

The image is a slide titled "INTRODUCTION" in bold red letters. It features the "eutechnyx" logo in the top left corner and a row of four small logos in the top right corner. The slide contains a bulleted list of information about Darren Jobling and Eutechnyx Limited. In the bottom right corner, there is a small image of a dark sports car, similar to the one on the book cover.

**INTRODUCTION**

- Darren Jobling
  - Director of Business Development
  - Physics Graduate
  - Sales & Marketing Background – Air Products
- Eutechnyx Limited
  - Specialist Driving Game Developer
  - Founded 1987
  - Namco, THQ, Electronic Arts, Eidos, Activision, Atari, Codemasters, Empire, plus...








## HISTORICAL GAMES

- Worked with some of biggest Intellectual Property in the world
  - James Bond 007
  - Formula One
  - Le Mans 24 Hours
  - Micro Machines
  - Pete Sampras













## BIG MUTHA TRUCKERS



TOP 10 PLAYSTATION 2 TITLES  
RANKED BY TOTAL USA UNITS

RANK	TITLE	PUBLISHER
1	NCAA FOOTBALL 2004	ELECTRONIC ARTS
2	GRAND THEFT AUTO 3	ROCKSTAR GAMES
3	GRAND THEFT AUTO: VICE	ROCKSTAR GAMES
4	NBA STREET VOL 2	ELECTRONIC ARTS
5	ENTER THE MATRIX	ATARI
6	<b>BIG MUTHA TRUCKERS</b>	<b>THQ</b>
7	MIDNIGHT CLUB II	ROCKSTAR GAMES
8	TOMB RAIDER: ANGEL	EIDOS INTERACTIVE
9	SPIDER-MAN: THE MOVIE	ACTIVISION
10	HULK	VIVENDI UNIVERSAL

SOURCE: TRYST SALES DATA JULY 2003




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Top upcoming games on PS2: -

1. Gran Turismo 4 (PS2)
2. Street Racing Syndicate (PS2)

Top upcoming games on Xbox: -

1. Rallisport Challenge 2 (Xbox)
2. Street Racing Syndicate (Xbox)

SOURCE: www.ign.com - February 2004

**"Best Racing Game" at E3 2003**

**- Maximum Play**

**Published worldwide by namco®**



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## COMPANY AWARDS

- Sunday Times Tech Track 100 Company
- Deloitte & Touche Northern Technology Fast 50
- Deloitte & Touche European Technology Fast 500
- Young Entrepreneur of the Year
- Investors in People Outstanding Practice Award
- Develop Industry Excellence Awards
- BAFTA Award Nomination






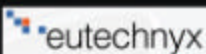








## DEVELOPMENT CONTRACTS

- Development Agreements **from a Developer's Point of View**
- Understanding Publisher's Point of View
- Negotiation
- Pitfalls
- Useful Clauses
- Hints 'n' Tips
- Avoiding Disasters...



## DISCLAIMER

This presentation does not constitute legal advice. You should always seek professional legal advice from a qualified attorney before entering into any agreement. The sample clauses in the following slides are for illustration purposes only, and are not "model clauses"



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## PREPARATION

- Promote your Company not your Game
- Produce a Prototype Demo
- Allocate 3 to 6 months to do any Deal
- Appoint Experienced Attorneys - Don't Pay them to get up to Speed in our Industry
- Research the Publishers
- Target Main Players
- Get Out There...!






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## TO DO THE DEAL


- Enthusiasm for the Game
- Enthusiasm for the Publisher
- Know What You Want
- Don't Forget Exchange Rates
- Know the Sales of Comparable Games
- Think Long Term – NOT Short Term





## THE FUNDAMENTALS


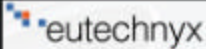
- Understand the Contract
- “Tracked Changes”
- Amend Contract yourself first, then...
- Send it to an Attorney
- Be Friendly in Negotiations
- Win the War – not Individual Battles
- Publisher is Customer – not Enemy!



