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The Pokémon invasion of privacy

The Pokémon invasion of privacy: Pokémon Go seems to be going into unexpected places, causing unexpected problems, and raising a legal storm.

The rosy-cheeked, rabbitlike characters have popped up in the Holocaust Memorial Museum, Arlington National Cemetery, and the ANZAC Memorial in Sydney. While these are public places, it is clear why there has been an outcry against them being trivialised as a place to find, fight, and catch a cyber-character.

But the game is throwing up other legal issues, as people playing it pursue the virtual characters without regard for their own safety or others' privacy.

It has been reported that in the US sex offenders are being banned from using the game so they cannot lure youngsters to areas where they might prey on them. Individuals have risked their own safety in pursuing Pokémon on bridges and towers and incurred the wrath of neighbours in pursuing them in parks night and day (SJ160/37).

It is now apparent the app is also causing privacy issues, with lawsuits already being filed across the US. As with Google Glass, it is apparent that the designers of these augmented reality functions devise them without considering the privacy issues that they give rise to. Google Glass had to be withdrawn after it was shown that wearers were able to identify, track, and record images of individuals on a sustained basis without the individual even being aware of it. The preservation and collation of the information gave rise to worldwide privacy complaints and would have inevitably led to Data Protection Act issues in the UK.

While Pokémon Go does not capture and preserve personal information, preserving only a record of Pokémon fought and captured, it has led, by the positioning of Pokestops and Pokegyms, to actions for trespass against people going on to private property to pursue their fictional quarry.

But the use of an individual's garden or the exterior of their property as a stop or gym is unlikely to give rise to a claim for breach of privacy.

As with Google Earth, capturing and storing the exterior of properties in this way is not a misuse of private information, but users will clearly have to be careful that this does not lead to the capturing of a third party's private information when entering homes. Where legal action in the US for the 'consequences of populating the real world with virtual Pokémon without seeking the permission of property owners' leads, it is perhaps inevitable that the rest of the world will follow.

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