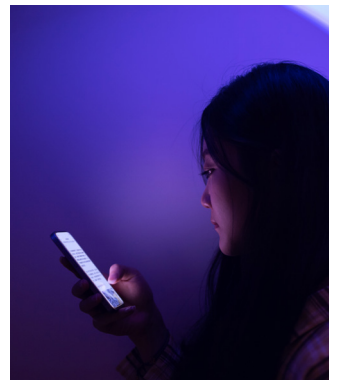




# Virtual billboards

## The future of immersive advertising?

RPC White Paper – October 2023



### Contents

- 1. A glimpse of the future 1
- 2. Immersive advertising 3
- 3. Virtual billboards and property digital rights 4
- 4. The Darabase model 5
- 5. Legal issues 9
- 6. Conclusion 12





# 1. A glimpse of the future

Imagine you're walking down London's Regent Street wearing a new set of augmented reality (AR) smart glasses for the first time. You're being directed to a coffee shop by arrows from an interactive map. As you walk, you're presented with drink options enabling you to order without needing to queue<sup>1</sup>, plus a discount on a pastry only available to users of smart glasses. So far so good. But it's what you see on the way to the coffee shop that surprises you.

On various buildings (some landmarks, some not) you see your favourite brands display advertising in a wholly new and engaging way. Where once there was a blank wall, there is now a virtual billboard, perhaps with interactive content and potentially even personalised specifically to you (depending on the ad choices you've selected on the platform running your smart glasses). You have to pinch yourself to remember you're not Tom Cruise in the 2002 sci-fi film, *Minority Report*, at that iconic moment when his character, John Anderton, is asked whether he's in need of a Guinness as a result of the film's imagined iris scanning technology.

Thanks to the likely or even (depending on who you ask) inevitable deployment of immersive technologies as the next iteration of the smart phone, John Anderton's experience may well be coming to you sooner than you think – not least as the build of the infrastructure for "virtual billboards", and the "property digital rights" which will underpin them, is already well underway. This Paper considers these two novel concepts, and, specifically, the key legal issues that are likely to arise as distinct from those associated with current advertising practices.



1. Forbes, "I've Seen The Future Of AR Glasses At CES 2023 – And It's Amazing"



## 2. Immersive advertising

### The now: one-off activations

An increasing number of advertisers are experimenting with immersive technologies, such as AR and virtual reality (VR), and the associated concept of the metaverse (ie a network of digital spaces through which we will connect with each other, largely (but not exclusively) accessible via AR and VR). Their aim is to create rich, immersive, multi-layered advertising experiences with which audiences can interact to learn more about a business, its products or services.

### Immersive advertising in AR

In the AR sphere, advertisers most commonly engage in immersive advertising through bespoke, one-off, smartphone-delivered activations on social platforms or via web based AR (eg to celebrate the launch of a new product). In the online world, social media platforms now offer advertisers various tools to incorporate AR into their ads, such as face filters or mini games<sup>2</sup>, which consumers can engage in as they scroll through their feeds. Certain retail brands have also built bespoke AR tools to allow customers to trial furniture within their homes<sup>3</sup>, or make-up on their faces<sup>4</sup>, before purchasing. In the real world, an advertiser might encourage consumers who are physically in a particular site to scan a QR code on their smartphone camera to trigger a location-based AR experience.

The consumer can then interact with the experience in a variety of ways (eg taking photos or playing games)<sup>5</sup>.

### Immersive advertising in VR

Immersive advertising in VR generally involves a brand's creation of a consumer experience within fully immersive, simulated virtual worlds such as Meta's Horizon Worlds, Fortnite or Roblox. As it stands, businesses face a certain investment of cost, time, skill, effort and resources in order to bring these to life – think of a brand launching its own virtual world<sup>6</sup> or selling designer avatar outfits<sup>7</sup>.

### The future: virtual billboards

As immersive technologies evolve, and consumer engagement increases, advertisers will become more and more interested in using these technologies to advertise in the real and virtual worlds around us. In other words, there will come a time when it will be commonplace for businesses to pay platforms to advertise virtually, in the same way as a business might purchase ad space to advertise on an online platform or mobile app today.

