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Top 10 Legal Issues for Game Developers

2012

It's a new year and as they say a new game. As you begin to plan and layout your game development strategy for 2012 it is also a good time to review some legal basics to keep in mind. Make protecting your creative efforts and staying out of litigation a top New Year's resolution.

Intellectual property rights are your best friends. You need to understand what and how it protects so you can reap the benefits, but also so you don't violate someone else's. The first question is is your game an original, a clone or a fan game?

1. Your game has to be in a fixed, tangible medium (code). Thoughts and ideas are not protected, their expression is.
2. Design and development decisions will need to contemplate intellectual property rights, from copyright of the code, to work for hire and copyright transfers and waivers from independent developers, to trademark of logos of the games and their domain names.
3. Who the author is can sometimes be the point of legal contention – work for hire, employee vs. independent contractor, commissioned works – each of these adds a new dimension of complexity if a contract that spells out the exact relationship isn't explicit or doesn't even exist. Are you the author, are your employees the authors, were you hired to develop for someone else?
4. Rights can be transferred through a sale or license agreement. Rights can also be split – for example, a right to reproduce but not distribute. Rights last a certain amount of time only and the length depends on which country the work was produced or registered.
5. Do you need to register? If you want to sue is what we've always been told. Easy, but can be expensive when you begin to register in every country you want protection in.
6. The Gaming Industry faces unique business model decisions. You have a target audience that is conditioned to paying to be able to play the games so issues such as subscription or user fees, micro transactions for virtual goods, and advertising via sponsorships, branded virtual goods and product

placement, will all require legal guidance in terms of virtual currencies, transactions, interstate commerce, sales taxes, etc.

7. Content production in association with the games may also lead to issues with publicity rights (if incorporating a well-known athlete or celebrity), music licensing issues, offensive content, and the Children's Online Protection Act to name a few.
8. After design and development, the next big issue focuses on game access and distribution - from digital rights management to licensing agreements – this issue also brings in international standards for content and IP protection.
9. If you are developing a social game, privacy implications come into play. Most of the games use the social graph to enhance the social experience. These uses are outlined in the games "Terms of Use" and "User Agreements" but many users do not bother to read them.
10. Content also brings up the issue of First Amendment rights (freedom of speech) vs. censorship. In June of 2011 Just Scalia and the United State Supreme Court based down a decision that "video games are protected speech and that restrictions based on their content would be subject to strict scrutiny."¹ (Brown vs. Entertainment Merchants Association, CA). So California's ban on violent video games for children was declared unconstitutional.

¹ <http://www.nytimes.com/2011/06/28/us/28scotus.html?pagewanted=all>