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Pokemon, Go? Augmented Reality Technology Faces Legal Reckonings in 2017

Clarity on Pokémon Go's pending legal and privacy challenges, as well as underlying intellectual property concerns, will define augmented reality's trajectory in the near future.

Ricci Dipshan, Law Technology News

January 4, 2017

While not a new technology, augmented reality (AR) became mainstream worldwide phenomena in 2016. But like any untested consumer technology, it faces fine-tuning to adopt to the laws and society around which it seeks to transform.

One of the best examples is Niantic's Pokémon Go AR game, a seminal platform launched in 2016 which uses AR technology to superimpose interactive Pokémon characters onto what a user's mobile phone's video camera captures. In addition to wide fame and success, the game has also run into an array of unique lawsuits.

Law firm Pomerantz has spearheaded many lawsuits involving Pokémon Go, which may heed rulings in 2017. One of Pomerantz's early actions against Niantic was *Marder v. Niantic* in the U.S. District Court for the Northern District of California, [which alleged common law nuisance and unjust enrichment claims](#). These claims specifically stemmed from Pokemon Go's placing of "Pokémon Gyms" and "Pokestops"—real world locations where players can achieve a bonus or train their characters in-game—adjacent to the plaintiff's property.

Shortly after, Pomerantz filed another lawsuit in the Northern District of California, *Dodich et al v. Niantic*, on behalf of Michigan couple [alleging the same claims](#). These and other similar challenges were soon grouped together in an ongoing class action lawsuit against Niantic, *In re Pokemon Go Nuisance Litigation*.

It is not just aggrieved homeowners, however, who are pushing back against the AR game. Shortly after the platform's success, U.S. Senator Al Franken expressed [concerns about the game's privacy policies and the information it collects](#). To function, the game has to collect information about the user's location, among other metrics.

Niantic general counsel Courtney Greene Power responded to such concerns in a letter to Senator

Franklin. “Niantic does not and has no plans to sell Pokémon Go user data—aggregated, de-identified or otherwise—to any third party,” Power wrote. “As we continue to develop our sponsored locations program, we will provide certain reports to sponsors about visits and game actions (such as redeeming a promotion at the location), but those reports will contain aggregated data only.”

Given the apprehension over using private location data and other metrics, it is likely that future platforms which use AR technology similar to Pokémon Go will need to be attentive to the same concerns. This will be true for developers looking to monetize data collected from AR platforms as well.

Beyond privacy, a developer who wants to create an AR platform that similarly pastes interactive characters or images onto what is captured in real-time on a video camera may be vulnerable to copyright actions.

Christian Mammen, partner at Hogan Lovells, noted there may be legal action around “the rights of copyrights in any kinds of things that are lawyered in augmented reality, or even in a virtual reality environment.” The question is, she added, “whether those copyrights are adequately licensed.”

Developers can claim fair use of characters or imagery in AR platforms, but Mammen noted that such a claim can hinge not only on whether the copyrighted material is not used for profit, but also several other factors such as its educational value.

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