cyberlaw: the brave new e-world
By Anne F. Downey

Pokémon No Go

Dear readers, you have no idea the sacrifices I make for you. This month, I descended into the world of Pokémon Go in order to bring you accurate and insightful reporting on the legal issues surrounding this highly popular online game. In case you have been living under a rock, Pokémon Go is a free software app for iOS and Android mobile devices that has taken the world by storm. The game is offered by Niantic, Inc. f/k/a Niantic Labs, which used to be part of Google. Niantic operates the Pokémon Go game in partnership with Nintendo and The Pokémon Company.

Things started out well enough. I signed up for the app on my iPhone using an existing Google (Gmail) account. Next I reviewed the app's terms and conditions, which included the following: "During game play, please be aware of your surroundings and play safely. You agree that your use of the App and play of the game is at your own risk, and it is your responsibility to maintain such health, liability, hazard, personal injury, medical, life and other insurance policies as you deem reasonably necessary for any injuries that you may incur while using the Services." Geez.

After ignoring the rest of the terms and conditions, I blithely hit "accept" (undoubtedly having sold my soul to Niantic), and the app fired up. An animated character named Professor Willow appeared on the screen and asked if I was aware that the world is inhabited by creatures called Pokémon. Pokémon are the animated characters that players hunt for, creatures such as Pikachu and Doduo. I selected a lady avatar for myself, impatiently bypassed the option of changing her appearance, and was given some Poké balls. The game largely involves throwing Poké balls (by tapping and swiping your finger on a ball, aiming at a creature), which allows you to earn points and make progress to a higher level of the game. The goal of the game is to ultimately obtain the original 151 Pokémon.

Shortly after reaching this point, I encountered technical difficulties beyond my control and simply gave up. Your humble columnist was befuddled by the newfangled technology. I put out a call to the Hodgson Russ staff, and soon Kyle Roberts, a savvy under-30 office assistant, came to my rescue.

Kyle turned on his cell phone and opened the Pokémon Go app, which is tied into the GPS function on his phone. (Because Pokémon Go uses the GPS function, players constantly need to replenish the cell phone battery, and many carry backup batteries or devices.) Kyle showed me how, as we stood there in the Guaranty Building, we were surrounded by Pokémon Go activity in the neighborhood. He pointed out that the Guaranty Building, like the Erie County Clerk's Office, is a PokéStop. A PokéStop is identified by a floating blue cube, and the image changes to a blue disc when the player draws closer. Kyle explained that Niantic has identified landmarks, businesses, parks, churches, cemeteries, public art projects, government buildings and other attractions as Pokéstops, i.e., places where players may collect Poké balls, Potions, Eggs and other valuable items that help a player advance.

Spinning or swiping the blue disc at the PokéStop will gain the player points, which helps the player advance to the next level as a "trainer" (all players are called trainers). Once a player has collected the goodies at a particular PokéStop, he or she can move to another stop or wait a few minutes for the PokéStop to refresh and then gather more goodies.

PokéStops Include Local Buildings and Landmarks

I wondered out loud how the Guaranty Building came to be designated as a PokéStop, and Kyle said that Niantic culled data from Google Maps in determining what attractions to list as PokéStops. Niantic does not ask permission to list a site as a PokéStop, and this has led to some instances where players have tried to access an off-limits location, with the site owner ordering players off the property. (Fortunately, the player need only be near a Pokéstop to gain points.) Forest Lawn, like the Arlington National Cemetery, has asked that players refrain from using the app on its grounds. It is possible to request that Niantic remove a PokéStop. Indeed, the Holocaust Museum in Washington D.C. has requested that its three PokéStops be removed. (Conversely, the Niantic support page says that the company

is currently not accepting requests for new PokéStops.) To see the map of PokéStops in Buffalo, go to www.pokemon-buffalo.com. I was intrigued to see that the Eternal Flame at Chestnut Ridge Park is a PokéStop, one of the few stops in that rural area.

While Pokémon can be encountered outside of PokéStops (a player's phone will vibrate when a Pokémon is nearby), a player will advance more quickly by visiting PokéStops. Kyle also showed me how there are two ways to view Pokémon: with the cell phone camera on (this method is called "augmented reality" and utilizes the phone's gyroscope), and with the cell phone camera off (it displays an animated background). Let's say a player is walking in downtown Buffalo and turns the cell phone camera on. The player will see a Pokémon while walking, as though the image were standing a few feet ahead, next to the wall, for example. Like a holographic image at Disney World, the Pokémon image looks real. Many players have been so engrossed in the game that they have walked into objects. (The players who play while driving are the ones who terrify me.) On the other hand, players have done good deeds such as stumbling upon a dead body and reporting it to the authorities.

Kyle also pointed out that the app identified a "gym" near the Guaranty Building. He was not referring to L.A. Fitness. Once a player reaches Level 5, he or she can join a yellow, red, or blue team. After picking a team, the player joins teammates around the world in trying to battle for control of a Poké Gym. The gym near the Guaranty Building was presently under the control of the red team. When a team controls a gym, the team members can obtain Poké Coins, which help the player advance.

Kyle noted that HarborCenter is a hotbed of Pokémon Go activity, especially since it offers multiple PokéStops and players have attached "lures" to these locations. If a player purchases a lure module from the Pokémon Go in-game shop, the player can place a lure at a PokéStop to increase the amount of Pokémon (wild Pokémon) that will gravitate to the area, thus benefitting the player who purchased the lure and other players in the area. The presence of a lure at a PokéStop is seen by showering pink petals on the map. A savvy business owner might purchase a lure in hopes of driving traffic to the brick and mortar location. Also, I noticed a restaurant at the Galleria Mall with a window sign encouraging Pokémon Go players to come inside. Food truck operators may want to identify PokéStops and position the truck nearby to take advantage of the foot traffic.

Many players are ardent fans of the game who will binge on non-stop play for hours or days. Proponents tout the fact that the game gets people off the couch and walking around the real world, where they may visit a park, statue or other attraction they have never been to before. Players often walk for miles while playing,

Kyle has a Facebook page where he gives tips to other players. I, on other hand, have barely scratched the surface in understanding of the world of Pokémon Go, but I hope this introduction gave you a taste of that world. In the next few columns, we will explore the legal issues related to Pokémon Go. While for me Pokémon is a "no go," the legal issues are fascinating.   [B]