

# Augmented Reality and Intellectual Property Rights

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Augmented reality (AR) in business is used in a multitude of ways, creating an enhanced version of reality by using technology to overlap a digital image of something being viewed through a device.<sup>1</sup> Imagine viewing a construction site and pointing your phone at it to see a building virtually at scale. This is happening in 2020. Now, imagine approaching your apartment after your commute with your smart glasses on. The building is covered in advertisements designed from data gathered on your facial recognition, search history, recent purchases, age and more.

We've seen how influential smartphones have become over the last two decades—what can we plan for in the future? Companies are designing virtually to lower costs, save time, and plan for efficiencies. Investors, owners, contractors and engineers can tour buildings all from their living rooms. As 5G and 6G internet speeds roll out, benefits of AR become exponential. Yet, there are complexities that need to be considered in implementing this technology.

## Challenges

Some groups are merging tech and construction teams for improved communication and efficiency. Using this model, they worry less about intellectual property rights because everyone is working together.

“Construction delivery is changing, facilitating a new way of thinking,” said Chad Knutson of Gilbane Building Company. “Owners want a collaborative process and to bring more people to the table, instead of handing off projects.” But what sort of protections should be in place after construction? Fundamentally, this could be solved in a similar way to air rights.

There are many factors to consider. Personally, I can't help being excited to live out the Minority Report, but what about landlords and tenants occupying buildings today?

“People have started waking up to this,” said Karen Whitt, Colliers International. “Similar to negotiated air rights, owners and tenants could sell their augmented reality rights separately from the buildings and generate revenue. Everybody wins.”

Without a formal agreement, virtual advertisements are funneling cash to the tech companies. Content creators have the right to creative expression, yet equally owners and tenants have a say in what is represented on the property.

“How do you own something invisible? Real estate has trust. No one has bought a property because it was unsafe,” said Neil Mandt of The Layer Group. “There are personal and community reasons to [put protections in place].”

Since AR relies on technology, who has the rights to control what we see through our devices? Currently, there is no ownership or restrictions on intellectual property rights. A social media company could wrap a building with a virtual billboard. A virtual window could pop up above your head when you walk through a building lobby, displaying your online profiles. Unbeknownst to you, anyone could view your information on a smart device.

Unintentional or accidental infringement is another consideration. For example, in the mobile game Pokémon GO, players compete for virtual Pokémon characters in the physical world. It is the most popular game since its peak in 2016.<sup>2</sup> However, lawsuits have popped up as players trespass onto private property without owner permission.<sup>3</sup> Nintendo's liability could be on the rise as players work harder to reach unattainable destinations.

“Between the property owners and the tech world, the individual should have the same level of protection in the virtual world as they would in the real world,” said Curtis Sano, Holland & Knight. There are concerns when users risk their safety and there is nothing other than the terms and conditions preventing them from using discretion.

## Using AR today and in the future

Develop a strategy for the property and adapt property agreement protections (as landlord and tenant). Signage rights have been negotiated as a standard practice, incorporating clauses on digital augmentation should carry the same weight.

The impact of COVID-19 is changing how we interact with real estate, and this creates opportunity. Landlords and tenants can lease vacancies for augmented displays and consumers can visit it remotely while socially distanced to generate income. As Ben Gruita from Tactura Solutions suggests, “Analyze how long people were spending in the floor plan to provide a customized approach using the data collected on the users.”

There's an opportunity for a symbiotic relationship. How we plan to put protections in place today will set the trajectory. If the past is any indicator, combined with the changing landscape of COVID-19, landlords, tenants and brokers may be having these conversations sooner than later.

(1) <https://www.merriam-webster.com/dictionary/augmented%20reality>

(2) <https://www.syfy.com/syfywire/why-pokemon-go-is-still-wickedly-popular-among-adults-two-years-after-its-debut#:~:text=In%20May%2C%20Nielsen%20data%20tracking,the%20game's%20peak%20in%202016.&text=Since%20its%20debut%2C%20according%20to,grossed%20over%20%24%20billion%20worldwide.>

(3) <https://www.claimsjournal.com/news/national/2016/08/04/272570.htm>