Augmented Reality: Legal and Policy Considerations

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1. Help businesses and governments understand the current legal and policy environment with regards to location and other types of spatial data.
2. Help develop a consistent and transparent legal and policy framework for collection, use and distribution of spatial data.
3. Identify solutions to legal and policy issues that limit the sharing of spatial data for critical transnational issues.
   1. Climate change
   2. Disaster response
   3. Health and Infectious Disease
Augmented Reality

‘Digital data superimposed on the physical world’
- Data – particularly data associated with a location – raises unique set of legal and policy issues.
- Issues become more complex when integrated into physical world

Practical Realities
- New technology often illicits fear
- Legal community is reactive, not proactive
  - Technology moves much faster
  - Hard to apply legal theory/doctrine to new technology
- Legal Interoperability does not yet exist
  - Each jurisdiction has its own laws
Augmented Reality
Sensor Web

- All sensors reporting position
- All connected to the Web
- All readable remotely
- Some controllable remotely
- All with metadata registered
Key Legal Issues

- Spatial Law is the set of legal issues associated with geospatial technology and the collection, use and transfer of location and other types of spatial data.

- Key Issues include:
  - Privacy
  - Intellectual Property Rights
  - Data Quality/Liability
  - National Security

- These same issues apply to Augmented Reality
Privacy

● What is privacy from a location stand-point?
  – What are we trying to protect?
  – Collection vs. use vs. distribution/transfer?
● Are existing privacy regimes applicable models?
  – Is location data the same as medical records?
  – Can meaningful notice and consent be obtained?
● Cultural differences must be considered.
● Opportunity costs?
  – Will we try to regulate too early?
  – What opportunities will be lost?
Privacy Is Being Defined Now!

- Rapid rollout in new technology, has resulted in . . .
  - Facebook, Google Street View, Apple +Android phones geotagging photos
- Media focusing attention on privacy issues which has caused . .
  - WSJ series, CNN, Internet, local news
- Policymakers and politicians around the world to respond with legislation/regulation . . .
  - US,
  - Europe
  - ??
- Challenge becomes how do you define what to regulate?
  - Data?
  - Technology?
  - What are the potential implications to Augmented Reality?
Future Challenges

- Taggants
  - What types?
  - How deployed?

- Future Applications
  - Augmented Reality glasses
  - Commercialization of Individual’s ‘avatars’?

- Use in Law Enforcement/National Security
  - Being tested in Brazil

- Each raises new issues/challenges
Data is very different from software with respect to copyright
  - Harder to protect databases through copyright protection

The issue becomes even more important (and complex) with Points of Interest (POI) and other location databases

“Very serious copyright issues around places databases”
  - attributed to Eric Schmidt, Google, Inc.
Nike Used OpenStreetMap Data
Advertising and Unfair Competition

- Potential sources Claims
  - Imposing images over billboards, signs, etc.
  - Adding signage to ‘white spaces’
  - Receiving advertising revenue generated from other augmented reality ads

- Law Is Unclear and Little Precedent Exists

- Sherwood 48 Associates v. Sony Corp of America
  - Court found no infringement for digital display of ads in movie
  - Similar to another case which involved CBS
    - ‘Under its reasoning, artists are at liberty to digitally alter nonpermanent advertisements, provided that such alteration primarily serves the creative endeavors of their work. The CBS situation shows, however, that where commerce meets art in a nonfictional context, the right to alter another’s advertisements may not be so clear.’
Augmented Reality: Potential Sources of Liability

- Flaws in product design/production
  - Eyewear

- Use of technology
  - Injuries sustained during use
    - “Slip and fall” cases

- Issues of data quality
  - Navigation
Liability - Negligence

- Causes of Action
  - Duty of care – ordinary prudent person
  - Breach of duty
  - Causation
  - Damages
- What is the ‘duty’ with respect to augmented reality?
- Who is to decide:
  - Industry?
  - Courts?
  - Legislatures?
  - Market?
Aetna Casualty and Surety Co. v. Jeppesen & Co., 642 F.2d 339 (9th Cir. 1981)

- The “defect” in the chart was that the graphic depiction of the profile, which covers a distance of three miles from the airport, appears to be drawn to the same scale as the graphic depiction of the plan, which covers a distance of 15 miles.
- “While the information conveyed in words and figures ...was completely correct, the purpose of the chart was to translate this information into a instantly understandable graphic representation”
- “It was reliance on this graphic portrayal that Jeppeson invited”
Liability - Product Liability (cont.)

  - Jeppeson aeronautical chart showed airport had a full instrument landing system, although it did not.
    - “By publishing and selling the charts, Jeppesen undertook a special responsibility, as seller, to insure that the consumers will not be injured by the use of the charts; Jeppesen is entitled – and encouraged – to treat the burden of accidental injury as a cost of production to be covered by liability insurance”
Recommendations

- Work with lawyers early in the process
  - This industry will face a number of legal/policy challenges
  - Dialogue between technical and legal feasibility and interoperability

- Emphasize value of technology besides advertising, gaming etc.
  - Create broader support
  - Will help in privacy debate
Questions?

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