

Copyright Licensing in Computer and Video Games

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The author is ordinarily the original owner of a copyright. However, when the author creates the work under a contract with another, it may be a "work for hire" where the employer or other hiring party owns the copyright. Typically, in a job where content creation is involved, an employee will often have signed an express assignment of all rights to the material created at work to the employer.

The owner can license the rights to copyrighted material to others in many different subsets. Each of the rights of reproduction, distribution, performance, creation of derivative works, importation, and exportation can be separately licensed to different people under different terms. Further, each of these categories can be broken down further and licensed separately by such divisions as area (country or region), place in the supply chain (publisher, distributor or retailer), and nature of use (commercial or personal).

In each of the multiple categories, the copyright license can be either exclusive or not. If exclusive, that same right, as limited by category, cannot be granted to another. Where the license is non-exclusive, however, the same rights can be granted to an unlimited number of persons, many of whom may be direct competitors. Exclusivity is often important, since it protects the acquiring party from competition from others acquiring the same rights.

Copyright licensing issues come up frequently in developing computer or video games. Where a game is taken from a literary work, such as a screenplay or novel, the developer must get an appropriate copyright license from the owner of the work. A game based on another work is called a "derivative work" in copyright legalese. If the original work is fiction, then a license must be obtained to develop a derivative work based on the same characters and story. On the other hand, if the original work is non-fiction, the underlying historical facts themselves are not protected by copyright. However, the particular way in which those facts are presented may be protected.

An important factor in copyright licensing is determining what other licenses have already been granted to others by the original owner. To the extent non-exclusive licenses have already been granted to others for the same use, the licensee may face direct competition. Further, where the new license being granted to the new licensee is not exclusive, the new licensee needs to be concerned about competition from possible future licensees. Where there are multiple already existing licensees with different bundles of rights, a new licensee may want the licensor to obtain direct assurances from previous licensees that the new license will not conflict with the earlier licenses.

Another important issue is the extent to which the licensor may want to retain some control over the adaptation of their work into a computer game. A licensor may be concerned about how the portrayal of the work in a game adaptation may affect the value of his original work, and how it may affect the marketability for additional derivative works.

The licensor may want to retain rights to license to others for other uses and could be concerned about whether a poorly done derivative game work might lessen the original work's value to others. Any provision where an licensor is given any kind of approval rights as to the derivative work must be carefully thought through. If the licensor unexpectedly fails to approve the work, it could cause catastrophic delays in the game's development.

A licensee will normally want to obtain warranties from the licensor as to its ownership of the copyright and that the original work does not infringe on the copyright of others. In order to prevent problems at the outset, the licensee should request documentation showing the licensor's rights and request disclosure of all prior licenses granted. The owner should provide express assurances that no prior licenses conflict with the new one being granted.

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