



INDEPENDENT GAMES
SUMMIT

Practical Contract Law 201 for Indie Developers: Moderately Scary Edition

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GDC

GAME DEVELOPERS CONFERENCE® | FEB 27-MAR 3, 2017 | EXPO: MAR 1-3, 2017 #GDC17





About

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CHRIS REID / LAW





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





Main Quest

Help indie devs understand contracts they will encounter



(Optional): Make corny game references



Contracts Covered

1. Nondisclosure Agreements (NDAs)
2. Work for Hire Agreements
3. Development Agreements
4. Publishing Agreements
5. End User License Agreements (EULAs)



Approach

1. WHEN does it come up?
2. WHY should you care (and HOW does it get scary?)
3. WHAT terms should you know about?



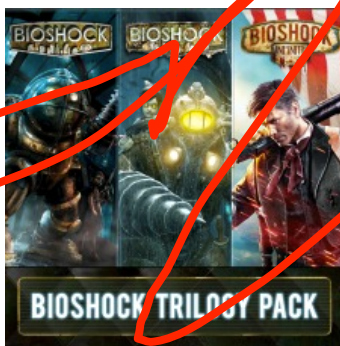
Time We Need



+



+



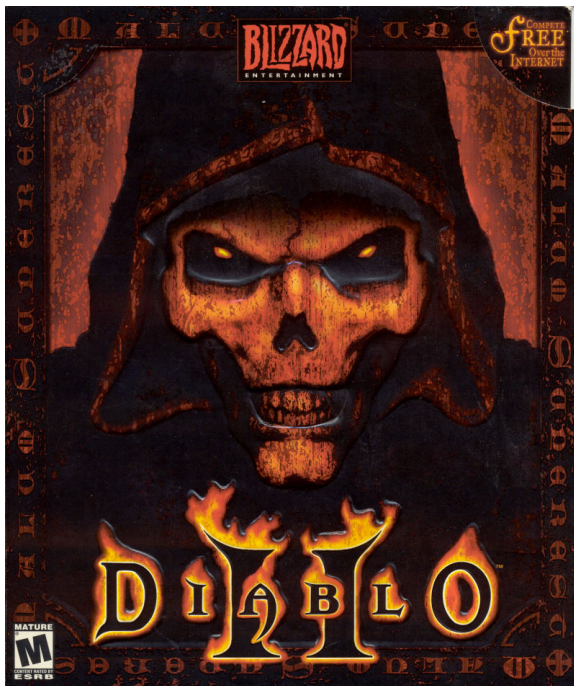
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Time We ACTUALLY Need



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UBM



Time We Have



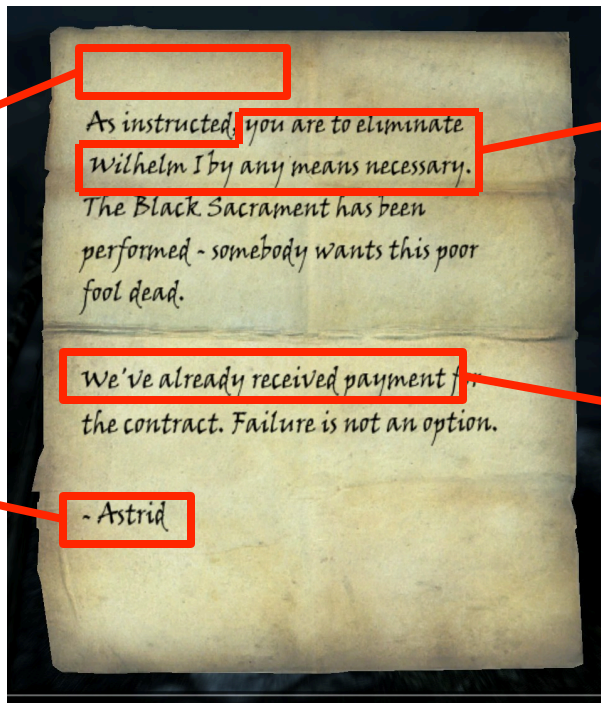
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Contract Basics

Character Name??
(missing)

Dark Brotherhood?



Services

Consideration



Contract Basics: When do you need one?