The focus of this Paper is on one of the most exciting developments in this space, and which is already starting to take shape – namely, “virtual billboards”. These billboards would not be limited in size in the same way a physical billboard

might be, but rather highly adaptable to the space available across the whole building itself, depending on the desired impact of the advertising in play. Over time these may evolve, for example to be 3D and interactive rather than the digital equivalent of a poster advertisement. These could be:

- viewable through AR, layered on top of the real world (as described in our Introduction); or
- viewable through VR within a fully immersive virtual world.

Property owners already attribute significant asset value to the outdoor media inventory on many of their properties, based on the incremental revenue generated. For example, Landsec's Piccadilly Lights screen in London currently has an asset value of over £200m<sup>8</sup>, making it one of Landsec's most valuable assets, larger than many office and retail properties they own. Virtual billboards represent a unique opportunity for advertisers to leverage the advantages of both digital and outdoor media for their properties, without the planning and capital expenditure requirements of their physical equivalents. As we all spend more time in immersive environments, it's quite possible that today's vast digital advertising spend will shift to AR and VR media, such as virtual billboards. Underpinning these virtual billboards are “property digital rights”, as described in Section 3 opposite.

## 3. Virtual billboards and property digital rights

All advertising, whether out of home, print, radio or digital, requires a steady supply of inventory for purchase by advertisers. Whether you contact a media owner directly to purchase space on a physical billboard or use a well-established platform with programmatic and real-time auction mechanisms to bid for digital advertising space, the common denominator is the same – permission. Advertisers require permission to advertise in a particular space. Likewise, we would expect that in the future, a smooth-running virtual billboard inventory, whether in AR or VR, will require permission of the owner of the real or virtual space on which the advertiser intends to place their ad. In addition to the potential prospective legal risks, brands and agencies just won't want to engage if the whole model is not built on a permission-based system, not least as they will not wish to risk their campaigns (or themselves) getting pulled into the inevitable difficulties and potential disputes that may otherwise arise.

Going back to our journey to the coffee shop around Regent Street: the digital billboards spotted en route are all of course virtually placed onto buildings or landmarks owned by a property owner. Under a permission-based virtual billboard system, one would expect that property owner to have given permission for the virtual billboard to appear in order to: (a) assert their ownership of the property for the purposes of placing virtual advertising; (b) exert their rights over how the property is used in and for virtual billboards (eg

perhaps they don't want ads placed at all, or wish to exclude advertisements for certain products such as alcohol); and (c) potentially even monetise the property (ie via payment from advertisers wishing to advertise via the virtual billboard). The challenge is that there is no consistent and easy way to do so at the moment. Granting such permissions conveniently and in large volumes requires a new approach, and potentially a new class of property rights, which may well become known as “property digital rights” (PDRs).

PDRs can be designed to allow property owners to protect, manage and monetise how their properties are used in AR-enabled mobile apps or smart glasses or VR metaverse worlds. At the same time, property owners can select any restrictions or content preferences that should apply to their property to ensure the advertisements or other digital content meet their requirements and preserve the reputation and prestige of the property.

It is worth imagining that PDRs could apply not only in the real-world and AR context (ie as applicable to real-world buildings on which virtual billboards are projected through a user's smart glasses as they explore the physical world), but also in the metaverse and VR context (ie noting that property owners can allow the creation of replicas of their physical-world buildings to be displayed in a completely virtual environment).

Some argue that immersive advertising (and particularly AR virtual billboards) and the PDRs that will control it, are the future of outdoor media. In the Case Study below we explore PDRs in more detail, and consider the cutting-edge work being done in this space by one of RPC's clients, Darabase.

2. eg Snapchat “Lenses”

3. eg DFS “View in your Space”

4. eg Charlotte Tilbury “Magic Mirror”

5. eg See brand activations created

by RPC's client, [Darabase](#)

6. eg [NIKELAND on Roblox](#)

7. eg [Balenciaga and Fortnite](#)

8. eg [Landsec on Piccadilly lights, WI](#)





## 4. The Darabase model

The new immersive world requires a permission based ecosystem similar to that used for traditional physical and digital advertising. Property owners need to control how their property can be used and advertisers need to be assured they have permission to display immersive advertising on that property.

Darabase solves the challenge by providing a global registry and content platform for the management and monetisation of PDRs.

There are two elements to PDRs claimed by property owners when they register their property on the Darabase platform:

- **The Property Digital Title (PDT):** The PDT in a property can be equated to the title to a physical property, as registered with the Land Registry. With their PDT, property owners can

record whether they allow third party immersive advertising to be associated with their property, whether they reserve the property for their own immersive content or whether they block any immersive content from being displayed.

