



CORPORATE COUNSELLOR

## Copyright reality in virtual reality

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The technology used to view media is constantly being improved. Over the past few decades, the resolution of screens has vastly increased alongside the computing power necessary to play high-definition video through them.

Similarly, video players have progressed through the formats of Betamax, VHS, LaserDisc, DVD and Blu-ray (alongside some more ill-fated counterparts), and internet speeds have risen to the point where content providers are now able to offer high-definition video streaming to mass-market consumers. Continuing this progression, virtual reality (VR) represents a new stage in media technology advancement.

Emerging VR technology: VR is the first technology to provide a truly immersive experience, allowing users to feel as if they are in another reality simply by putting on a VR headset. With multiple platforms now available for retail purchase, VR is poised to become the number-one method of visual media consumption in the near future.

Because of its immersive nature, VR has the potential to dramatically change the way we access creative works and think about travel. For widespread adoption of VR technology to take place, VR developers will need to ensure that there is robust content available for consumers who purchase a VR system.

To maximise the potential of VR, developers will need to have a deep understanding of how VR content may be protected under existing intellectual property laws. In addition, they will need to learn which uses of existing non-VR content are permissible and which uses will give rise to infringement claims by content owners.

Copyright law implications: Copyright law protects creative content such as books, music and movies. The Thai Copyright Act BE 2537 (1994) grants authors of creative works the exclusive right to reproduce, rent, assign, license, communicate to the public and create adaptations or derivative works. Other parties may not use works in these ways without the permission of the copyright owner. Doing so can be deemed as infringement of the owner's copyright, making the violator liable for damages and/or imprisonment.

However, the Copyright Act also carves out limited exceptions for uses of protected works that will not be considered infringement. For these special cases, the public benefit of allowing the use of a protected work outweighs the owner's interest in the work, provided that the new use does not conflict with the owner's normal exploitation of the copyright work and does not unreasonably prejudice the owner's legitimate rights to the work.

One such exception that was recently added to the Copyright Act in Section 32(9) governs the reproduction or adaptation of a copyright work for the benefit of people with visual, auditory or mental disabilities. Under this section, protected copyright works may be reproduced by parties other than the author as long as they obtain the permission of the author and the reproduction is for a non-profit purpose.

Virtual reality has the potential to greatly assist those whose disabilities make it difficult for them to enjoy works in their original forms, by adapting them to a medium that is more accessible.

Similarly, VR applications for education can have a huge advantage over traditional textbooks by providing customised lessons to students with learning disabilities or other impairments. It can provide lessons individually tailored to the learning style of each student, in order to hold their interest and aid in retention.

Travel is another area where VR is expected to flourish, by providing immersive experiences for those who cannot journey to a given location because of financial or other limitations. Imagine experiencing a simulated moonwalk, or sitting in the stands of the Colosseum during a gladiator match in ancient Rome.

Creators interested in offering VR travel experiences should be aware that architectural works, like buildings, are often protected under copyright in the same way as other creative works, like art. Reproducing a protected building or artwork in a VR travel experience could land a developer in legal trouble.

Fortunately, the copyright laws of many countries recognise a "freedom of panorama", which allows for the photographing, filming or painting of publicly accessible buildings and artwork. However, not all countries' copyright laws are the same in this regard.

Italy's laws prohibit the commercial reproduction of ancient buildings or works of art, so a VR developer would need to obtain permission from the relevant ministry before offering an experience featuring the Colosseum or other famous landmarks.

In France, while the Eiffel Tower is now part of the public domain and may be reproduced, the light shows that are exhibited on the tower are still under copyright protection. Thus, VR developers may reproduce images of the tower during the day, but may not reproduce the illuminations at night.

In Thailand, it is not an infringement of copyright to reproduce images of an architectural work, so VR developers may feel free to create simulated walking tours of famous Thai destinations. However, they should be aware that artwork associated with a building might still be protected even if the building itself is not.

There are many exciting applications for VR in the areas of travel and education. VR developers should familiarise themselves with local copyright law and enlist the advice of experienced legal counsel in order to ensure that their hard work does not expose them to lawsuits by disgruntled copyright owners.

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