



INDEPENDENT GAMES
SUMMIT

Practical Law 101 for Indie Developers: Not Scary Edition

March 14, 2016
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GAME DEVELOPERS CONFERENCE March 14-18, 2016 · Expo: March 16-18, 2016 #GDC16



My Origin Story

Never again...

I Christopher Reid ~~promise~~ promise to
give my brother Thomas Reid all of
my current cash supply if I break
one of his dishes. Payment must be at
least \$10.

~~signed christopher~~

signed christopher reid



About Me

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Finn Reid: Born/Hired March 2, 2016



DISCLAIMER!
I am not your lawyer,
and this presentation
is legal education, not
legal advice!





Main Quest

Help Indie Devs identify and avoid legal pitfalls



(Optional): Make corny game references



Time We Need



+



+

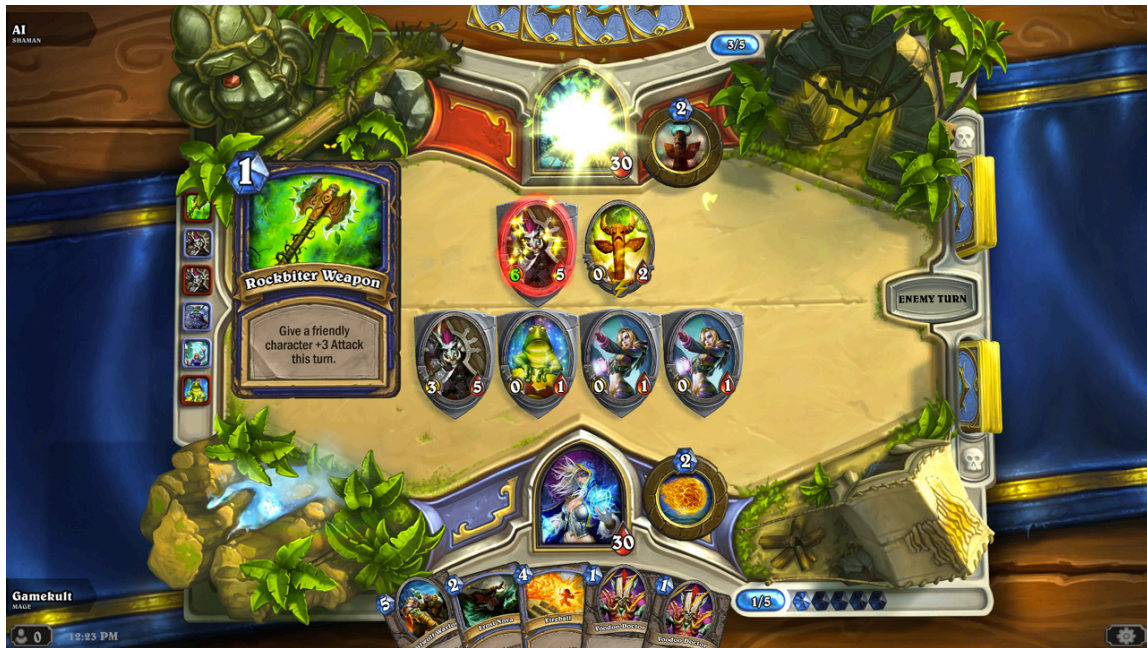


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Time We Have



x 2



Topics Covered

1. Creating a Company
2. Contracts
3. Intellectual Property (IP)
4. Infringement
5. Privacy



Approach

1. WHY you should care
2. WHEN it comes up
3. WHAT you should know about it (the *very brief* version)



ISSUE #1: Creating a Company





Creating a Company: Why?





Creating a Company: Why?



Limited Liability



"Bucket" for IP



Sharing Profits/
Ownership



Tax reasons



Being taken
seriously



Creating a Company: When?