- **The Property Digital Rights (PDR)<sup>9</sup>:** The PDR gives property owners a vehicle for earning revenue from third party immersive advertising that makes use of their property. The concept is much the same as a property owner granting rights to extract minerals from beneath a property or leasing units in a building to tenants.

The Darabase model has a number of benefits for property owners:

- **Exerting control:** Darabase gives property owners control over what content is associated with their building. They can do this at a macro level by indicating whether they allow third party advertising, and they can do this at a more granular level by blacklisting certain IAB content categories<sup>10</sup>. For example, the property owner may wish to blacklist a certain content category to avoid competitor or culturally sensitive content being advertised. These controls allow property owners to preserve their own brand safety and that of their tenants.
- **Earning revenue from immersive advertising:** PDRs can provide a lucrative additional source of revenue for property owners. This incremental revenue and opportunity can be converted into asset value on the

owner's balance sheet, with only marginal investment. Once a property owner decides to allow third party immersive advertising, Darabase defines and shares the property inventory with app publishers. These publishers use the inventory in exactly the same way a website or app uses advertising space; that is to generate revenue from their audience. Darabase helps the publisher make the inventory available to advertisers through existing ad networks and any revenue earned by the immersive advert is shared between the publisher and the property digital rights owners.

- **Trading PDRs:** A property owner can lease fractions of their PDR to buyers through the Darabase Marketplace<sup>11</sup>. In doing so, the property owner can earn immediate revenue, and the buyers gain the right to a proportion of the advertising income. Fractionalised PDRs have a 10 year lease and when this expires, they revert back to the property owner.

It also has many advantages for the other stakeholders in the ecosystem, ie publishers, advertisers and regulators. By regularising the ecosystem with permission-based inventory, Darabase:

- gives publishers and advertisers ready access to a catalogue of pre-defined immersive inventory which means they can monetise their audience through existing digital advertising solutions (ad networks etc);
- provides assurance that publishers and advertisers have permission to associate immersive content with the property;
- creates greater traceability between property owner, publisher and advertiser, which is helpful in ensuring advertising regulation is respected. Darabase can also help to ensure ads are displayed to valid audiences and within their field of view, thereby ensuring the advert receives genuine impressions, so combating fraud (eg where an advert is seen by a bot rather than a human);

- where required, is also able to implement changes to comply with relevant regulations and guidelines eg the UK's Advertising Standards Authority (ASA).

9. It is worth clarifying that throughout this Paper, we use "PDRs" in a general sense, to describe the high-level concept. In Darabase's ecosystem, PDRs are the rights derived from a PDT

10. The Internet Advertising Bureau (IAB) is the industry body for digital advertising. It has defined advertising categories which are used globally to categorise advertising content. Examples of the tier 1 categories include Arts and Entertainment, Automotive and Education

11. [Darabase](#)



## 5. The legal issues

**It is well-known that the law often struggles to keep up with shifts in technology, and the shifts in cultural trends and norms which follow. Invariably, and somewhat understandably, legislators still tend to react only once technologies have become mainstream – and, until that point, applying existing legal frameworks to the issues raised by these new technologies can feel like fitting a square peg in a round hole. Just as it took time for the law to catch up with digital advertising, we are only just starting to see its early response to immersive advertising.**

We set out below some of the legal issues that we can foresee arising as virtual billboards and PDRs develop. We tackle a few key areas: (a) property; (b) advertising; (c) data protection; and (d) intellectual property. Of course, at this stage we can only analyse based on what we know today – all will depend on how exactly the development of the technology, and industry’s collective use of it, actually unfolds.

### Property

The use of PDRs in a virtual billboard context is necessarily derivative of the legal and regulatory framework in the physical world. For example, the owners of the iconic Shard building and the intellectual property subsisting in it have the primary right to register the Shard and make the PDRs available to allow the use of virtual billboards on the property, or any part of it.

In the physical world, property owners’ rights to allow outdoor media are fettered in numerous ways. Taking the Shard example, individual tenants within the Shard may have rights to restrict advertising or displays in proximity to their spaces. The planning authority restricts the content, placement and nature of physical advertising, and central government applies over-arching regulation. In fact, new legislation is expected to be enacted this year to address light pollution in the City of London which will add further restrictions. Comparable restrictions apply in countries across the globe – for example, Germany recently took steps to ban public screens being active between 10pm and 6am for similar reasons.

