

Yeshiva University, Cardozo School of Law

LARC @ Cardozo Law

AEJ Blog

Journal Blogs

4-26-2016

Early Concerns over Protecting Consumer Privacy in the Emerging Virtual Reality Market

Jerome Chapman IV

Cardozo Arts & Entertainment Law Journal

Follow this and additional works at: <https://larc.cardozo.yu.edu/aelj-blog>



Part of the [Law Commons](#)

Recommended Citation

Chapman IV, Jerome, "Early Concerns over Protecting Consumer Privacy in the Emerging Virtual Reality Market" (2016). *AEJ Blog*. 113.

<https://larc.cardozo.yu.edu/aelj-blog/113>

This Article is brought to you for free and open access by the Journal Blogs at LARC @ Cardozo Law. It has been accepted for inclusion in AELJ Blog by an authorized administrator of LARC @ Cardozo Law. For more information, please contact christine.george@yu.edu, ingrid.mattson@yu.edu.

Early Concerns over Protecting Consumer Privacy in the Emerging Virtual Reality Market

BY [JEROME CHAPMAN IV](#) / ON APRIL 26, 2016

As Virtual Reality entertainment finally finds itself in consumers' hands, the leaders have taken a bold stance on what legal rights they claim over user-generated content. While one front runner, Oculus Rift, estimates a shipping date in August 2016, they are accepting pre-orders and have posted their "Terms of Service."[\[1\]](#) Therein, Oculus states:

"By submitting User Content through the Services, you grant Oculus a worldwide, irrevocable, perpetual (i.e. lasting forever), non-exclusive, transferable, royalty-free and fully sublicensable (i.e. we can grant this right to others) right to use, copy, display, store, adapt, publicly perform and distribute such User Content in connection with the Services.[\[2\]](#)

Per these terms Oculus would have the right to sub-license user-generated content to third parties for Oculus' own financial gain. Users of Instagram will remember a proposed amendment to the Terms of Service which was redacted after large-scale user backlash to the proposed changes.[\[3\]](#) The proposed changes stated in simple terms that Instagram might profit off of user-generated content:

Some or all of the Service [*Instagram*] may be supported by advertising revenue. To help us deliver interesting paid or sponsored content or promotions, you agree that a business or other entity may pay us to display your username, likeness, photos (along with any associated metadata), and/or actions you take, in connection with paid or sponsored content or promotions, without any compensation to you."[\[4\]](#)

While those terms were eventually retracted, the language taking its place seems to legally permit substantially the same action:

"[Y]ou hereby grant to Instagram a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service, subject to the Service's Privacy Policy . . ."[\[5\]](#)

The privacy policy clarifies:

"We may share User Content and your information . . . with businesses that are legally part of the same group of companies that Instagram is part of . . . ("Affiliates"). Affiliates may use this information to help . . . improve . . . Affiliates' own services (including by providing you with better and more relevant experiences).[\[6\]](#)

Perhaps the most notable of these “Affiliates” is Facebook, which acquired Instagram for \$1 billion in 2012.[\[7\]](#) Slightly more than two years later, Facebook bought Oculus Rift for a substantial \$2 billion dollars.[\[8\]](#) Another affiliate under this umbrella is Atlas Solutions,[\[9\]](#) which “is a world-class ad-serving and measurement platform, offering services (“Services”) to advertisers and agencies to help them deliver and understand the effectiveness of their ad campaigns.”[\[10\]](#) Plainly, this agreement would permit this information to be used in targeting advertisements.

Users of the service have agreed to allow Oculus to collect and share not only user generated content, but also “[i]nformation about your physical movements and dimensions when you use a virtual reality headset” and “information about the device’s precise location, which is derived from sources such as the device’s GPS signal and information about nearby WiFi networks and cell towers”[\[11\]](#)

As these terms are fairly generous to the Facebook family of companies, and seem to be a step forward from the retracted provisions of the Instagram policy, the agreement has drawn significant attention. Notable technology news website Gizmodo ran a story entitled “There are Some Super Shady Things in Oculus Rift’s Terms of Service,” which speculated “that the emergence of VR technology opens up [a] new type of data for companies to mine en masse which can be collected efficiently. The fact that Oculus, the clear leader in the new VR marketplace, is setting this precedent could be dangerous for the future of the technology.”[\[12\]](#)

A more impactful critique may be forthcoming from United States Senator Al Franken, who wrote to Oculus’ CEO Brendan Iribe, expressing concern over privacy protections for users of the new technology. Franken wrote:

