

WHERE ARE YOU GOING WITH YOUR STUDIO IN 2010 AND BEYOND?

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GDC EUROPE 2010

www.fierstpucci.com

TOPICS

- Speaker Introduction
- Building Studio Value
- Working With Brands
- Developing Intellectual Property
- Adjusting to the Digital Age
- Selling Direct to Consumers

TOPICS (cont.)

- Operating Your Studio (insurance; publisher contracts; records retention; publisher-developer wars; building and holding a war chest)
- Deciding to Sell Your Studio
- The Roles of Agents, Brokers, Bankers & Lawyers

STUDIO VALUE

- ⦿ Proprietary interactive product lines and their value
- ⦿ Developing other proprietary intellectual property (engines, tools, enhancements, entertainment and merchandising, trademarks, logos, brand names, etc.) and how to obtain patents, trademarks, copyrights, etc.
- ⦿ Cash for litigation and between projects

STUDIO VALUE (cont.)

- ⦿ Building strong and varied publisher relationships; one-stop shopping versus eggs in one basket concerns
- ⦿ The need for solid financial data and revenue
- ⦿ Corporate structure issues, including employee stock option plans and employee retention
- ⦿ Building cohesive and lasting development and technology teams and their value
- ⦿ Ongoing preparation of a “pitch book” for when it is needed

Adjusting to the digital age.

Understanding how the roles of publishers are changing.

ADJUSTING TO THE DIGITAL AGE

- ◉ TRADITIONAL PUBLISHERS DESPERATELY NEED NEW FRANCHISES.

Activision's 2009 growth is noteworthy, but so too is the fact that they are growing more dependant on fewer titles for that growth: Guitar Hero, Warcraft, Call of Duty.

- ◉ FEWER TITLES COMPETING FOR DEVELOPMENT DOLLARS.

- ◉ LICENSED PRODUCT MARKET FALTERING.

- ◉ EMERGING, SOCIAL PUBLISHERS ARE HOT.

- ◉ Playdom acquisition by Disney - \$508M; Playfish acquisition by EA - \$308M
- ◉ Keep an eye on Disney/Playdom; Zynga; EA/Playfish

CASE STUDY

an organically-grown interactive
web site.

www.poptropica.com



**#1 KIDS WEB SITE IN U.S.,
over Nickelodeon and Disney**

www.poptropica.com (cont.)

- Originally Funbrain, a text-only site servicing teachers and children with ~6M monthly visits. Acquired by Pearson Publishing in 2000
- Poptropica was brainchild of Jeff Kinney and Jess Brailier
- Looking to utilize interactive gaming to reach kids. Literacy based, but emphasizing fun. Features narrative-based quests
- Explored, but rejected Facebook, Twitter, etc. Too much risk to children's privacy
- **NOW OVER 120M MONTHLY VISITS**



www.poptropica.com (cont.)

Poptropica makes money by:

- Advertising (mostly)
- Selling virtual items
- Subscriptions
- Rollout of ancillary rights