In contrast, virtual billboards leave real-world property untouched. The “place-making” and other location-based sensitivities which typically concern a government or local authority and therefore drive most of the restrictive legislation largely fall away. As this is a new frontier, tenants’ lease contracts also don’t typically impose restrictions. In any event, even once virtual billboards become fully established, we can expect such third parties’ concerns to be limited to the extent the advertising creates safety issues (such as overcrowding or distracting content at busy road junctions), or negative or competitive associations with the property. As a result, many of the significant obstacles to value extraction which exist for outdoor media are removed. In the absence of statutory, copyright or contractual restrictions, property owners are free to register their properties and use their PDRs to permit immersive advertising.

There is another important attraction to registering PDRs. The traditional tools available to a property owner in the face of

the unauthorised “use” of their property in an immersive environment are not ideal. The law of trespass, for example, has historically been applied where there has been a physical use or placing of items/ displays on a property without consent. If the “use” of a property is within a device, arguably there has been no physical interaction with the property at all and so it is unclear how the law of trespass would respond in these circumstances (if at all). Intellectual property law may offer a remedy in the form of breach of copyright or passing off (see Section 5.5 below), but clearly, as is often the case, the law is struggling to keep up with technology.

We also expect that a new PDRs registry and its associated marketplace will act as something of a catalyst to establishing a more appropriate regulatory framework in the digital world. After all, the high degree of accuracy and oversight associated with our physical Land Registry is what underpins the success of the property marketplace and resultant property values.

### Advertising

The UK advertising regime largely concerns itself with the content of advertisements over their format, and we expect that the existing rules will therefore apply regardless of the chosen advertising medium – ie whether offline, traditional digital (display, video, etc) or virtual billboards. The ASA has already stated the following:

“As with all great shifts in technology, the metaverse promises advertisers new and exciting ways of marketing their goods and services, which in turn raises issues for ad regulation. Thankfully, we have a strong track record of handling significant changes in the technological landscape, from our regulation of paid-for internet ads to our remit extension to cover other online content in 2011... Ultimately, though, we expect that many of the issues likely to arise, whether they relate to the identification of marketing, the targeting of under-18s, or the absence of significant information, will be similar to those we see in the mundane world in which we presently dwell, and can be dealt with via existing principles in our Codes, which we have applied to new technology over the years. The era of the metaverse may well be upon us, but remember that the CAP Code applies as much to realms of data as it does to those of brick and mortar.”<sup>12</sup>

The virtual billboard ecosystem will feature some well-known players, as well as some new interested parties, each with specific interests in the realm of legal compliance:

- consumers will be looking for the same levels of advertising protection that they experience in the real world when they view a physical billboard;
- advertisers will require brand and monetary safety – ie trust that the placement of their virtual billboard will be safe from a branding perspective and that they have the legitimate right to use the property and its contextual setting in the way they envisage and which maximises their return on investment;
- property owners will want to generate revenue with their virtual advertising space, but equally ensure only appropriate content is shown on the virtual billboard which is overlaid onto their property;
- the platforms and publishers on which virtual billboards will be served will

set their own rules and community standards with which the advertisers showing those ads must comply, to avoid platform liability issues; and

- regulators (eg the ASA) will be incentivised to provide the same level of protection and enforcement as exists in the current regime

As the ASA mentions (see the extract above), while the existing legal framework will certainly be applicable to virtual billboards, there are also certain issues which can already be foreseen as requiring further consideration and analysis, beyond the current regime. For instance:

- certain advertising claims require qualification (eg additional information in small print), and often will need to refer to a business’ specific terms and conditions in a way which consumers can easily access (usually within one click). It is unclear how such information would be displayed and distributed within a virtual billboard – while at first glance one might be tempted to equate this to a physical billboard, it will depend entirely on the different functionalities available within the technology, and the advertisers’ intentions with regards to claims and content;
- there are regulatory rules relating to the advertising content which can (or cannot) be shown in certain public locations (eg on billboards within a certain proximity of a school, such as alcohol). Any AR virtual billboard, therefore, will need to leverage location-based technology to allow advertisers to place advertisements in accordance with the current rules. Similarly, VR products and platforms can be somewhat age-gated (eg as of writing, Meta Quest is for those aged 13+), and advertisers will need to take this into account;
- the ASA currently requires an advertiser to seek an individual’s permission if that individual, or their “identifiable possessions” (including their home) are to be featured in an ad. This adds weight to the argument that a virtual billboard layered on top of an individual’s property needs to be underpinned by a permissions-based structure (and hence why the need for PDRs come into play).