## WORK FOR HIRE


- Europe -v- USA
- Creating Games is a Creative Process
- Know How, Tools & Technology
- BMW





## LICENSING

- Taxi Driver –v– Chauffeur
- Licence the Game
- Give the Publisher Reassurance via Contract



## THE GAME FORMULA

**THE GAME =  
DEVELOPER IP + PUBLISHER IP + LICENSED IP**

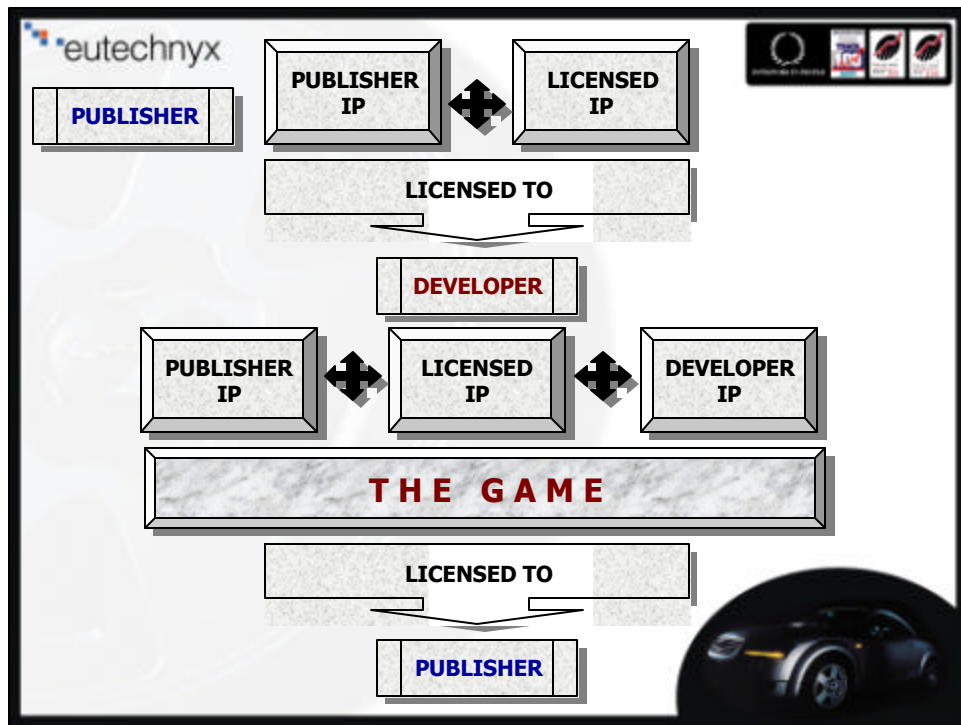
Developer IP – Engine, Tools, Technology, Trade Marks,  
Design, Characters, Existing IP.

Publisher IP – Trade Marks, CGI, Translations, Existing  
Code, Existing IP.

Licensed IP – Vehicle Makers, Film Rights,  
TV Rights, Brand Rights & TMs, etc..







**WIN - LOSE**

"Developer hereby agrees that the Game and all rights included in the Game, including programming source code, are produced as "Work for Hire" as specified in the U.S.A. Copyright Act. Developer hereby assigns to the Publisher all rights in and to the Game, any Sequels or Conversions of the Game, and any associated products exclusively throughout the world in perpetuity."

The slide includes the eutechnyx logo in the top left and platform logos in the top right. A partial image of a car is visible in the bottom right corner.





## WIN - WIN

"The Developer hereby grants to the Publisher:


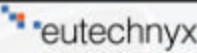
- (a) an exclusive, worldwide, perpetual license to manufacture, publicly display, publicly perform, promote, market, sell, sublicense and distribute the Game;
- (b) a non-exclusive, worldwide, perpetual license to reproduce and use the Developer's IP to identify and promote the sale and distribution of the Game;
- (c) a non-exclusive, worldwide, perpetual license to reproduce, modify, and use materials from the Game to create packaging, advertising and/or marketing materials for the Game; and,
- (d) the right to sublicense any or all of the rights above."