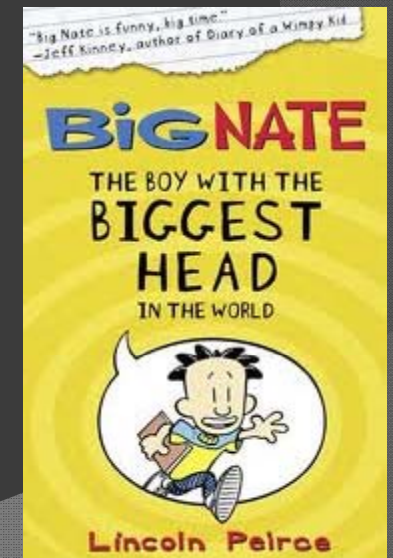
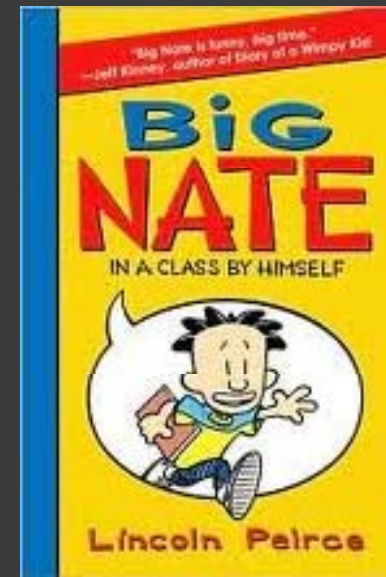
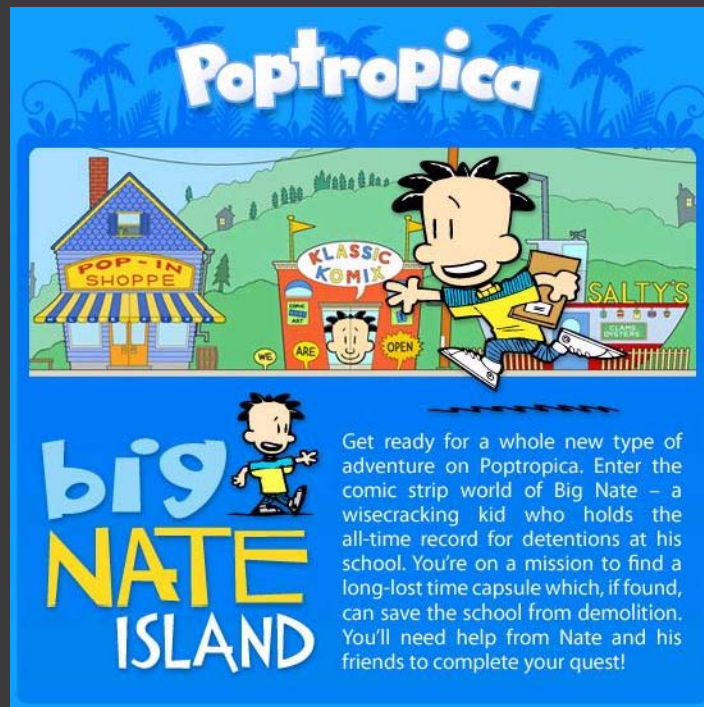


www.poptropica.com (cont.)

EXAMPLE #1

***Big Nate* by Lincoln Peirce**

Book launched with island on Poptropica. NY Times bestseller within one week.



The New York Times

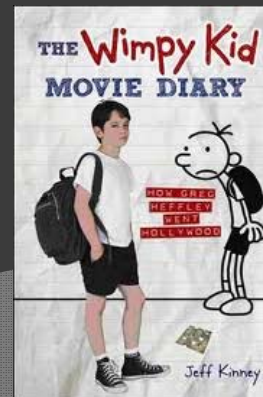
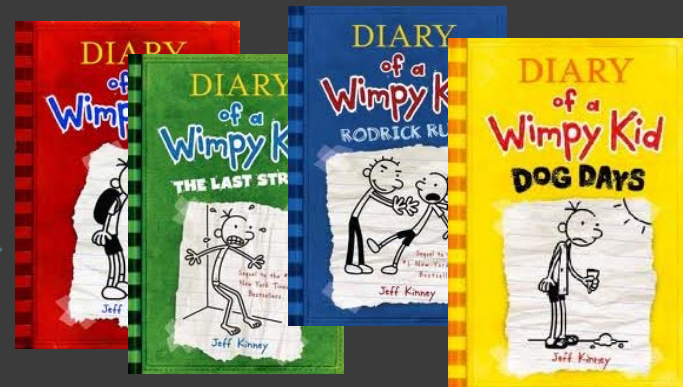
BIG NATE BOOK DEBUTS AS #5 ON NYT BEST SELLER LIST

www.poptropica.com (cont.)

EXAMPLE #2

Diary of a Wimpy Kid by Jeff Kinney

Book launched with island on Poptropica. Became best seller and feature film.



**IT'S NOT A DIARY
IT'S A MOVIE**

OWN IT 8/3
ON DVD AND BLU-RAY COMBO PACK

www.poptropica.com (cont.)

- ⦿ Very conservative, low-budget operation
- ⦿ 12 employees
- ⦿ All focus is on the creative; story telling
- ⦿ Trusting kids to reject the all-sugar approach
- ⦿ Still U.S.-centric; only 10% of business outside of U.S.; looking for interactive partners

POPTROPICA LESSON:

grow conservatively, keep focus on creative, develop and build your own brand.

Not just for gamers, anymore: reaching new markets with **SOCIAL GAMES.**

More women play than men.

Only 23% of social gamers play console games.