BEFORE YOU DO ANYTHING WITH ANYONE

Or as soon as possible after



Contract Basics: Examples

- NDAs
- Work For Hire Agreements
- Development Agreements
- Publishing Agreements
- EULAs
- Terms of Service
- Contest Rules
- IP Licensing
- IP Assignment
- Company Governing Documents (Shareholders Agreement/Operating Agreement/Stock Purchases)
- Investment deal documents
- Incubator terms
- Streamer/Influencer agreements
- Settlement Agreements (to end a dispute)
- Endorsement Deals



Contract Basics: Why Contracts?





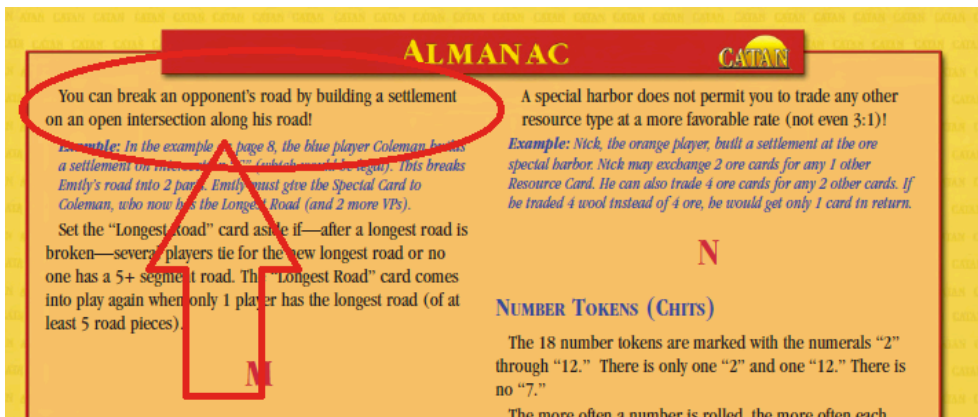
Contract Basics: Why Contracts?

- Clarity and predictability
- Thinking/talking
- Protection (worst case AND best case)
- Some things REQUIRE signed contracts (transferring copyright)



Contract Basics: Why Contracts?

A contract is a rulebook for a business relationship





Contract Basics: "Boilerplate"



12 GENERAL

12.1 Written Modification This Agreement may be modified by the parties. Any modification of this Agreement must be in writing. Failure by either party to enforce any right or remedy under this Agreement shall not be construed as a waiver of such right, nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

12.2 Notice Notices shall be given hereunder shall be transmitted in writing by facsimile or electronic mail or by certified or registered mail, return receipt requested, and shall be sent to the addresses identified below, unless notification of change of address is given in writing. Personally delivered notices will be deemed given when delivered. Notices sent by certified or registered mail, fax, or UPS will be deemed given upon receipt. Notices sent by electronic mail will be deemed given when received. Notwithstanding the foregoing, notices of change of address will be deemed given only upon receipt by the party to whom it is directed.

12.3 Electronic Means/Counterparts The parties consent to the use of electronic means to complete this Agreement and to provide one another with any notices given or required in relation to this Agreement. This Agreement may be signed in counterparts and by facsimile, PDF, JPE, BMP, or TIF. Each such counterpart shall be deemed to be a duplicate original, and all of which shall constitute one agreement. Facsimile, PDF, JPE, BMP, or TIF copies of this Agreement and ~~agreements shall be deemed to be binding on the parties.~~

12.4 Arbitration/Venue This Agreement has been entered into in the State of New York and will be governed by and interpreted in accordance with those laws of the State of New York that are applicable to contracts entered into and performed entirely within the State of New York. Any disputes which arise under this Agreement shall not be resolved through good faith discussions, but shall be heard only in the New York state or federal courts located in New York City. Consultant and Client expressly consent to the exclusive jurisdiction of the foregoing courts in any dispute between them. ~~Neither party shall be bound by the terms of this Agreement.~~

12.5 No Assignment Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned, or encumbered by operation of law or otherwise, without the prior written consent of the other party.

12.6 Force Majeure Neither party shall be deemed in breach of this Agreement if it is unable to complete the Services or any portion thereof by reason of fire, earthquake, labor dispute, natural disaster, act of public enemy, death, illness or incapacity or any local, state, federal, national or international law, governmental order or regulation or any other event beyond Consultant's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, Consultant shall give notice to Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

12.7 Severability Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.

12.8 Headings The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of the provisions of this Agreement nor shall such headings otherwise be given any legal effect. All uses of gendered pronouns shall be interpreted in the gender-neutral and shall have no effect on the meaning of a given provision.