## WORK FOR HIRE -v- LICENSE




- Persuasive Arguments...
  - Existing IP
  - Playable Demo
  - Specialism
  - Tools and Technology
  - Developer Concerns
  - Past Deals
  - Registered Trademarks
  - Buy Out of IP






## **SUPPORTING LICENSES**

"The Publisher hereby grants to the Developer a non-exclusive royalty-free license to use, reproduce and adapt or modify the Publisher IP and the Licensed IP as are necessary to develop the Game pursuant to this Agreement and for no other purpose whatsoever."




## **GAME OWNERSHIP**

"Subject to the licenses granted hereunder, the Publisher hereby acknowledges and agrees that the Developer shall retain all Intellectual Property Rights, title and interests in and to the Game."




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## SEQUELS & CONVERSIONS

- Partnership Approach
- Publisher or Developer wants to do Sequel or Conversion
- 60 Days Negotiation
- No Agreement – Suggesting Party Free to do Sequel or Conversion subject to: -
- Last Matching Offer
- 15 Days to Match Offer




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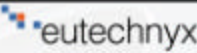


## ADVANCES

“Any development payments provided by the Publisher shall be considered to be non-refundable Advances against Royalties which may be otherwise due and payable to the Developer in accordance with the Milestone Schedule.”

- Advances -v- Payments


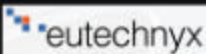





## ROYALTIES

- Aim for Clarity


"Net Receipts means the gross cash received by the Publisher and/or its Affiliate(s) from sales of units of the Game less manufacturing costs directly incurred by the Publisher and royalties due to third parties as a result of the manufacturing and/or distribution of the Game. For the avoidance of doubt and the purpose of this definition, proceeds of a sale by the Publisher to an Affiliate shall not be deemed a Net Receipt."



## CHANGE ORDER PROCEDURE

Essential in any software development agreement: -

- Parties agree Game specification in Design Document
- Amendments by either party have to be requested in writing
- Developer researches cost and timescale within a "Validity Period"
- Publisher decides whether they wish to proceed within "Validity Period"
- Developer amends Design Document and Milestone Schedule



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## MILESTONE DELIVERY

The Publisher will review the Milestone Deliverable and will within 20 (twenty) working days of receipt either:-

- (a) confirm its acceptance of the Milestone Deliverable; or
- (b) reject it, in which event the Developer will promptly amend and resubmit the Milestone Deliverable to the Publisher.



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## MILESTONE DELIVERY

The Publisher will review the Milestone Deliverable and will within [20 (twenty)] 5 (five) working days of receipt using good faith judgement either:-

- (a) confirm its acceptance of the Milestone Deliverable in writing; or written details of the shortcomings in the Deliverables




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## MLESTONE DELIVERY

(b) reject it, giving a written explanation in detail of the shortcomings in the Milestone Deliverable, and describing in detail the actions the Developer must take to cause the Milestone Deliverable to be accepted, in which event the Developer will [promptly] amend and resubmit the Milestone Deliverable to the Publisher within a timescale to be mutually agreed between the parties.  
The process outlined above shall be repeated until the Milestone Deliverable is accepted by the Publisher."




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## MLESTONE APPROVAL

"Where the Publisher confirms its acceptance of Milestone Deliverable, the Publisher shall inform the Developer in writing to that effect. If by the end of 10 (ten) working days the Publisher has not communicated in writing either acceptance or rejection then the Deliverable shall be deemed accepted."




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COMMITMENT TO EXCELLENCE

## MAILESTONE FAILURE

"If the Publisher shall in its absolute discretion afford the Developer an opportunity to resubmit any Milestone Deliverable as set out above and either the Developer fails to resubmit the relevant Milestone Deliverable within the time limit specified by the Publisher or such Milestone Deliverable is still unacceptable to the Publisher, the Publisher shall, without prejudice to any other rights or remedies the Publisher may have under this Agreement, exercise its takeover rights and/or terminate this Agreement."




