



## Use Agreements to Capture and Control IP like it's a Pokémon

Aug 25, 2016

Authors: Noel Courage and Nicholas Aitken

In our previous article “[Pokémon GO Shows How to Augment Reality and your Intellectual Property](#)”, we discussed the value and diversity of the Pokémon Intellectual Property (“IP”) portfolio. Pokémon GO was used as an interesting example of the evolution of IP protection to cover integration of the Pokémon brand with new augmented reality technology. Trademarks, copyrights, trade secrets and patents all played an important role. This article will provide a high level overview of certain key agreements used to further protect augmented reality IP, with specific reference to the Pokémon IP. The use of agreements to control IP is similar whether the IP is computer-related, mechanical, or life sciences.

### Terms of Use

Terms of Use (alternatively called Terms of Service) help protect IP by controlling what end users do with the game and its IP. In Pokémon GO, new users are prompted to agree to [the game's Terms of Use](#) before being allowed to play the game. The Terms of Use are non-negotiable – declining the agreement ejects you from the game. They also authorize game play, but prohibit certain unauthorized uses of the game. The Terms of Use for Pokémon GO state, “Niantic and its licensors...exclusively own all right, title, and interest in and to the Services and Content, including all associated intellectual property rights.” If a user violates the terms, for example, by misusing the IP, then that user may be cut off from further use and could have a legal liability if the violation was an IP infringement.

Terms of Use can also enforce fair gameplay and protect the monetization strategy. In a free-to-play game where players can purchase in-game content for advancement, “cheating” can undermine the value of the purchasable content and frustrate paying users. Recently, Pokévision and other Pokémon trackers that relied upon Niantic's API to map the location of Pokémon have been shut down, allegedly for breaching the API's Terms of Use. Developer Niantic is also now issuing permanent bans against players who employ GPS spoofing, bots, and other prohibited techniques to get ahead, citing the Terms of Use which prohibits such activities.

### Other Negotiated Agreements

Pokémon GO is the result of the collaboration between The Pokémon Company and Niantic. The Pokémon Company is jointly owned by Nintendo, Game Freak and Creatures, and is responsible for licensing the Pokémon IP. Niantic is a Google spin-off with expertise in augmented reality and location-based mobile gaming from their earlier works Field Trip and Ingress. We are not privy to the agreements between the co-owners of the business, but they undoubtedly deal with confidentiality, IP ownership, and sharing of proceeds. For example, Nintendo is licensing its Pokémon GO trademarks to Niantic, but retains control over the mark and how it is used. It is good to have agreements in place early on before revenue starts to flow, so that parties' entitlements and obligations are clear. Undoubtedly, there are also confidentiality and IP ownership agreements in place with the employees, independent contractors and outside companies that help develop and promote the games. These contracts ensure that all IP ownership, for example, in graphic design, software code, game functionality and other work product, is transferred to the appropriate owner, regardless of which

outside party is the author or inventor.

As this augmented reality example shows, while identifying and registering IP is a good practice, the IP also has to be carefully controlled. This control should be exercised not just with respect to competitors, but also end users and business partners. Use this strategy with all types of IP, not just the latest technology. Using clear and strong agreements will ensure that a company can retain, maintain and profit from its investment into IP.