12.9 Attorney's Fees In the event of any action, suit, arbitration, or proceeding arising out of or based on this Agreement or the subject matter hereof, the prevailing party shall be entitled to recover from the other, in addition to any other award or recovery, its reasonable outside attorney's fees and costs incurred in connection with any such action, suit, arbitration, or proceeding and in connection with the collection of any award or other enforcement of a decision, ruling, judgment, award, or settlement.

12.10 Integration This Agreement encompasses the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Agreement. In the event of a conflict between an SOW and any other Agreement documents, the terms of the SOW shall control with respect to the Services provided for in that SOW. This Agreement comprises this Master Services Agreement document and the attached SOW.

12.11 Survival Any provision of this Agreement which, by its terms, is applicable to actions or periods occurring after termination of the Agreement, will remain in full force and effect following termination of this Agreement.

12.12 Agreement Binding This Agreement will not be binding on Consultant and Client until it is signed by both parties.

Written modification

Arbitration? Venue?

Can you assign?

Attorney's fees



Contract Basics: Practical Concerns

Contracts don't enforce themselves





Contract Basics: Practical Concerns

Don't use Franken-contracts*



*Technically "Franken-Contracts' Monster"



1. Nondisclosure Agreements (NDAs)



Someone Disclosing
Confidential Information



Someone Receiving
Confidential Information



NDA's: When?

- Interviewing contractors
- Confidential game pitch
- Working on confidential project

NDA's

Work for Hire

Development

Publishing

EULAs



NDA's: Why?

- Protects “ideas” and mechanics (NOT protected by copyright)
- Trade secrets
- Non-public info

NDA's

Work for Hire

Development

Publishing

EULAs



NDA's: Scary!



ZeniMax v. Oculus: \$500M Verdict - \$200M for breach of NDA

NDA's

Work for Hire

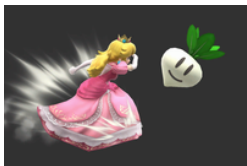
Development

Publishing

EULAs



NDA's: Terms



Mutual or
One Way?



Definition of
"Confidential"



Permitted Uses



Duration and
Obligations

NDA's

Work for Hire

Development

Publishing

EULAs



NDA's: Practical Concerns

- They might say "No"
- Enforcing costs \$ and time

NDA's

Work for Hire

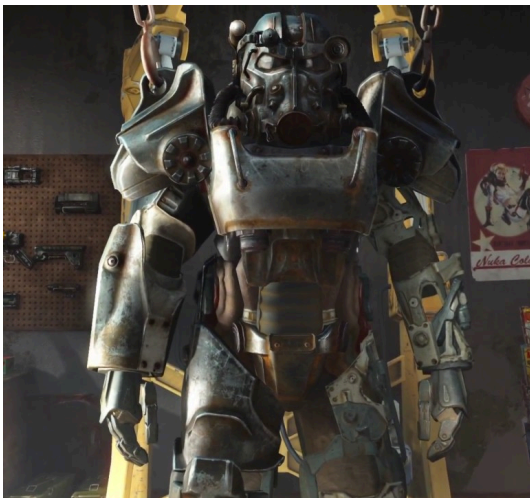
Development

Publishing

EULAs



2. Work for Hire Agreements



Developer



Contractor



Work for Hire Agreements: When?

- Owners/Founders (“Invention Assignment”)
- Anyone contributing (Contractors)

NDAs

Work for Hire

Development

Publishing

EULAs



Work for Hire Agreements: Why?

- So studio owns IP
- Independent Contractor vs. Employee
 - (Ask your accountant!)

NDAs

Work for Hire

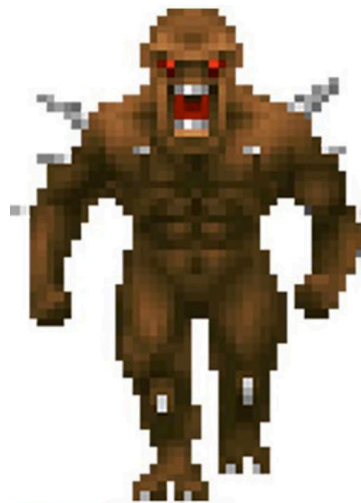
Development

Publishing

EULAs



Work for Hire Agreements: Scary!