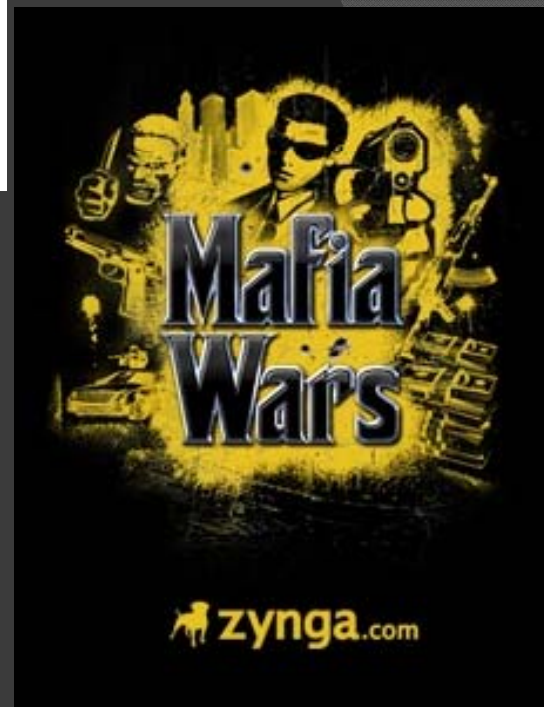
Over half of U.S. social gamers are over 50 years old.

CASE STUDY

ZYNGA, the largest developer of social games in the world.

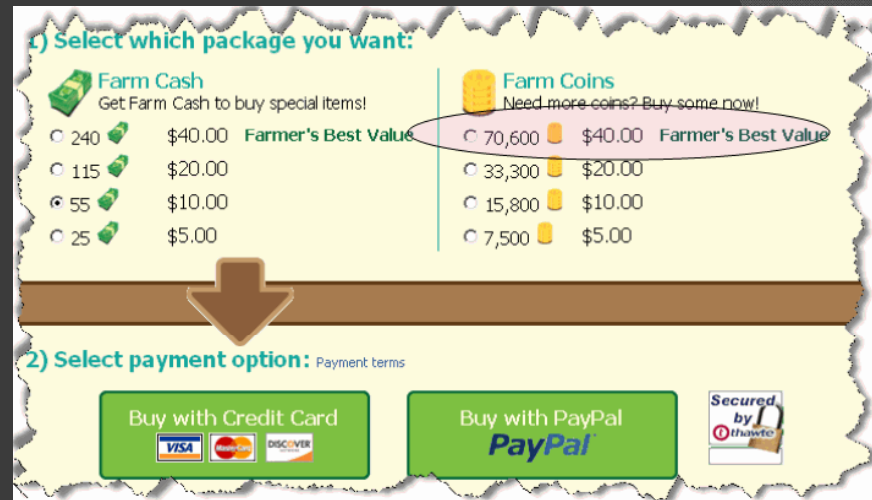


CONNECTING THE WORLD THROUGH GAMES



ZYNGA

- Founded in 2007
- 600+ employees
- 65+M active daily users
- 235+M active monthly users
- Currently valued at \$4.5B
- Makes money through advertising and sales of “virtual” commodities



ZYNGA LESSON:

think outside the publishers' box.

Selling directly to consumers.

Digital downloads make possible eliminating the box.
Developer web sites can sell direct to consumers.

CASE STUDY

digital downloads as a business

www.gamersgate.com



- Founded in 2005 as offshoot of Paradox Interactive in Sweden; trademark registered in 2007
- 100% annual growth each year since launch; currently making millions of dollars a year
- World's largest digital retailer of interactive titles with more than 2300 PC and MAC games for sale; expect catalogue to double in next three years
- Represents over 250 publishers and developers, including EA, Sega, THQ, Atari and 2K, as well as independents such as Number None (Braid)

GamersGate is a great example of foresighted thinking and brand-building in the digital age.

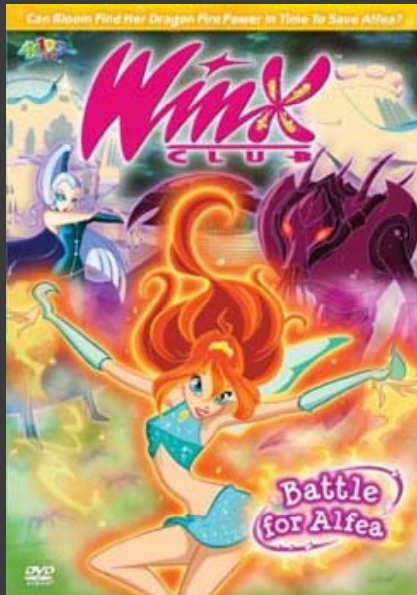
Acquiring or building brands
that stand out from the clutter.

