



## Ep. 3: Virtual and Augmented Reality

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**Jose Garriga:**

Hello and welcome to *OnAir with Akin Gump*. I'm your host, Jose Garriga.

Virtual reality and augmented reality. Many analysts project big growth over the next five years for these two new media. And as with other new technologies, their application to entertainment experiences is first off the blocks in terms of generating buzz and revenue.

In this episode, we'll be speaking with Tammy Brandt, chief legal officer of Dreamscape Immersive, a location-based virtual reality startup, and Courtney York, a corporate partner at Akin Gump, whose practice focuses on transactional matters for technology and media companies.

We'll be looking at the state of the market, legal and business challenges, and similarities to, and differences from, other tech innovations. Welcome to the podcast.

Tammy, Courtney, thanks for appearing on the show today. This is a fascinating topic, and I thought we might start with some definitions of the terms we'll be using during the course of our conversation. So, let's begin with the differences between augmented reality and virtual reality. What would you say they are?

**Tammy Brandt:**

Thanks, Jose. So, "augmented reality" is basically augmenting your everyday life. You're walking around your house. You're going to work. You're walking down the street. So, it's basically some type of interaction with your everyday life. "Virtual reality" is really taking you to another world. You put on the headset, and you're going to a totally other world that has nothing to do with your actual where you're standing or where you're sitting at that time. There's a lot of talk about "mixed reality," which is basically the combination of the two.

I think if these technologies do what we think they're going to do in the next, you know, few years, you'll have where you might be able to flip between the two a lot more seamlessly than you can now.

**Jose Garriga:**

That's interesting. Now, augmented reality, just to provide a little context, that would be something like ... I think something a lot of people are familiar with is *Pokémon Go*, where you have a telephone, you're in a real-world situation, but you're on whatever the interface you're using presents that augmentation. Is that correct?

**Tammy Brandt:** That's exactly it. Augmented reality is really software, which a lot of the times is an app, but it's basically you're using your phone, which is a piece of hardware we all have, right?, and you're going around your world, and then you're trying to collect different items, basically, in the game or whatever you're doing that's augmented.

**Jose Garriga:** And then the other part of it, as I've mentioned in the introduction, your Dreamscape Immersive, your company, is location-based. What are the differences, then, between location-based virtual reality and the home gear that people might be using?

**Tammy Brandt:** Yeah, it's really that. I mean the in-home is something you are doing at your house or doing in a defined place. Location-based is just like you are leaving your home for some type of entertainment. You go to the movie theater. You go to the mall. You go shopping. Dreamscape Immersive is a virtual reality experience that you leave your home to go do.

**Jose Garriga:** Got it. Let's start talking about this market. I think it'd be useful and helpful for listeners to get a bit of a sense of the current state of the virtual reality/augmented reality market from an industry insider such as yourself. How do you view the current state of play there, and where is the market heading in the near term?

**Tammy Brandt:** I think the current state of the play are people are very excited about these technologies. I think *Pokémon Go* is an example; it brought augmented reality. It showed people what it could be. Now you're seeing a lot of different types of experiences where you can augment, again, your everyday life. Virtual reality has been around for quite some time, and a lot of people have been excited about it. Mark Zuckerberg, when they bought Oculus, he said it's the next big platform, which is a very strong statement from such an expert in technology.

But virtual reality has generally been a lot slower to take off than people thought, and that's because most people that have consumed virtual reality have only done it in the home. And that's the thinking, like, if you have location-based destinations, and you show people the power of the technology, our company and myself, I think that you'll see virtual reality adopted in a lot of other industries once people realize how cool it is, but most people have not experienced it at this point.

**Courtney York:** And I think in addition to the entertainment side of things, which Dreamscape Immersive is obviously very focused on, I'm hearing folks in other industries looking at using VR for things like training and education in the medical field, in the insurance field, all over the place. I think there are a lot of benefits to what VR can do as far as helping with those types of issues, and people are beginning to explore how those things would work together.

**Jose Garriga:** Courtney, thank you. I think that leads into my next question, both of you legal practitioners, with any new and burgeoning industry, what are some of the legal and business challenges that you're seeing in this environment as this gears up and starts taking off both in terms of public acceptance and public awareness of the possibilities?