Disgruntled Contractor gets game pulled from Steam! (DMCA takedown)

NDAs

Work for Hire

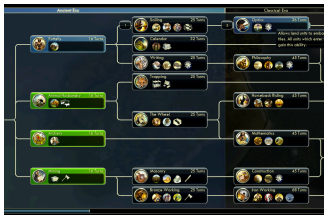
Development

Publishing

EULAs



Work for Hire Agreements: Terms



IP Rights



Payment



Revenue Share



Scope of Work



Termination



Reps, Warranties,
Indemnity



Non-compete/Non-solicit

NDA's

Work for Hire

Development

Publishing

EULAs



3. Development Agreements



Client/Funder



Developer



Development Agreements: When?

- \$ from Publisher to make Dev's own game
- Hired by 3rd Party to make a game

NDAs

Work for Hire

Development

Publishing

EULAs



Development Agreements: Why?

- Ensures you get paid!!!
- Sets scope of work

NDAs

Work for Hire

Development

Publishing

EULAs



Development Agreements: Scary!



Project takes 2x time for same fee
Project cancelled early with \$ owing

NDAs

Work for Hire

Development

Publishing

EULAs



Development Agreements: Terms



IP Rights



Developer Tools



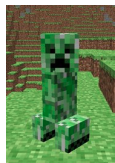
Payment



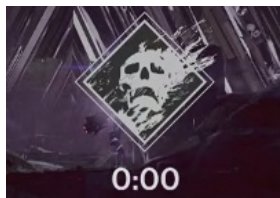
Revenue Share



Scope of Work



Scope Creep



Termination



Reps, Warranties,
Indemnity



"Hot Coffee"

NDAs

Work for Hire

Development

Publishing

EULAs



Development Agreements: Practical Concerns

- Non-Payment: Don't wait!
 - Give notice of breach
 - Stop work until paid
 - Don't hand over the final work until you get paid

“F*!k you, pay me”

NDAs

Work for Hire

Development

Publishing

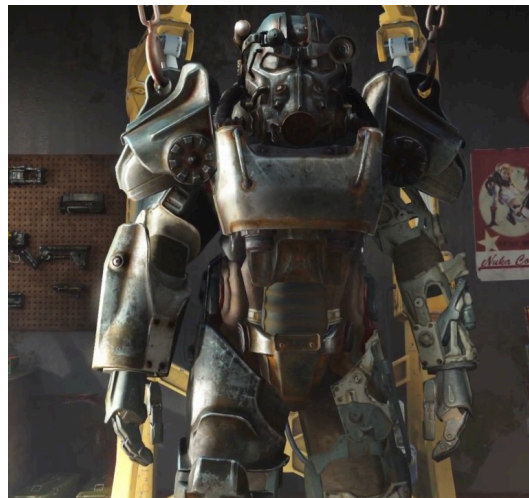
EULAs



4. Publishing Agreements



Publisher



Developer



Publishing Agreements: When?

- Publisher funded development (old/AAA model)
- Distribution/marketing/ports/localization/QA

NDAs

Work for Hire

Development

Publishing

EULAs



Publishing Agreements: Why?

Defines:

- How broad publisher's license is
- How you get paid
- What the publisher actually does for you

NDAs

Work for Hire

Development

Publishing

EULAs



Publishing Agreements: Scary!



Game stuck in a bad deal... FOREVER!

NDAs

Work for Hire

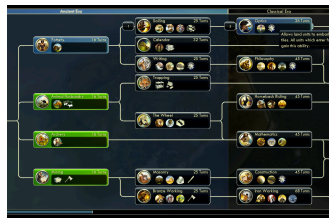
Development

Publishing

EULAs



Publishing Agreements: Terms



IP Rights



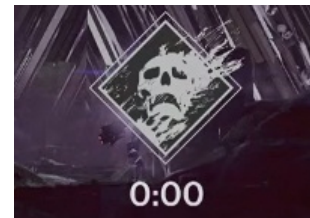
Payment



Revenue Share



Publisher Obligations



Termination

NDAs

Work for Hire

Development

Publishing

EULAs



Publishing Agreements: Practical Concerns

- You don't NEED a publisher (but you need an agreement if you have one)
- Make sure they earn their %
- Terminate if you're not happy