UTILIZING LICENSED BRANDS

◎ 1C-SOFTCLUB / RAINBOW STUDIOS

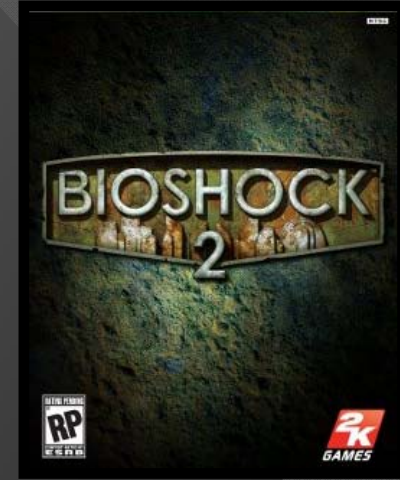
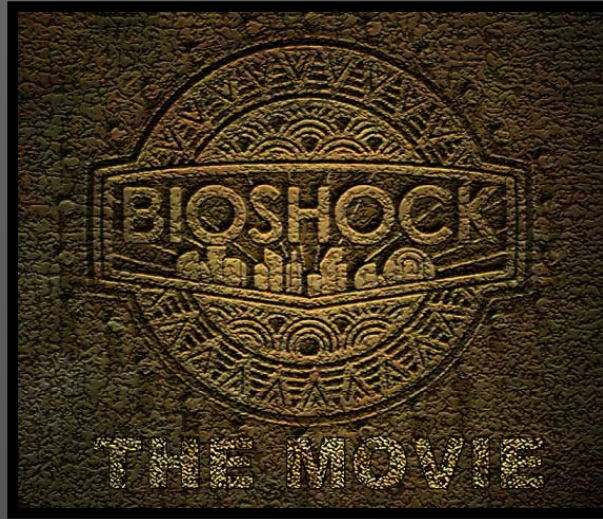
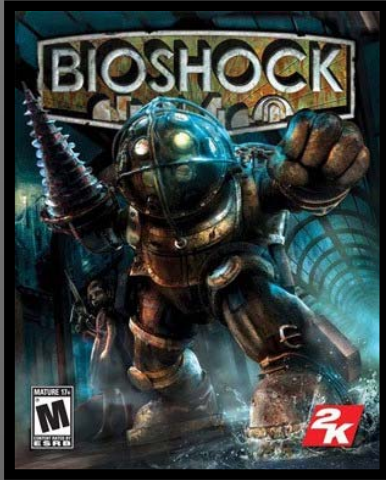
- ◎ Largest publisher/developer in former soviet union; employs 400 developers
- ◎ First foray into licensing – **Winx Club**
- ◎ Now seeking more well-known interactive IPs

UTILIZING BRANDS



1C-SOFTCLUB LESSON:
rewards of using licensed brands
can be huge.

Examples of the long, hard road.
BioShock; Conan



New York, NY – May 9, 2008 – 2K Games announced today that it has reached an agreement for BioShock, the universally acclaimed smash-hit video game, to be developed as a feature film by Universal Pictures. 2K Games, whose 2K Boston and 2K Australia studios developed BioShock, is a video game publishing label of Take-Two Interactive Software, Inc. (NASDAQ: TTWO).

