

Augmented Reality Raises Legal Issues For Property Owners

By **Curtis Sano** (February 4, 2020)

Imagine that you are a real estate asset manager in the fourth quarter of 2025.

A client drops off a gift of the latest model of Google Glass — with vastly improved capabilities and under \$200. 5G cell service has been installed throughout your area and everyone currently has at least double (and in some locations 10 times) the data speed as in 2020.

You drive out to one of your buildings to try the glasses out. You look at your building and its address pops out as a bubble over your building, and additional bubbles contain your internet listings for rental space. So far so good.



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But what's that? On the side of your building, there appears to be a large sign with one of your tenant's names on it. You lift up your glasses and it disappears. There's another sign in your landscaping for a local restaurant down the block, which also disappears when you lift up your glasses. And a ghostly figure comes walking out of your building, talking to passersby.

You walk up to the lobby entrance and the figure comes up to you and says, "I see that the lab results from your last doctor visit indicate that you are at risk for cancer. Follow me to the second floor and we can run a full slate of tests to verify whether or not you have cancer."

Consider that Google Glass and other augmented reality goggles, glasses and other devices already exist. We have facial recognition, and the ability to marry GPS and camera technology with search functions so that phones and other digital devices can recognize buildings and locations in real time.

In early 2020, goggles and glasses for augmented reality uses are available but are expensive, often bulky and limited in capabilities. They are also limited by speed of data transfer and latency issues.

This situation will change rapidly over the next few years: the price of these devices will fall, making them true consumer appliances, their capabilities and available apps will expand and bottlenecks in data will be removed.

So what is augmented reality? Simply put, it is the ability to overlay digital information over views or images of the real world.

Consider the popular game, "Pokémon Go." Cartoon characters and game locations are overlaid on cartoon maps of the real world. When viewed through a phone or other device, the characters have an apparent location and remain in that location (or move about) as the phone's camera moves about. The camera sees the cartoon location overlaid over a representation of the real world.

Players must physically be at certain places on the map to find monsters to capture and to engage in battles with other players.

Other examples include Snapchat. One feature of Snapchat is the ability to view selfies of yourself and share images and videos with others. There are various filters associated with Snapchat whereby you can add cartoon images to your face that follow your face around as your camera moves, making it appear as though you have bunny ears or a funny nose.

How does this affect commercial real estate? The answer (and the big question) is, who controls the appearance of an owner's real property? The owner, its tenants or third parties?

Real estate professionals understand signage. It can be thought of as content and information which is attached to a building for branding, marketing and informational purposes.

But what if a sign can be attached to a building or displayed on a property through digital means, within various devices and apps used by a growing population of users?

Associating digital content with physical locations may make it possible to change the appearance of a building when viewed through certain devices and apps, or to create digital signage or other information to appear to be located on, around, within or in front of a building.

- A digital billboard could be of any size, perhaps appearing to be larger than the building itself.
- A digital representation of a person or cartoon character may attempt to engage passersby in conversation.
- The digital information may be in the form of voice, music or other audio content playing in or around the building.
- The signs and images may be interactive, and may permit the collection of personal and marketing information.
- Individuals may choose to display personal information on or about their person — or others may obtain that information and display information about that individual or show images which appear on or around that individual.

How can a property owner control these upcoming potential problems?

Some things can be subject to contracts — leases can contain language whereby a tenant agrees not to engage in certain actions, such as by restricting virtual signage or prohibiting contacts with visitors and passersby in and around the building.

Vendor contracts can restrict what the vendors are permitted to do. Agreements with employees can, to a certain extent, regulate their conduct in the workplace.

However, when third parties are involved, there may be instances in which there is no legal recourse under existing statutes or case law.

For example, if a third-party company creates an app that provides advertising signage that appears to obscure a building or interact with passersby when viewed while the app is active, that does not appear to violate any laws at this time.

After all, there is no physical effect on the building, and as long as the ad content itself does not defame anyone or otherwise constitute a tort it will be difficult to find a legal theory that would allow a court to enjoin the digital presence at the building.

Until law are passed extending the property owner's rights to its property to govern digital representations of the property or digital enhancements to the property, there may be nothing that the owner can do, other than complain to the makers of the app.

Finally, when purchasing a commercial building, it will be important for due diligence purposes to understand what commitments the seller has made as far as digital rights with respect to the building.

Have they made any agreements with advertisers? Tenants? Are they collecting data or tracking people who walk through the building or view the information available about the building?

It will be important for property owners and asset managers to be prepared for these changes. Some suggestions:

- Review lease and contract documentation to clarify what augmented reality features the tenant or counterparty may use which is associated with the building, such as those which are akin to signage.
- Perform periodic due diligence as to the appearance of the property using commonly available devices and apps.
- Review real estate purchase agreements to be sure that agreements with augmented reality providers are disclosed and either assigned to the purchaser or terminated at closing.

Augmented reality devices and apps are already here and are likely to spread rapidly. How will you prepare?

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