The ASA’s remit and application of the UK advertising and consumer laws will be engaged when a consumer is viewing a personalised virtual billboard in the UK (ie using AR on a London street, or using VR from their home in Manchester). But what if that consumer takes their smart glasses or VR headset on holiday? What rules apply then?

### Using AR in a specific jurisdiction

Given that AR is layered on top of the real world, the most likely regulations to apply are those of the jurisdiction in which the consumer is using their smart glasses – so the London user will see advertising which is compliant with English laws and regulations.

Equally, if that user takes their smart glasses to Paris, then French advertising law and regulation is most likely to apply to the virtual advertising that the user sees. In other words, the user will be seeing advertising in a ‘local’ context – be that the use of Euros in pricing or compliance with, say, France’s specific requirements to the marketing of alcohol.

### Using VR in different jurisdictions

A different approach is likely to apply to advertising viewed through VR within a fully immersive virtual world. Just as with website advertising currently, the advertisers targeting consumers in a certain jurisdiction will need to comply with the laws and regulations of that jurisdiction. So, a US brand currently targeting British consumers via a banner ad on a website using GBP sterling prices (thereby signalling its intent to market to British users) will have to comply with UK advertising law and regulation. The same approach would apply to advertising through VR in an immersive metaverse. So, a brand targeting a British consumer via a virtual billboard featuring GBP sterling pricing would again need to comply with UK advertising law and regulation. The same position would arise even if that British VR user took their VR headset to New York. In other words, provided the British user was being ‘targeted’ with virtual advertising (eg still seeing GBP sterling prices), then it is likely that the same UK legal compliance standards would need to be applied to that advertising, notwithstanding that that British consumer was physically now located in New York.

12. ASA, “[Things can only get Meta: a brief guide to ad regulation in the Metaverse](#)”

## 5. The legal issues (cont)

### Data protection

Data protection laws globally, such as the EU's General Data Protection Regulation (GDPR), have established baseline data protection compliance expectations which are largely applicable in all industries and sectors. The interplay between digital advertising (or 'adtech') and data protection laws has long been the source of legal commentary and analysis – it is not within the scope of this Paper to examine these issues. Equally, AR and VR technologies themselves trigger some novel data protection questions (eg how will privacy policies be surfaced to users within the confines of an AR or VR headset interface?) – again, this is too broad a topic for this Paper.

That said, from a data protection perspective, the virtual billboards discussed in this Paper are broadly no different to traditional digital advertising – a virtual targeted ad billboard overlaid in AR on a real-world building, or a virtual billboard in VR is, conceptually, much the same as a targeted ad shown on a webpage. The underlying online tracking and data collection, processing and sharing between the involved parties (ie consumer, advertiser and publisher/platform) is similar. Some aspects of virtual billboards, however, should be distinguished and acknowledged as potentially elevating the data-related risk level. For instance:

- the use of location data in digital advertising is nothing new – however, virtual billboards, particularly in the AR setting, will rely more heavily on contextual data and real-time location in particular (for example for the reason set out in Section 4.3 above);

- equally, a key element of AR and VR technologies is likely to be 'eye tracking', used to provide a higher-resolution immersive experience. This feature could in future be used as a tool for advertisers to identify certain factors about a device user (eg age, race, etc) or even track levels of interest in an ad (eg through cues such as pupil dilation). Further, it is not inconceivable that other physical cues might be tracked by immersive technologies in years to come – perhaps recognition of emotional responses on a user's face, or the level of perspiration, pulse or grip on a user's hand when using a hand-held controller. The data protection implications are considerable – not least because eye tracking data, for instance, is likely both biometric and health data, and both are considered special category data, ie sensitive, personal data under the GDPR.

Overall, it's likely that immersive advertising, as used in virtual billboards, will touch more sensitive personal data than standard outdoor or digital advertising has done in the past.

The GDPR is, of course, just one of many data protection regimes which might be engaged in the context of virtual billboards. While advertising regulation is based on the concept of 'targeted' messaging, data protection law can apply in many more situations and can reach well beyond state borders. The extra-territorial reach of the GDPR is well known, but different countries around the world are also now looking at developing similar legislation. To further complicate matters, virtual billboards of course can take both VR and AR forms – and the applicability of international law in these two different forms differs, depending on how and where the data processing is taking place.