VARIETY

Thurs., May 8, 2008, 7:30pm PT

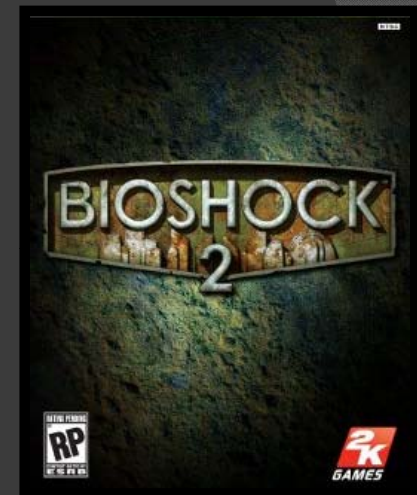
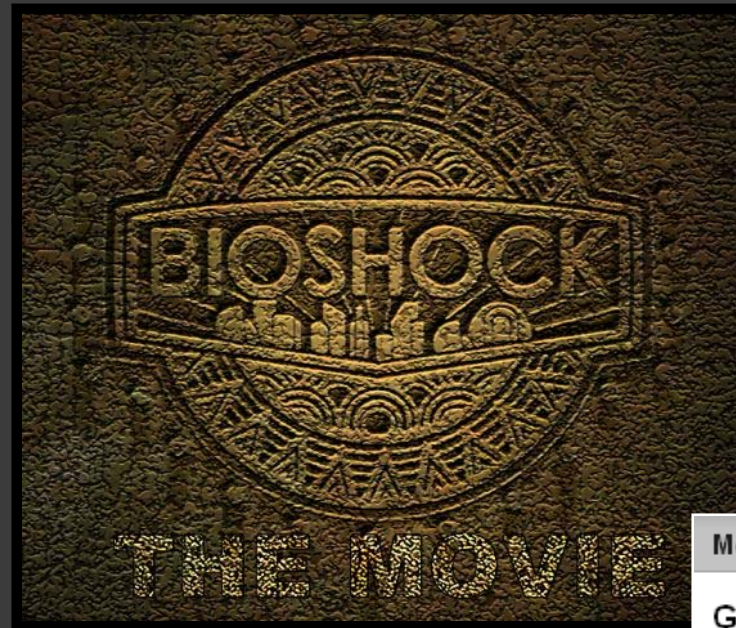
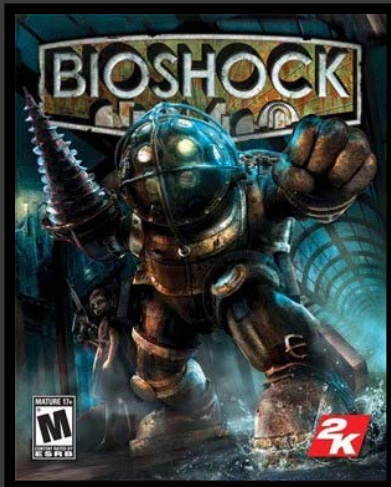
Gore Verbinski to direct 'Bioshock'

Universal bringing videogame to bigscreen

BioShock Film Helmed by Pirates Director

BioShock 3 Might Accompany Feature Film Release, Take-Two CEO Suggests

Universal Planning BioShock Movie



What We Want: The Bioshock Movie

We fire off our suggestions for when the Big Daddies march to Hollywood.

February 9, 2010

BioShock Movie On Hold Over Budget Concerns

Universal insists the adaptation will go forward, but not until after a few budget cuts.

Movie News

Gore Verbinski to Direct *BioShock*

Source: Take-Two Interactive Software, Inc.



April 24, 2009

BioShock Movie on Hold

Down but not out, says Verbinski.



VARIETY

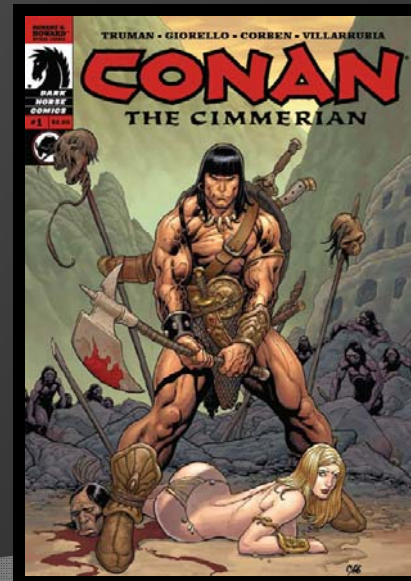
Tue., Mar. 16, 2010, 8:00pm PT

'Conan' rounds out cast

Lang, McGowan and Perlman at Bulgaria shoot

By DAVE MCNARY

Nu Image/Millennium Films has completed the cast for "Conan," adding Rose McGowan, Stephen Lang, Rachel Nichols, Ron Perlman, Said Taghmaoui and Leo Howard to star alongside Jason Momoa.



CONAN

- ◉ Well-known but dormant brand acquired in 2002
- ◉ MMOG “Age of Conan”
- ◉ Film
- ◉ Comic books
- ◉ Traditional video game – How to license; marriage of IP, studio and agent?
- ◉ Direct-to-video
- ◉ Television series
- ◉ Merchandising
- ◉ iPhone apps

Developing intellectual property.
(engines, tools, characters, etc.)

DEVELOPING IP

- Engine – Build on a license?
- Asset library to re-use game after game? (Eurocom approach)
- Who owns what when working on games that are based on third-party IP?
- Record retention – important!