Ideally: Before you start working



Realistically: When you get serious



Latest: Hiring or doing business with others





Creating a Company: What to Know

- Discuss with co-founders:
 - Future investment
 - Ownership/Control
- Choose entity type: C-Corp, S-Corp or LLC
- File to create entity
- Draft Operating/Shareholders Agreement

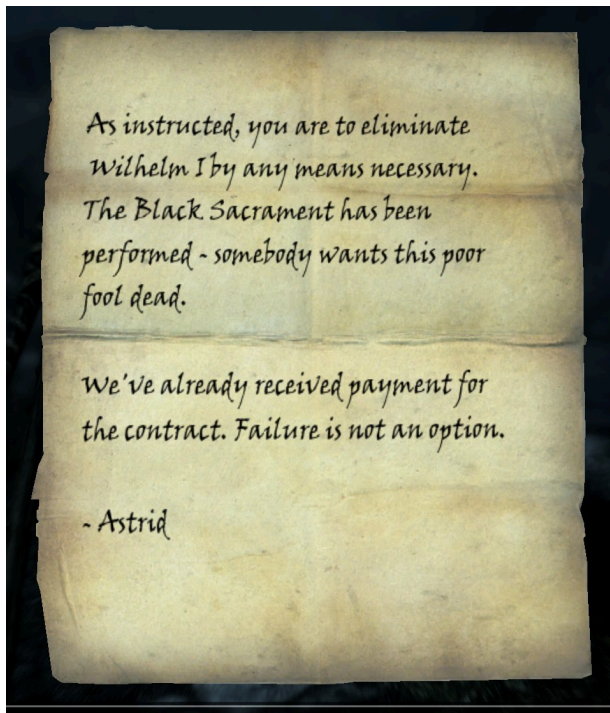


Creating a Company: Takeaways

- Form one early
- Discuss with your cofounders
- Put it in writing!



ISSUE #2: Contracts





Contracts: Why?

- Provides clarity and predictability
- Gets parties thinking/talking
- Protects against worst case AND best case
- Some things REQUIRE signed contracts (transferring IP)



Contracts: When?

BEFORE YOU DO ANYTHING WITH ANYONE



Contracts: When? Before...

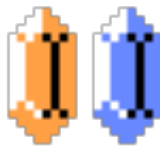
- **Hiring employees or independent contractors to contribute ANYTHING to your game**
- **Entering into a publishing arrangement**
- Hiring a developer
- Being hired AS a developer
- Transferring or licensing IP
- Making a confidential pitch (Non Disclosure Agreements)
- Launch (EULA and Privacy policy)



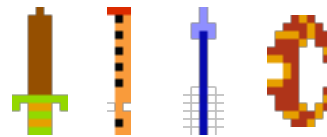
Contracts: What to Know



Term/
Termination



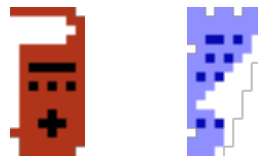
Compensation



Services/
Deliverables



Warranties/
Indemnification

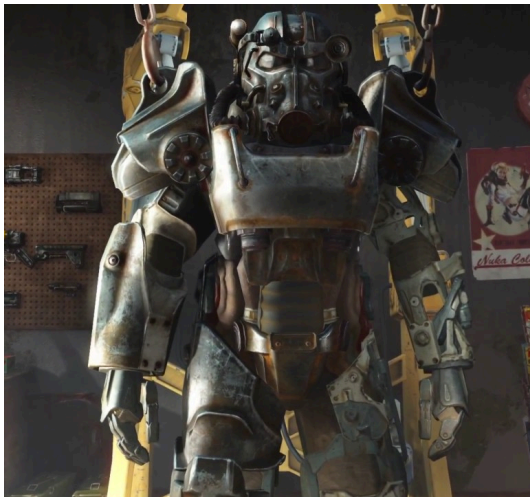


Other: Jurisdiction,
Confidentiality,
Non-Compete/Solicit



Contracts: What to Know

Work for Hire Agreements



Developer



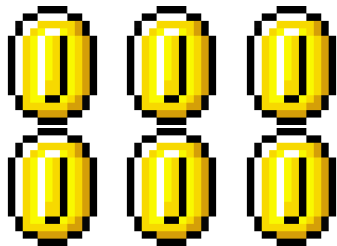
Contractor
(or anyone contributing)