### Data protection in VR virtual billboards

Both local and foreign data regulations are likely to apply in a fully virtual world. After all, users will be entering such worlds from locations across the globe and accordingly a matrix of different regulatory regimes may need to be complied with. The critical point to note is that international data protection legislation can apply even when a business has relatively little contact with the country in question. This is because the purpose of these regulations is to protect the personal data of the individuals in those countries, and broad catchment provisions mean that they have 'extra-territorial' effect. For an example of this, see Article 3 of the GDPR. Two examples illustrate the extra-territorial nature of such regulations as they relate to fully virtual worlds:

- an individual accesses the metaverse and views a virtual billboard from his home in Singapore. Singapore's Personal Data Protection Act (PDPA) will likely apply because some processing of their personal data will occur within Singapore, for example via the servers which are located there;
- similarly, a British individual accesses the metaverse and views a virtual billboard from his home in London. The UK GDPR will automatically apply to the processing of a British individual's personal data because services will be being offered to that individual or some form of monitoring will be taking place in the UK. The EU GDPR would be engaged were that same British individual to be physically located in Paris because the offering of services to, or monitoring of, that individual is now taking place within the EU.

The European Data Protection Board (EDPB) offers a helpful further example:

"A start-up established in the USA, without any business presence or establishment in the EU, provides a city-mapping application for tourists. The application processes personal data concerning the location of customers using the app (the data subjects) once they start using the application in the city they visit, in order to offer targeted advertisements for places to visit, restaurant, bars and hotels. The application is available for tourists while they visit New York, San Francisco, Toronto, London, Paris and Rome. The US start-up, via its city mapping application, is offering services to individuals in the Union (specifically in London, Paris and Rome). The processing of the EU-located data subjects' personal data in connection with the offering of the service falls within the scope of the GDPR (as per Article 3(2))."<sup>13</sup>

### Data protection for AR virtual billboards

The application of data regulation to a real-world experience using AR is different to that in a fully virtual world. By way of

example, the fact that an individual is an EU citizen or resident does not automatically afford that individual the protection of the EU GDPR when that individual travels to a location outside the EU. As the EDPB states: "...the processing of personal data of EU citizens or residents that takes place in a third country does not trigger the application of the GDPR, as long as the processing is not related to a specific offer directed at individuals in the EU or to a monitoring of their behaviour in the Union". If an individual uses AR in a real-world environment, the most likely data regulation to apply will be that in which the individual is located at that point in time. For example:

- if an individual completes a paper-based survey in a real-world location, and that survey collects any personal data from that individual, the collation and processing of that personal data will be subject to such local data regulations as may apply in that location;
- if the same individual then puts on a pair of AR glasses and wanders around the real-world city, any personal data

that is collected through the use of those glasses will also be subject to those local data protection regulations; whether that be a registration process when first putting on the glasses or any subsequent tracking of that individual's eye movements in order to show them personalised advertising.

It is important to note that if processing of the individual's personal data simultaneously occurs outside of the place where the individual is located (eg because the servers processing the individual's personal data are based abroad) then the processing may well also be subject to the data regulation of the territory in which those servers are based. In other words, data processing can be subject to different regulatory regimes at the same moment in time, depending on where the processing takes place and/or where the controller or processor of that data is established. To further illustrate the point, the following table sets out the applicability of data protection laws using the example of a British and a Singaporean citizen viewing virtual billboards from their homes.

Virtual billboard viewed	Nationality of individual	Physical location of individual	Location of data servers (data processing)	Is UK GDPR likely to apply?	Is Singapore's PDPA likely to apply?
AR virtual billboard	Singaporean	Singapore	Singapore	No	Yes
AR virtual billboard	British	London	UK	Yes	No
AR virtual billboard	British	Singapore	Singapore	No	Yes – data processing takes place on data servers located in Singapore
VR virtual billboard	Singaporean	Singapore	Singapore	No	Yes
VR virtual billboard	British	London	UK	Yes	No
VR virtual billboard	British	Singapore	UK	Yes – data processing takes place on data servers located in UK	Yes