**Courtney York:** I think, from the legal perspective, we're seeing a number of different issues or challenges faced by VR companies. I think primary amongst those is the fact that virtual reality involves a wide variety of intellectual property. So, it involves software, it involves the hardware, and it involves content. And, so, all of the IP-related challenges that businesses have seen in these different areas are similar to what other companies have seen traditionally, but they're intertwined in a unique way.

So, from the perspective of the software that's used in connection with virtual reality, you'll see traditional issues like ownership and protection of the software and how the

code is developed and how the code is licensed. With respect to hardware, which would be things like the headsets and the backpacks and the sensors that are used in the VR experience, you see legal challenges relating to compliance with safety regulations, as well as the proprietary nature of the hardware and patenting issues.

With respect to the content, I think the primary issues there tend to be the development, whether that is original content that's being developed or licensed content or some combination of content from various owners of that content and then who owns the works that are made, how that's licensed, character and music rights, the copyrights and trademarks that can go into the virtual reality experience. So, the IP aspects of the virtual reality experience are a little unique.

In addition to that, I think you will see that there are potential liability issues relating to users of the virtual reality. Those could be health and safety-related regulations—again, things like COPPA, which is the Children's Online Privacy and Protection Act—where you need to look at how the hardware and software in some cases, how that complies with various regulations as it impacts the users. Another thing we're seeing is how data is collected and used in connection with the VR experience, and who owns that data. Certainly, data privacy regulations have to be considered in connection with that as well.

For a company like Dreamscape Immersive, which is location-based, you have the typical issues that you would have with users coming onto a particular piece of real estate, specifications within the virtual reality pods that are used and the health and safety issues that come along with that, as well as thinking through insurance and how that looks with respect to having people on your property that's either owned or leased.

I think one other thing that we're seeing is how VR companies are partnering with others in the industry, whether it'd be hardware providers or content providers, location providers or hosts. I think when you're working through those partnerships, all of these issues that have been discussed from a legal perspective have to be taken into consideration to understand how those partnerships work together.

**Jose Garriga:**

Then looking at it sort of beyond the challenges specific to navigating some of the legal issues, from the business perspective, what challenges are you and others in this industry seeing?

**Tammy Brandt:**

I think the biggest business challenge right now is: Is this technology that can be monetized? Everyone is excited about the technology, but the biggest problem with the adoption of VR has been the cost of the headset and, basically, the game. You have to spend two or three hundred dollars, and what if you don't like it? Again it's in-home-focused VR. It's very interesting, but it's a big investment that a lot of people haven't made. Really, where our company and other companies are looking at right now is: Is this a business that people are willing to leave their home and go pay to do? Similar to, like, going to the movie theater or going to an escape room, et cetera. Until there are actual destinations, it's hard to tell.

So that I think how to monetize this business and VR in general is an important thing. Even with AR with *Pokémon Go*, right? Obviously, you could pay to upgrade to get different functionalities in your app, et cetera, but at the end of the day, a lot of the augmented reality that's out there right now is a free app, right? Unless people are willing to spend the money to upgrade for an enhanced experience, at the end of the day, it's not exactly clear the path to monetization.

**Jose Garriga:**

A reminder that we're here today with Courtney York and Tammy Brandt talking about the virtual reality and augmented reality industry. Well, speaking, then, to the individual

willingness to pay for the virtual reality and augmented reality experience, how do the challenges and opportunities surrounding VR and AR differ from or resemble those of other tech innovations of the recent past? Here, I'm thinking, for example, of game consoles, which experienced gradual and then almost exponential growth that has supported and driven growth on those platforms for decades.

**Courtney York:**

Jose, I think you're exactly right that there a lot of similarities with the video gaming industry. It involves the somewhat similar mix of issues with respect to the IP. That's an issue. You've got the software, the hardware and the content that all goes into that. Obviously that has become well accepted, I think, beyond what many would have anticipated even five or 10 years ago. Another fairly similar industry that we've compared this to a little bit would be other location-based entertainment areas such as the movie theaters, but also things like amusement parks, where you may run into some of the health or safety concerns because the virtual reality, it does, in fact, feel real when you're experiencing it. And, so, some of the effects of feeling as if you're on a roller coaster even if you're not on a roller coaster, you have similar health and safety concerns there with respect to the users.

I think one thing that stands out about VR and AR, we'll see how regulations over time catch up to the technology and whether they can catch up to the technology and the implications of virtual reality in the real world.

