

Pokemon “No!”

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The proliferation of iPhones, iPads, androids and other personal technology devices has also resulted in the growth of online games for both the young and old. It is difficult to watch television without seeing an ad for “Mobile Strike”, “Game of War” or “Clash of Clans” or some other “Clash” game.

The latest game craze for personal technology device users is “Pokemon Go”. “Pokemon Go” is described as an “Augmented Reality” game, in which users or players, who have downloaded the “Pokemon Go” application, seek “monsters” that appear on their phone screen in actual places. The application uses the phone’s GPS and Camera to link the game with the player’s actual surroundings. The surroundings appear as a stripped-down and stylized version of Google Maps whereby the player sees the outline of streets on a solid-colour background. As the player walks around, his or her “avatar” moves as well, within the map.

Players search for virtual critters scattered around the map, and capture them by throwing “Pokeballs”, which they gather, along with other equipment, at various “Pokestops” located at pre-determined actual landmarks around the world. In order to find Pokemon, players look at their surroundings through the app/Camera combination. The Pokemon appears super-imposed on the background and is integrated with its surroundings, to give the appearance of “reality”. Once a player finds Pokemon, he or she flicks a “Pokeball”, located at the bottom of the game screen, toward the creature. If successful in capturing the Pokemon, a player may then train it using various in-game supplies. These supplies may be collected or bought using “Pokecoins”, which may in turn be collected through gameplay or bought with real money. A player can also use his or her Pokemon to fight the Pokemon of other players.

While online gaming can be fun and social, Pokemon Go has been earning the ire of many people. It has led to some bizarre behaviour as well.

In the past few weeks, police in York Region (just outside Toronto) stopped an erratic Mercedes driver who was driving “suspiciously” at 3:20 am in the morning because he was on a “Pokemon catching spree”. In Toronto, the Toronto Transit Commission has charged a YouTube comedian, who took a video mocking Pokemon game players while walking on subway tracks at busy Union Station, under transit commission by-laws. In another incident, an Arizona couple have been charged with child neglect and endangerment after they left their two-year-old toddler at home alone so that they could Pokemon hunting. The toddler was spotted, 10:30 at night, running around his home and trying to get in. He was barefoot, red-faced and filthy. When police eventually called the father to advise him that his son had been abandoned, the father allegedly answered and replied, “Whatever”, before hanging up the phone.

A significant concern for others has been the gathering of Pokemon “hunters” in public parks or on private property. Hundreds of people have gathered in popular Pokemon locales at all hours of the day and have created a nuisance for local residents. For example, residents living near the popular Jack Layton Ferry Terminal in downtown Toronto have recently video-recorded hordes of Pokemon “hunters” trekking across private condominium lands, urinating in a condominium’s guest parking lot, and pushing baby-strollers at 1 o’clock in the morning, all in effort to capture elusive virtual Pokemon monsters.

Despite contacting the developers of the game, the City of Toronto seems powerless to convince them to reduce the number of “Pokestops” in the ferry terminal area or convince them to revise Pokemon locales.

From a legal perspective, it will be interesting to see how the law develops to deal with this new kind of virtual game. While an individual can be charged with trespass for the unwanted entering of private land and potentially be held liable if he or she causes damage on those lands, can the developers of the game also be held liable for the trespass or resulting damage? Can a government pass a regulation or by-law preventing a virtual game developer from deploying a virtual critter on government lands or require a game developer to pay fee for the right to place a virtual critter, seen only a game user’s phone, on public land? Certainly, a vendor cannot sell his or her goods on public land without a permit. So why should game developers be allowed to utilize public space to further their commercial interests without being required to pay for the costs of using the “space”? What happens if a game player gets injured on public or private land while playing the game? Can the owner of the property be held liable under occupier liability laws or will a court determine that the player voluntarily assumed the risk of getting hurt because he or she was playing the game when the injury happened?

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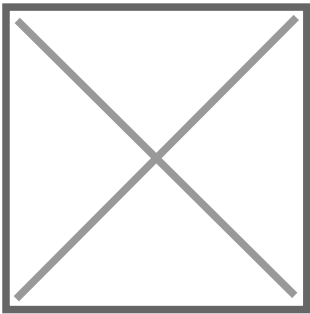
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As was seen on the recent video, the hordes of Pokemon “hunters” have left all kinds of garbage on public and private lands along Toronto’s waterfront as well which has required the City to deploy additional workers to keep the area clean. Is it fair for the Toronto taxpayer to bear the costs of the extra services or should the game developer be required to pay for the costs of clean up?

Given all of these questions and the headaches, it is no wonder that, despite some positive aspects to this kind of game, people are beginning to chant, “Pokemon, NO”!

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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