13. EDPB, "Guideline 3/2018 on the territorial scope of the GDPR (Article 3)"

14. Ibid



## 5. The legal issues (cont)

### Intellectual property

The intellectual property implications of immersive technologies and the metaverse are far-reaching, and businesses will need to develop strategies to protect their intellectual property and enforce against unlawful use – this Paper does not seek to discuss such issues. However, intellectual property will, of course, play a huge part in the context of advertising and marketing. Virtual billboards will provide advertisers with an opportunity to push the creative boundaries of advertising and create new and exciting concepts using the real and digital worlds around them as a canvas. However, in doing so, advertisers run a greater risk of overstepping the mark and infringing third party intellectual property rights. Consider the following scenarios:

- when advertisers use the physical world as the backdrop for content in their virtual billboard displays, there will inevitably be copyrighted works in the periphery – whether in the form of artworks, statues, architecture, and so on. In the UK, well known public works (eg the Angel of the North statue), are the subject of registered shape trade marks; not to mention the innumerable brand trade marks visible on your average UK street (eg McDonalds’ golden arches). In other words – intellectual property rights are pervasive. If a virtual billboard somehow incorporates, distorts or replicates the underlying work or mark, there is a clear risk that this could constitute an infringement;
- equally, if a virtual billboard is delivered (without permission) onto the façade of a well-known department store with a distinctive building – as we’re

continuing our journey down Regent Street, let’s say Liberty – might a viewer understand that the content of the virtual billboard was endorsed or approved by Liberty? The owner of Liberty could potentially bring a claim for “passing off”, if they can establish: (a) goodwill associated with the building in the minds of consumers; (b) a misrepresentation leading or likely to lead consumers to believe that the advertised goods or services are in some way associated with or endorsed by the building’s owner; and (c) that damage has been incurred, or is likely to have been incurred, as a result of the erroneous belief created in the minds of consumers as a result of the misrepresentation;

- Snap Inc.’s Landmarker Lenses AR tool allows users to create AR experiences tied to iconic buildings such as London’s Buckingham Palace or the Eiffel Tower in Paris. Users of the tool are told that “Landmarker templates are not offered for commercial use. This includes advertisements and other promotional purposes. You are responsible for obtaining any necessary rights and permissions before using a Landmarker template commercially”<sup>15</sup>. As yet, there is no specific legislation requiring this – albeit, as seen, torts such as passing off are likely to offer decent layers of protection. However, but from a commercial standpoint, Snap Inc. has made the decision to require permission to be obtained from the relevant rightsholders before its tool can be used in an advertising setting. We imagine

that the use of the tool for HBO’s Game of Thrones AR activation featuring the Flatiron Building in New York<sup>16</sup> would have required extensive consideration and commercial negotiations with the property owner for the requisite rights and permissions, and most likely a commercial payment for the use of the location;

- advertisers are constantly seeking the next viral moment to elevate brand awareness – in Brazil, Burger King enabled consumers to “burn” competitors’ ads through an AR lens in exchange for a free burger<sup>17</sup>. While this activation in itself was not necessarily infringing of the competitors’ intellectual property (ie as the competitors’ trade marks were not used, nor was their underlying advertising copied), it might have been had Burger King instead encouraged consumers, for example, to share the videos of the competitors’ ads “burning” on social media

It is clear that the answer to many of the above issues lies in permission-based advertising. If advertisers obtain permission to use a property as the backdrop for their virtual billboard, many of the issues and risks described above will automatically fall away.

## 6. Conclusion

Some might imagine that there is still some way to go for immersive technology to enable the execution of virtual advertising in the advanced way in which we consider it in this Paper – for instance, the current functionality of smart glasses on the market (eg Meta’s RayBan Stories) is relatively simplistic (ie taking photos, or playing music) and a fair distance from the new technology we have attempted to portray; and, while there are some creators of web-based immersive AR applications which specialise in outdoors usage, at the time of writing there is no scope for the headsets currently on the market from the more well-known consumer brands (eg Apple’s Vision Pro) to be used outside.

**As the Darabase model shows us, however, there is real, tangible work happening behind the scenes within the advertising industry (and beyond) – and soon enough, we may all have our own virtual billboard experience. Whether it will reach the levels of a John Anderton moment in Minority Report remains to be seen.**

But, as that day approaches (which is inevitable in our view), it will be important for all stakeholders involved in the virtual billboard ecosystem (from advertisers, brands, platforms, hardware manufacturers to the legislators and

regulators) to pre-emptively engage in these developments. This means building their products, services and regulatory regimes in such a way as to meet not just their own requirements, but also to ensure that the same level of protection afforded to consumers in our real-life world is extended to our new virtual worlds.