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COMMITMENT TO EXCELLENCE

## MAILESTONE FAILURE

"If within two (2) calendar months of the first submission of the Milestone Deliverable either [the Publisher shall in its absolute discretion afford the Developer an opportunity to resubmit any Milestone Deliverable as set out above and either] the Developer fails to resubmit the relevant Milestone Deliverable [within the time limit specified by the Publisher] or such Milestone Deliverable is still unacceptable to the Publisher due to shortcomings in the Milestone Deliverable from the specification in the Design Document, the Publisher shall, without prejudice to any other rights or remedies the Publisher may have under this Agreement, exercise its takeover rights and/or terminate this Agreement provided that any periods in which the Deliverables are being tested by either of the Publisher or a Hardware Manufacturer shall not be calculated towards the delay period referred to above."








## **MAILESTONE FAILURE**


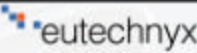
"The Publisher will not act unreasonably in each instance in making their determination whether or not any milestone submission satisfies the applicable Milestone Deliverable specification, and in any event all disputes or issues to be resolved shall be submitted to dispute resolution."



## **PUBLISHER WARRANTIES**




"The Publisher has the right to publish products on the Sony PlayStation 2 platform, the Microsoft Xbox platform and the Nintendo Gamecube platform."






## **PUBLISHER WARRANTIES**


"The Publisher is able to grant all rights granted to the Developer under this Agreement, including, without limitation, the use of the the Publisher Materials, the Publisher IP and the Licensed IP in accordance with the terms of this Agreement."



## **PUBLISHER MATERIALS**

"The Publisher Materials shall be provided by the Publisher to the Developer and shall be of satisfactory quality and fit for the purpose and provided with professional skill and expertise equivalent at least to the quality expected to be deployed by the Developer for the Game. In the event that the Publisher Materials are not to the required standard, the Developer shall notify the Publisher of amendments or improvements needed to meet the required quality. In the of event of late delivery of the Publisher Materials, the Developer shall not be liable for subsequent impact on the Milestone Schedule which shall be amended as appropriate."





## PUBLISHER WARRANTIES

"Save as expressly permitted by this Agreement or by operation of applicable law, the Publisher shall not copy, distribute, decompile, reverse engineer or otherwise make use of such Developer's Code nor will it permit others to do so."



## DEVELOPER WARRANTIES

- USA Patents are a real problem...

"The Developer warrants that the final version of the Game will not knowingly violate or infringe the rights of any third party."

"Claims of patent infringement the existence of which the Developer is aware"





## DEVELOPER WARRANTIES


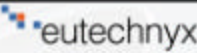
"The Developer shall promptly provide fixes or work-arounds for any bugs or other errors, defects or omissions discovered in the Game and reported to the Developer within six (6) months following the Publishers first commercial release of the the Game."



## INDEMNITIES

- Get Good Trade Insurance
- Send Copies of your Agreements to your Insurers and get their Approval in Writing
- Any Problems – Run Your Own Defense
- Do Not Give Publisher the Right to Settle
- Limit your Liability – do not Bet the Company on one Contract








## TERMINATION FOR CONVENIENCE


"The Publisher may terminate this Agreement on written notice to the Developer at any time prior to the Acceptance Date without giving any reason for its own convenience."

- Critical clause in the current marketplace
- Negotiation could save your company



## TERMINATION FOR CONVENIENCE



"The Publisher may terminate this Agreement on 30 (thirty) days written notice to the Developer at any time prior to the Acceptance Date without giving any reason for its own convenience and the Publisher shall pay the Developer for all Milestones submitted up to the date of termination plus the sum of \$500,000 (five hundred thousand dollars) as compensation for peremptory termination and all rights granted to the Publisher by Developer in the Developer IP shall immediately revert to Developer, and all rights in the Game other than Publisher IP and Licensed IP shall be assigned by the Publisher to Developer."






## TERMINATION


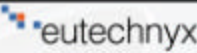
"In the event of a breach by the Developer of a provision of this Agreement, then the Publisher shall have the right to terminate this Agreement."