EXAMPLE

◎FACTS

Our client hired an artist to come up with a certain character type in a game. The artist signed an agreement that his work would be original. IT WASN'T. Unbeknownst to our client, the artist had copied a person's image off the internet. That person's representative contacted us once the Game began to be marketed.

EXAMPLE, cont.

◎ EMAIL #1 FROM OPPOSING PARTY:

“I think the best resolution is for you guys to come to us with an offer to settle this dispute...Your defense costs are going to be \$150,000 minimum, quite possibly more. On top of what you end up losing in sales and other damages. Quite possibly we will be awarded our legal fees as well.”

◎ EMAIL #2 FROM OPPOSING PARTY:

“Actually, after getting more advice, I think you guys have much bigger problems than I even originally thought. We could make a criminal claim for willful damages that provides for jail time in addition to \$250,000 in extra damages. Of course, this is in addition to all our other claims.”

CASE STUDY

records retention.

To be able to prevail in publisher/developer disputes, the parties must maintain and be able to produce:

- ◎ All correspondence between developer and publisher. Arrange an archive.
- ◎ Copies of all submitted milestone builds. Keep an archive.
- ◎ Copy of source code as delivered.

EXAMPLE

REAL PUBLISHER DEMAND
FOR DELIVERY OF ASSETS
TWO YEARS AFTER GAME IS
PUBLISHED

May 10, 2010

**RE: Development Agreement between Publisher and Developer dated _____ --
 Delivery of assets related to _____ (“Game”) (the “Agreement”)**

Dear Mr. Fierst:

I am writing on behalf of both the Publisher and the Licensor of Game.

As you know, Developer developed the Game which was published by Publisher in early, 2008 pursuant to the terms of the Agreement. During the course of development, Developer delivered the Milestone Deliverables to Publisher to enable it to test and approve the Product at various stages throughout development as it was _____ obliged to do under the Agreement.

The Licensor owns the intellectual property in the game (meaning all IP in the Milestone Deliverables, Underlying Properties, reports, tools, technologies, designs, drawings, computer programs, audio-visual works, and technical documentation of or concerning the Product) and now wishes to license a sequel.

What Publisher now requires under the terms of the Agreement is delivery up of all Product Materials and Licensor-owned Intellectual Property in its possession except for the source code. Publisher therefore formally requests that Developer provide a copy of a hard drive containing these assets within thirty (30) days.

We trust that this matter can be resolved amicably in accordance with the terms of the Agreement, but in the meantime, Publisher reserves all its rights in relation to courses of action available to it.

Yours sincerely,

Head of Legal
Publisher

LESSON:

You must keep archives until well after the game is released.

Do not give up ownership of
your intellectual property.

KEEP YOUR IP

- Keep your eye on the ball as to who owns the copyright in your game.
- What happens if the publisher/distributor breaches and doesn't pay? Do you get the IP back?
- Who controls sequel rights?

EXAMPLE. THE FOLLOWING CLAUSES WERE INCLUDED IN AN AGREEMENT BETWEEN A EUROPEAN DEVELOPER AND A EUROPEAN PUBLISHER.

2. Purpose of the Agreement.

Developer hereby assigns and transfers to Publisher any and all rights, including those of Adaptation and Localization, connected with the exploitation of the Game, as set forth in the Agreement.

5.1 Copyright.

A. In accordance with and except as otherwise provided in the Agreement, Developer acknowledges and agrees to assign and transfer on an exclusive basis for the Term of Exploitation of the Game and within the Territory, as the work proceeds, the rights of reproduction, the rights of representation and public performance, and such other ancillary rights a merchandising, translation, and adaptation rights relating to the Game.

B. The right granted herein expressly includes the right for Publisher to take out copyright for the Game under the laws of the United States of America and, if necessary, to carry out all procedures, declarations, renewals and deposits at the US Copyright Office in Washington, D.C.

- ① The developer developed the source code and assigned ownership of it to the Publisher.
- ② The publisher turned out to be insolvent and failed to make a single payment to the developer.
- ③ The Western European court with jurisdiction found that the publisher owned the source code and the developer could only sue for damages. The publisher is now in bankruptcy.

LESSON:

Hold onto your intellectual property rights and license, don't assign.

CORPORATE ~~STRUCTURE TIP~~

- In order to buy standard business and/or error and omission insurance in the United States, you generally need to be a US company with a US office address. Care of a third party is generally okay.
- Many Europeans utilize BVI or Cypriot corporations to own their companies. Consider having your off- shore subsidiary establish a US subsidiary and doing all business in the US through that *insured* subsidiary.