Contracts: What to Know Work for Hire Agreements



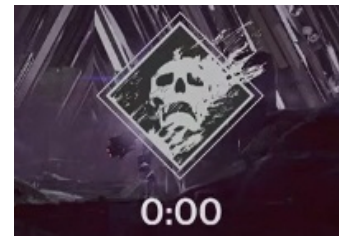
IP Rights



Payment



Scope of work



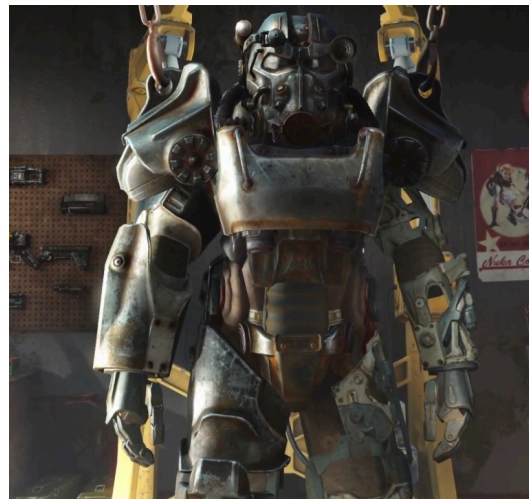
Termination



Contracts: What to Know Development/Publishing Agreements



Publisher



Developer

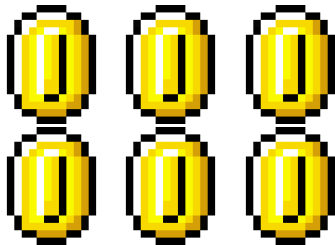


Contracts: What to Know?

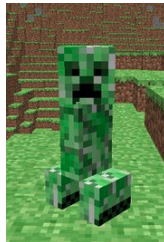
Development/Publishing Agreements



IP Rights



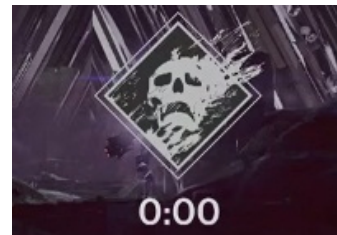
Payment



Scope
Creep



Derivative
Works



Termination



Contracts: Takeaways

- Don't work (or allow work) without one
- Clear scope/obligations (both sides!)
- Clear payment terms
- Termination
- Who makes decisions?



ISSUE #3: Intellectual Property





Intellectual Property: Types

- **Copyright (content)**
- **Trademarks (name/logo)**
- Patents (novel software/methods)
- Trade Secrets (info kept secret for business advantage)
- Right of Publicity (name/likeness of real individuals)



Intellectual Property: Why?

Game components covered by IP:

- Code (copyright/sometimes patent/trade secrets)
- Art (copyright)
- Animations (copyright)
- Music (copyright)
- Characters (copyright)
- UI design (copyright)
- Story (copyright)
- Names (trademark)
- Logos (trademark/copyright)
- Customer lists/IAP pricing strategies (trade secrets)
- "Universes" e.g. Star Wars (copyright)



Intellectual Property: When?

- Copyright: Before it is created/when it is released
- Trademarks: Before launch or as soon as practical



Intellectual Property: What to Know Copyright

- Protects: *Fixed expression* of ideas (i.e. your content)
- Does NOT protect: *Abstract* ideas (i.e. game rules or mechanics)
- The author/artist/coder/composer owns copyright by default (no registration required!)





Intellectual Property: What to Know Copyright

The right to:

- **Reproduce**
- **Distribute copies**
- Publically perform (music, plays)
- Publically display
- Transmit (digitally or otherwise)
- **Produce Derivative Works (sequels, spinoffs, DLC, merchandise, adaptations)**



Intellectual Property: What to Know Trademarks



- Protect: Titles, company names, logos, taglines
- Two sources of TM rights:
 - Common Law
 - Federal Registration (\$~1,500 w/ legal fees)
- Use in commerce
- Distinctiveness



Intellectual Property: Takeaways

Super Oversimplified IP Summary

	Patents	TM	Trade Secrets	Copyright
Length	20 Yr	Immortal	Immortal	95/120 Yr
Cost	High	Medium	Medium	Low
Ease of obtaining	Tough	Medium	Medium	Easy
Use	Rare	Often	Medium	Often
Registration?	Yes	Should	No	Should
Coverage	Medium	Narrow	Large	Large

*All information tailored to game development



ISSUE#4: Infringement





Infringement: Why?