NDAs

Work for Hire

Development

Publishing

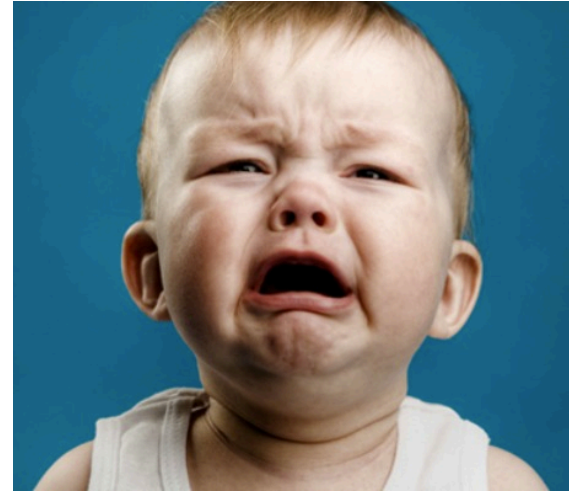
EULAs



5. End User License Agreements (EULAs)



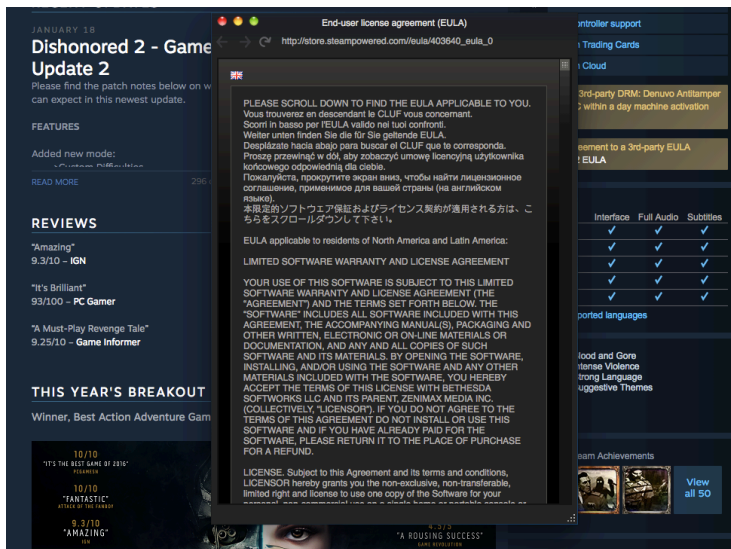
Developer



Players



EULAs: When?



Before you make your game available to users (even beta testers)

NDA's

Work for Hire

Development

Publishing

EULAs



EULAs: Who Cares!?



NDAs

Work for Hire

Development

Publishing

EULAs



EULAs: Why?

- Impose legal obligations on players
- Control your liability

NDAs

Work for Hire

Development

Publishing

EULAs



EULAs: Scary!



An angry player sues!

NDAs

Work for Hire

Development

Publishing

EULAs



EULAs: Terms



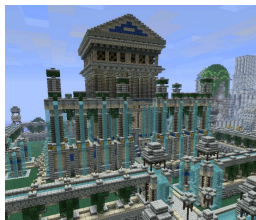
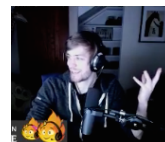
License



Rules of Conduct



IP Rights



User Generated
Content



Virtual Currency/
Items



Age Restrictions



Limited Liability

NDAs

Work for Hire

Development

Publishing

EULAs



EULAs: Zombies

Amazon Web Services Terms:



"57.10 Acceptable Use; Safety-Critical Systems. Your use of the Lumberyard Materials must comply with the AWS Acceptable Use Policy. The Lumberyard Materials are not intended for use with life-critical or safety-critical systems, such as use in operation of medical equipment, automated transportation systems, autonomous vehicles, aircraft or air traffic control, nuclear facilities, manned spacecraft, or military use in connection with live combat. However, this restriction will not apply in the event of the occurrence (certified by the United States Centers for Disease Control or successor body) of a **widespread viral infection transmitted via bites or contact with bodily fluids that causes human corpses to reanimate and seek to consume living human flesh, blood, brain or nerve tissue and is likely to result in the fall of organized civilization.**"

NDAs

Work for Hire

Development

Publishing

EULAs



EULAs: Practical Concerns

- 3rd party EULAs (Steam, Apple, etc.)
- Make them actually click!



NDAs

Work for Hire

Development

Publishing

EULAs



What have we learned?

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

~~signed chris~~

signed christopher reid



Postgame Carnage Report

1. NDAs
2. Work for Hire Agreements
3. Development Agreements
4. Publishing Agreements
5. EULAs



Finn Reid: Paralegal





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Are you moderately scared yet?



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Questions?

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CHRIS REID / LAW



Please fill out your Session Evaluation after the talk!

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