Equally, the property market will also need to find a way to develop a safe and secure registration system for property owners to register and exploit these new advertising techniques in a way which allows them to maximise the true digital value of their properties. In turn, this is where the importance of a structured property digital registration system (and associated PDRs) come into play.



15. [docs.snap.com/lens-studio/references/templates/landmarker/guide](https://docs.snap.com/lens-studio/references/templates/landmarker/guide)

16. [www.youtube.com/watch?v=0QfM93eUqN4](https://www.youtube.com/watch?v=0QfM93eUqN4)

17. [www.youtube.com/watch?v=PGByvh25uE0&t=3s](https://www.youtube.com/watch?v=PGByvh25uE0&t=3s)

# Contacts



**Oliver Bray**  
Senior Partner,  
Digital; Marketing and  
Advertising; Commercial

**Oliver is a recognised specialist in digital, advertising/marketing and commercial, with over 25 years' experience.**

His key clients include digital platforms, global technology companies, media and publishing houses, retailers, and innovative online businesses, as well as advertising and digital agencies. His

specialist areas include the full mix needed for the developing digital world, including technology, data protection, consumer, marketing, regulatory, content and intellectual property. He is RPC's Senior Partner, Chairman of the City of London Law Society Commercial Law Committee, a member of the Ad Law Group and an editorial board member of Digital Business

Lawyer and Entertainment Law Review. He co-edited the leading textbook "Advertising Law and Regulation" (now into its third edition). He is also a former winner of the "Best Client Partner" award at the British Legal Awards. He is ranked in the Legal 500's "Hall of Fame" and "Top Ranked" by Chambers and Partners.



**Nicholas Lauw**  
Partner,  
Tech, IP and Digital Assets

**Nicholas is an information technology, intellectual property and digital assets law specialist with over 15 years of experience in both contentious and non-contentious matters.**

He is based and qualified in Singapore, and practices out of RPC Premier Law.

Typically, Nicholas assists clients in managing and enforcing trademark, copyright and patent rights, drafting and advising on agreements typical in the IT space, as well as in relation to personal data protection issues. Most recently he has advised various companies and individuals in the Web3 space in relation to NFTs, decentralised online platforms,

decentralized autonomous organisations and the tokenisation of digital assets. As a thought leader on the subject, he has spoken about legal issues relating to NFTs at events such as Metajam Asia and NFT.NYC. He has been named as one of Singapore's "70 most influential lawyers aged 40 and under" by the Singapore Business Review 2016.



**Elizabeth Alibhai**  
Partner,  
Head of Real Estate

**Elizabeth leads RPC's real estate team, advising investors, property companies, corporates and financial institutions on a wide range of real estate matters.**

Her expertise covers all aspects of portfolio management and place-making, acquisitions and sales and developments. Elizabeth has been involved in several

market-leading real estate transactions in the City and her transactional experience spans industry sectors from tech and retail, to offices, estates and hotels. Elizabeth is recognised as a Leading Individual for Real Estate by The Legal 500 UK, and named a "Stand out Lawyer" by legal research company Thomson Reuters following global surveys of in-house General Counsel and senior lawyers.

*"What do Meta founder Mark Zuckerberg, Google boss Sundar Pichai and Twitter chief Elon Musk all have in common? Their enormous empires have all instructed RPC, which The Lawyer hears has become BigTech's go-to UK adviser."*

**The Lawyer, 2022**

*"RPC's pragmatism and experience, particularly regarding their eagerness to get stuck into cutting-edge tech spaces, is truly unique."*

**Legal 500 UK 2024**

2024

**Tier 1  
Media and  
Entertainment:  
Digital Content  
and Social**

LEGAL 500 UK

2024

**Tier 1  
Retail and  
Consumer**

LEGAL 500 UK

2023

**Band 1  
Media and  
Entertainment:  
Publishing**

CHAMBERS & PARTNERS UK

**Disclaimer**

The information in this publication is for guidance purposes only and does not constitute legal advice. We attempt to ensure that the content is current as of the date of publication but we do not guarantee that it remains up to date. You should seek legal or other professional advice before acting or relying on any of the content.