INSURANCE

◎ TERMS FROM A TYPICAL INSURING AGREEMENT

A. Coverage.

The **Company** agrees to pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** shall become legally obligated to pay as **damages** and **claim expenses** because of a **claim** that is both first made against the Insured and reported in writing to the **Company** during the **policy period**...

B. Defense.

The **Company** shall have the right **and duty** to defend in the **Insured's** name and on the **Insured's** behalf a **claim** covered by this Policy even if any of the allegations of the claim are groundless, false or fraudulent. The **Company** shall have the right to appoint counsel and to make such investigation and defense of a **claim** as is deemed necessary by the **Company**.

COSTS

SETTING UP U.S. COMPANY

800 EUR - 1200 EUR

ANNUAL FEES

LESS THAN 800 EUR

INSURANCE POLICIES

**800 EUR –
SEVERAL THOUSAND EUROS**

COST OF DEFENDING AN INTELLECTUAL PROPERTY (“IP”)
CASE IN THE US OR EUROPEAN COURTS

EU35.000 - EU250.000

LESSON:

Buy insurance if dealing with the U.S., if only to cover the very high costs of litigation.

Deciding to sell your studio.

SELLING YOUR STUDIO

ABOUT THE ACQUISITION ENVIRONMENT

- ◎ Emerging publishers and digital transactions dominate 2009-2010 acquisitions

All but one of the last 10 major acquisitions or investments have involved new players: Zynga, Playdom, hi5

- ◎ Traditional, large developer acquisitions are disappearing

Of the last 17 acquisitions, traditional publishers were only involved in half

- ◎ If you're not offering on-line, you're uninteresting

Social or on-line expertise has been the key purchase factor in nearly all 2010 acquisitions

SELLING YOUR STUDIO

- ◉ Weighing your options and deciding to sell
- ◉ Seeking a buyer
- ◉ Making your own pitch book
- ◉ Valuing your studio
- ◉ Negotiating the sale
- ◉ Protecting & rewarding your employees
- ◉ Post-acquisition realities

Your advisory team.

ADVISORY TEAM

⦿ AGENTS

Larger deals have forced agents to concede to lower fees.

Good developers successfully resisting long-term commitments.

Marrying new money, good developers, and compelling IP is key to agent deals done today.

EXAMPLE: Conan IP plus Swedish developer Starbreeze

⦿ BROKERS

⦿ INVESTMENT BANKERS

⦿ ATTORNEYS

ADVISORY TEAM (cont.)

⦿ AGENTS

- ⦿ Interactive – e.g. DDM, CAA, Ambition Management
- ⦿ Merchandising - 30-35% commission
- ⦿ Theatrical – e.g. CAA, ICM, William-Morris Endeavor
- ⦿ Seeking financing
- ⦿ Can developer deal directly, or through agents

AGENTS - EXAMPLES



CLIENTS INCLUDE 8 EUROPEAN STUDIOS

RECENT DEALS

- ◉ **Enslaved** (created by Ninja Theory, UK)
- ◉ **Silent Hill 8** (announced at E3, iconic Japanese brand being developed in Central Europe by Vatra, Czech Republic)
- ◉ **Need for Speed: Shift** (created by Slightly Mad Studios, UK; millions of units sold)

TAKES A PERCENTAGE OF ADVANCES, ROYALTIES AND STUDIO SALES
(TYPICALLY 5%-10%)

AGENTS - EXAMPLES



Ambition claims to offer the IP reach of CAA and the deal savvy of DDM, and its founding partners have plenty of actual, practical game-biz experience.

ATTORNEYS

⦿ IN-HOUSE

On salary.
Can become expert in small niche.
Can call on outside counsel as needed.

⦿ PERCENTAGE

Many entertainment attorneys in the U.S. work on percentage basis of deals, or even of company.

⦿ HOURLY

Rates US\$200-US\$600 per hour.
Use them and pay as needed.
Pick different expertise.

⦿ FLAT FEE

Negotiated flat fee per contract or task.

⦿ INTERACTIVE-FOCUSED

New attorneys group being formed; worldwide.

CONCLUSIONS

Tough times.

Build brand loyalty for your studio.

Be conservative, but think outside the box and long term.

Manage your cash.

Find time for strategic planning.