So, taking a company like Dreamscape, which is a fairly controlled environment, right?—their user interaction takes place with their software and hardware, but in a pod that has controlled content. But given all of the other evolving uses of VR and AR that are not within such a controlled environment and are very much subject to the actions of the individual users and how those users are interacting with both the virtual world and the real world, I think we'll see some expansion of regulation that's applicable to the industry as the uses continue to evolve, and data collection is a good example: safeguards with respect to the software and content and regulations that may come around, the type of content and how it can be distributed, as well as liability issues in the real world. Talking about something like *Pokémon Go*, there were a lot of real-world consequences that came out of that and, I think, received quite a bit of press at the time: accidents that were caused on the street and liability issues and how developers of the VR and AR software and hardware, what their responsibilities may be to put safeguards in place.

**Tammy Brandt:**

Yeah, it's similar. A lot of these safety issues come up with the self-driving cars. I mean, it's, like, as our technology really advances, there are always these issues. Of course, if you're using your phone to augment your reality, or, later on, it's something like Google Glasses or whatever it may be, if you're out in the real world, and these technologies that you have to interact with day-to-day life and what's safe and what makes sense. I think Courtney's exactly right. The data collection issues here are very numerous because everyone talks about big data. They talk about AI. They talk about all of these things.

How do we collect data? What can we do with it? There's so many amazing uses for that data, but it's also a little scary. So, if you're in the virtual world, you can track, and we can collect data on everything, where you're looking, how long you spend in one part of the pod, what particular character and the content you're most interested in. Because, right, you have a piece of hardware on, and it's communicating with the software, and you can track all of that. There's already regulations out there around, for example, eye tracking and what you can do and the types of disclosures you have to make to individuals. When you basically arm individuals in the cellphone, it's the same thing: When you arm individuals with a piece of hardware and the right software, data that can be collected is enormous. It could be very helpful not only to the business, but also

for the public. But the question is: What can you really do with that? So, you're going to see a lot of regulations in this area around that once people really understand how you consume AR and VR.

**Jose Garriga:** I can imagine that there'll certainly be privacy and other considerations surrounding this. At the same time, I can also imagine based on the fact that there's been a tremendous amount of anticipation just in terms of the popular culture going back to films, not even recent ones, but going back 10-20 years, imagining what virtual worlds would be like. I think there would certainly be a tremendous amount of demand for it. Speaking just in general, Tammy and Courtney, just to close this very interesting conversation, what would you consider are a couple of takeaways for listeners regarding the legal and business aspects of virtual reality and augmented reality?

**Tammy Brandt:** I think there's just a lot of unique legal issues that Courtney touched on. I think you have to really sit down and map out the whole experience. There's so many different IP issues that range from, yes, do you have the right license?, do you have the right rights to whatever you're doing?, to is it patentable?, have you filed a patent?, have you filed the trademarks? I mean, there's so many IP issues with this, and I think it converges the hardware, the software and the content, and each one of those areas is a very complex area. When you start creating anything in this area, there's so many different intertwined types of legal and business issues, you really have to map it out and make sure that you're addressing them because you can get into trouble I think very quickly.

**Courtney York:** From my perspective, I would say that there are obviously a number of exciting opportunities for developers and users of virtual reality and augmented reality. I think for legal counsel, just keeping in mind all the issues that need to be considered to help protect VR businesses from these risks is a very important part of legal counsel's role, including helping the success of the business.

**Tammy Brandt:** There's a lot of opportunity here, I think, for legal practitioners to learn a new area just like what's happening right now with cryptocurrency. It's very similar. There's always these trends. Certainly AR and VR is one. It's really right at the beginning of where I think it's going to go. There's a lot of opportunity to get ahead of some of the issues and actually help kind of define the legal parameters around it as we all develop this business.

**Jose Garriga:** Thank you. Thanks to both of you. Listeners, you've been listening to Tammy Brandt, chief legal officer at Dreamscape Immersive, a location-based virtual reality startup, and Courtney York, corporate partner here at Akin Gump, whose practice focuses on transactional matters for technology and media companies. Thank you both for joining us today and for sharing your thoughts on what is literally visionary technology. Thank you listeners for your time and attention. Please make sure to subscribe to *OnAir with Akin Gump* at your favorite podcast provider to ensure you don't miss an episode. We're on, among others, iTunes, Google Play, and Spotify.

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