Chapter 7.3
Law, Architecture, Gameplay, and Marketing[1]

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ABSTRACT

This chapter introduces readers to a broad range of legal issues relevant to game designers and developers touching such topics as intellectual property protection, player disputes, employment, licensing, and taxation. It provides an overview of relevant law, but primarily focuses on how to bring legal considerations into game design, software development, and business planning so as to minimize one's legal risk. The Principle of Severability is also highlighted as a way to increase users' willingness to contribute content; it is then extended to offer guidance in setting up a Litigation Savvy Development process.

PURPOSE

This chapter highlights areas of law pertaining to the development of computer games. It focuses on ways to manage legal risk and their impact on game architectures, gameplay, and marketing. It is intended as a practitioner's guide rather than a formal research study. In no case should you rely on this or any other publication in making legal decisions without consulting an attorney licensed to practice in your jurisdiction.

Legal risk is the danger that when relevant laws are applied to a course of action, they will have negative or unforeseen consequences affecting one's rights and obligations. It can stem from uncertainties over what the law will be and how it might be applied. Since each possible course of action will raise multiple issues each of which could play out several different ways, one must consider all plausible permutations to develop a range of scenarios that can be ranked in a game theoretic sense by likelihood and severity of impact. This is the essence of legal analysis and

planning, and as such it serves as the implicit basis for the organization of this chapter.

GENERAL BACKGROUND

Laws and Games go back to the dawn of humanity, when an extended childhood provided precious time to learn survival skills and legal bounds that were transmitted socially through play.

"That an affinity may exist between law and play becomes obvious to us as soon as we realize how much the actual practice of law, in other words a lawsuit, properly resembles a contest, whatever the ideal foundations of the law may be." (Huizinga, 1944/1955, p. 76)

Before the advent of law, disputes and questions of governance were settled by force of arms; some early societies then introduced *champions* to battle on behalf of the parties, and in time, combat gave way to the ballot box and communal judgment of the jury.

Since economics is not a zero-sum game, private law subsequently evolved to forge binding agreements that would support long-term cooperation. These arrangements gave birth to bodies of contractual and commercial law, through which players could choose their own rules of play. The most important legal innovation was that of the corporation, which allowed groups to effectively join in a quest (for profit) while legally limiting their potential losses to a fixed investment.

These aspects of Law can be a rich source for Gameplay and themed player classes and it is well worth considering the possibility of making the development of an in-world legal system and its imposition on the wilds of an initially unregulated game grid the basis of a MMORPG. That such a concept can attract an audience is well established by the Judge Dredd™ franchise (trademarked by Jason & Christopher Kingsley), which has moved from the comics to such media as film, novels, music, as well as video, board, play-by-forum, and role-playing games ("Judge Dredd," 2009).

HOW TO USE COUNSEL

It is important for game developers to understand how to properly employ legal counsel. When client/lawyer relations break down poor communication is usually at fault.

Always ask if there is anything you should have asked about and this is particularly so if your counsel is used to working with more knowledgeable clients. In matters of billing you need to spell out the extent of the legal services you are bargaining for.

Perhaps at no other time in the history of the United States has the Law been in a greater state of flux or less subject to the original intent of the Founders, as all too often appointed judges act in concert with unelected regulators to advance a Statist agenda of ever increasing regulation and taxation of business entities (Levin, 2006; Levin, 2009).

So if you are doing anything novel, questions will arise that cannot be answered by settled law. Every case is unique and regulators, judges, and juries are often unpredictable. Therefore, most legal guidance will take the form of a set of alternate scenarios weighted by their shifting likelihood as the Law evolves. Your task is to choose a strategy that will play out to your best advantage against this range of outcomes, just like in a game.

It is critical to draw a distinction between the correct business decision and the correct legal decision. Remember, as long as you remain in business, there is no dominant strategy in a game theoretic sense (Von Neumann & Morgenstern, 1944/1990, pp. 37-39) that will guarantee immunity from legal woes and trying to find one can lead to a sub-optimal business solution or outright strategic paralysis.

Accordingly, use legal counsel as an input into your business and engineering processes. Seek a

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