

## **Legal issues around location data and augmented reality**

**Many social networking services, games and other online apps are investigating the possibilities of monetising location data by using ‘geofilters’ which overlay local brand information on top of user images.**

Overlaying graphical or text based information on top of real-life photos or video is also referred to as ‘augmented reality’. Snapchat is one such brand seeking to combine location data and augmented reality.

Leaving aside the issue of whether users will really embrace brand messages on top of their own content there are a few legal issues to untangle. The main issues in the UK and EU relate to the use of location data under data protection rules and the copyright issues which arise when user images are altered or amended.

### **Location data and data protection rules**

Location data can amount to ‘personal data’ and may be subject to the Data Protection Act. The UK’s information commissioner has laid out some useful guidelines on using location data. Specifically, location data can only be used where a) the user cannot be identified from the data or b) the data is required as part of a value-added service which the user has consented to.

In order to add local brand information or serve local ads to users, location data will need to be processed. In practice it is difficult to say that a user cannot be identified from the information and anyone who is seeking to use location data should ensure that explicit consent is obtained, through a specific opt-in to the use of location data. The user will need to be informed what types of data will be used, the reasons for using this data, how long it will be used and whether this data will be supplied to third parties.

### **Amending user images**

Any business seeking to introduce a service which will amend a user’s image should be aware that the copyright in the image will generally vest in the user. As well as being able to prevent copying or distribution of the work (the classic copyright) the user also has “moral rights” to be identified as the creator of the work if the work is subject to any publication or distribution and to object to “derogatory treatment” of the work (which might include amendments and additions to the work).

Any application or service which seeks to amend or add to user images or video should ensure that they have the consent of the user in their terms of service to these alterations. And if there is any use of the work which might amount to publication or distribution (e.g. featured user images, or showing other photos taken in the local area) then separate and specific “opt-in” consent should be obtained for this. As with data protection issues, obtaining clear consent is key.

### **Using augmented reality and location data to promote your business**

SMEs who want to use existing services to promote their business need to be aware that the content of their promotions will be subject to regulation in the UK by the Advertising Standards Agency. This means that any promotions which are made using such services need to be

flagged as marketing promotions, must be accurate and not misleading. Obviously third party IP should not be infringed in any promotion.

The contract between the advertiser seeking to promote their services and the online service serving the ad to its users is likely to shift responsibility onto the advertiser, so it is up to the advertiser to ensure that the content is compliant with the rules.

*Guy Wilmot is a partner in the corporate and commercial team at Russell-Cooke LLP.*

**[www.russell-cooke.co.uk](http://www.russell-cooke.co.uk)**