I believe Americans have a fundamental right to privacy, and that right includes an individual’s access to information about what data are being collected about them, how the data are being treated, and with whom the data are being shared.[\[13\]](#)

A virtual reality analyst noted that the concerns about the amount of data collected, and the use thereof, have arisen because of Oculus’ lack of transparency regarding its business model.[\[14\]](#) Quite simply, if Oculus sells the \$600 unit at a loss[\[15\]](#), that revenue must be collected elsewhere, and the broad license to an unprecedented amount of user data and information certainly has the potential to be that cash cow, considering the relative modicum (as compared to an always-on in-home virtual reality device) of information to be gleaned off of an Instagram user’s account was valued at \$30 per user.[\[16\]](#)

Will Mason, Editor-in-Chief at UploadVR imagined a somewhat Orwellian scenario possible under these terms where “[a]n ad executive at Coke, for instance, could tell just how long you

stared at the Coke bottle cleverly placed inside your favorite game as an in-game ad and use that data to better place it in the game for you next time.”[\[17\]](#)

Oculus currently denies the presence of such an advertising scheme,[\[18\]](#) but explicitly states “these are things we may consider in the future.”[\[19\]](#) Undoubtedly, it would be naïve to expect that Oculus would forgo profits, but there is something concerning about users giving content and data to a mega-corporation which openly states: “You irrevocably consent to any and all acts or omissions by us or persons authorized by us that may infringe any moral right (or analogous right) in your User Content.”[\[20\]](#)

Perhaps drawing publicity to the surprising terms in this agreement early in the emergence of the industry will protect consumer interests, and draw prospective users to the other terms including their requirement to opt out of the arbitration agreement should litigation be the preferred route.[\[21\]](#)

[\[1\]](#) Terms of Service, Oculus: <https://www.oculus.com/en-us/legal/terms-of-service/>.

[\[2\]](#) *Id.*

[\[3\]](#) <http://www.forbes.com/sites/tomiogeron/2012/12/20/after-backlash-instagram-changes-back-to-original-terms-of-service/#2bc5124326ab>

[\[4\]](#) Proposed Terms of Service update, Instagram, as excerpted in: <http://blogs.wsj.com/digits/2012/12/18/why-the-web-is-freaking-out-over-instagrams-new-terms-of-service/>. NB: italics are this author’s.

[\[5\]](#) Terms of Use, Instagram: <https://help.instagram.com/478745558852511/>.

[\[6\]](#) Privacy Policy, Instagram: <https://help.instagram.com/155833707900388>

[\[7\]](#) <http://techcrunch.com/2012/04/09/facebook-to-acquire-instagram-for-1-billion/>

[\[8\]](#) <http://techcrunch.com/2014/07/21/facebooks-acquisition-of-oculus-closes-now-official/>

[\[9\]](#) Related Companies, Oculus: <https://www.oculus.com/en-us/legal/related-companies/>

[\[10\]](#) Privacy Policy, Atlas Solutions: <https://atlassolutions.com/privacy-policy/>

[\[11\]](#) Privacy Policy, Oculus: <https://www.oculus.com/en-us/legal/privacy-policy/>

[\[12\]](#) <http://gizmodo.com/there-are-some-super-shady-things-in-oculus-rifts-terms-1768678169>

[13] Letter to Oculus from Sen. Franken:
<http://www.franken.senate.gov/files/letter/160407OculusLetter.pdf>

[14] Anshel Sag noted that "Oculus has made their business model a mystery to most They claim not to make much money on the headset itself, which leads many to believe that they be making money off software. However, software does not exclude the collection of data through the Oculus Store. This privacy issue has arisen due to the fact that Oculus has not been straightforward with their users and made it clear to them that they would be collecting this much data." Quoted in
<http://www.forbes.com/sites/jasonevangelho/2016/04/07/senator-al-franken-wants-answers-from-oculus-about-their-privacy-policy/#431ba2ea7bf0/>.

[15] <http://www.vrfocus.com/2015/10/oculus-rift-to-shift-5-million-2016-sell-at-a-loss-predicts-credit-suisse/>.

[16] <http://techcrunch.com/2015/10/13/whats-the-value-of-your-data/>.

[17] <http://uploadvr.com/facebook-oculus-privacy/>.

[18] *Id.*

[19] *Id.*

[20] Terms of Service, Oculus: <https://www.oculus.com/en-us/legal/terms-of-service/>.

[21] Terms of Service, Oculus: <https://www.oculus.com/en-us/legal/terms-of-service/>.