## TERMINATION


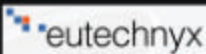

"In the event of a material breach by [the Developer] either party of a material provision of this Agreement, which, if capable of remedy remains unremedied thirty (30) days after written notice requiring such breach to be remedied, then the [Publisher] other party shall have the right forthwith to terminate this Agreement."






## LEAVING

"For the avoidance of doubt the parties agree that members of the Development Team are entitled to resign or may be suspended or dismissed by the Developer (together called "Leaving") and such Leaving shall not in itself constitute a breach of the Developer's obligations under this Agreement."



## POACHING

"The Publisher and Developer agree that for during the Term and a period of twelve (12) months after Publisher acceptance of the Game they shall not directly or indirectly solicit or offer employment to any of the other's staff (whether or not they have been involved or associated with this Agreement) without the other party's prior written consent."






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THE PRODUCER

"The Publisher will designate a Producer as Developer's principal interface with the Publisher in connection with this Agreement. All services must be co-ordinated with the Producer and the Developer shall be entitled to rely on the statements and instructions of the Producer as the authorized expression of the Publisher's intentions with respect to the performance of this Agreement. The Producer shall be responsible for Approval of Milestones. The Publisher shall consult with Developer in sufficient time to obtain the views of Developer to any proposed changes to the the Producer, and shall not change the Producer without first obtaining the prior written approval of Developer, such approval not to be unreasonably withheld."





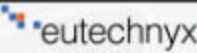
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DEVELOPER CREDIT

"The Publisher will ensure that the following notice appears in the Game and in the manual of the Game:




- (i) © 2004 The Developer Inc.. All Rights Reserved. Design and Software Technology © 2004 The Developer Inc.. "Name of Game" is a registered trademark of The Developer Inc.,
- (ii) the Developer Logo is included in the Game and on the packaging and marketing materials in the position and size agreed between the parties from time to time,
- (iii) the names of the Developer's staff involved in the production of the Game."






## PROMOTING YOUR COMPANY


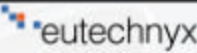
"With the Publisher's prior written consent, not to be unreasonably withheld or delayed, the Developer shall be entitled to state that the Publisher is a client and to use the Publisher's name and images from the Game in publicity material and on the Developer's website."



## TRADE SHOWS




"With the Publisher's prior written consent, not to be unreasonably withheld or delayed, the Developer may show the Game on the Developer's stand at E3, GDC, ECTS, Game Connection and similar computer trade shows."






## COPIES OF THE GAME

"The Publisher shall provide the Developer with fifty (50) free of charge copies of each released version of the Game, within 30 days of the release of that version of the Game to the market, and further copies at the Publisher's manufacturing cost price."




## AUDIT

- Right to Audit Customers
- Developer can Audit, not just CPA
- No Expiration of Right to Audit
- Material Underpayment: -
  - Immediate Repayment
  - Interest at 4% above Bank Base Rate
  - Reasonable Costs of Audit reimbursed




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## GENERAL CONTRACT TIPS

- Be “reasonable” – “reasonable” costs, “reasonable” requests, etc.
- Be Aware of “Best Endeavors” – use “Reasonable Commercial Endeavors” instead
- Timescales or actions should be “mutually agree”
- Any requests for permission should “not be unreasonably withheld, delayed or conditioned”
- Any breaches should be “material”
- Immediately should be “promptly”




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## SUMMARY

- You Get What You Can Negotiate
- Learn Contract Fundamentals
- Good IP Attorney
- Win – Win is Key
- Know What you Bring to the Table
- Be Friendly – Publishers are Customers
- Enjoy the Process!



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**IP SOLICITORS**

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Faegre Benson Hobson Audley  
7 Pilgrim Street  
London  
EC4V 6LB

Email: MEvans@faegre.com  
Tel: +44 (0)207 450 4500  
Fax: +44 (0)207 450 4545



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**ANY QUESTIONS?**

**Darren Jobling**  
**dj@eutechnyx.com**