The Sims Social



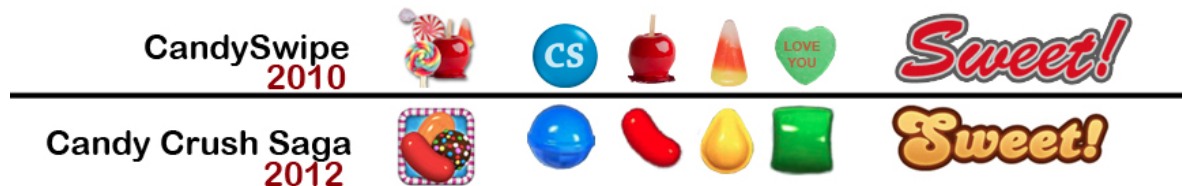
The Ville





Infringement: When?

- Registration
 - Copyright: At release (\$55) / before suing
 - Trademark: As soon as practical (~\$1,500)
- Infringement response: As soon as you notice it





Infringement: What to Know

Copyright Infringement (Cloning)



- Difficult to prove (“substantial similarity”)
- Cease and desist letter (to infringer)
- DMCA takedown notice (to content host)
- Register copyright
- Sue (often cost-prohibitive)



Infringement: What to Know

Trademark Infringement



- Cease and Desist letter (to infringer)
- Contact distribution platform (to content host)
- Must enforce to keep mark strong



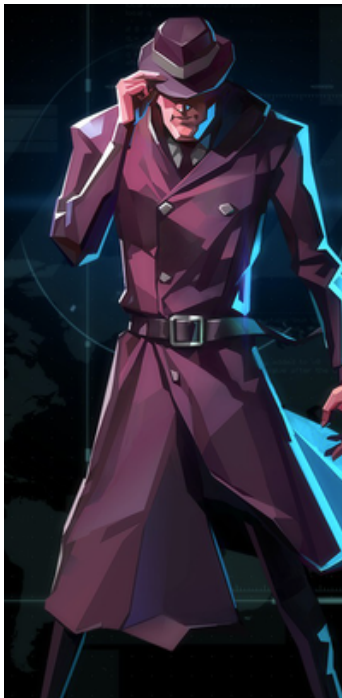
Infringement: Takeaways

- Use letters/takedown policies
- Register Copyright/Trademark early
- Be proactive w/ infringers
- There is no magic bullet





ISSUE#5: Privacy





Privacy: Why?

- Most games collect data (even single player w/ leaderboards or sharing)
- Government enforcement
- Reputation
- Data breaches





Privacy: When?

- During development
- At launch
- Post launch



Privacy: What to Know Best Practices

- If you don't need it, don't collect it!
- Know and disclose 3rd parties you share with (e.g. ad networks)
- Prominent and accessible privacy policy
- DO NOT copy a privacy policy you find online!





Privacy: What to Know

Elements of a Privacy Policy

- What types of data are collected
- Why they are collected and how they are used
- When and with whom they are shared
- How users can access their data and correct it
- What steps are taken to protect data



Privacy: What to Know Children Under 13 and COPPA

- Involves: Personally Identifiable Information (PII)
- Requires: Verifiable Parental Consent
- Compliance: Safe Harbors





Privacy: Takeaways

- Take it seriously, the government does
- Your game likely has at least SOME privacy issues
- Have privacy policy in place BEFORE launch
- Be clear and honest
- COPPA – Extra rules for under 13s



Postgame Carnage Report

1. Creating a Company
2. Contracts
3. Intellectual Property (IP)
4. Infringement
5. Privacy



The End.





Questions?

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