

Game Developers Conference®

February 28 - March 4, 2011
Moscone Center, San Francisco

www.GDConf.com



GDC²⁵

Essential Steps to Starting a New Dev Studio in 2011

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Essential Steps to Starting a New Dev Studio in 2011

- ⦿ Can you do it? – 2 examples:
- ⦿ Ready At Dawn and NewCo 02/2011
- ⦿ Why now?
- ⦿ Downsized?
- ⦿ In house studio disbanded?
- ⦿ New grad?
- ⦿ See market opportunity?
- ⦿ Got the itch



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- ③ Keep your plans secret within your group.
- ③ Start planning early.
- ③ Determine your niche.
- ③ Write a business plan.
- ③ Create a staffing chart.
- ③ Do cash flow projections.
- ③ Research the cost of office space and gear.
- ③ Do NOT start to develop product designs!

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- ③ Leaving your employer = most complicated process
- ③ Check your employment documents
- ③ Notice period required? Not usually the policy where voluntary separation in employment-at-will situation.

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- ⌚ Non-compete clause?
 - Unenforcable in California
 - “Reasonableness” standard may apply elsewhere
 - ⌚ Talk to local employment lawyer for guidance

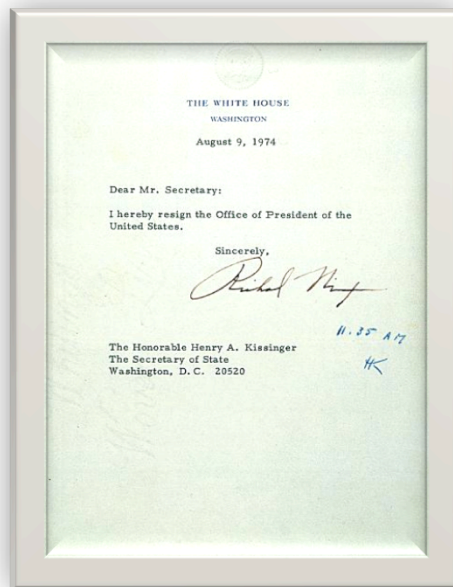
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- ④ Always strive to leave on the very best of terms
- Observe formalities
 - ④ Never leave in the middle of a project
 - ④ Give written notice – give more notice than required

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- ③ Resign in writing.
- ③ Doesn't have to be long involved communication.
- ③ My favorite resignation letter of all time (but this fellow gave no notice):

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- ③ Be discrete.
- ③ Word will get out in the studio. Don't let your pending departure become a disruption.
- ③ Let your employer control the flow of information.
- ③ Be helpful to the process.
- ③ Be prepared if the employer declines to accept your notice and shows you the door.

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- ③ Who are the founders?
- ③ Assigning equity.
- ③ The fewer partners/members/stakeholders, the better.
- ③ Issues to consider:
 - Management
 - Governance
 - Plan your organizational chart – assign titles and responsibilities
 - This is a business, not a hobby or playtime

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- ⓘ It's not recommended to start work on any demos/project/proposals/designs/project until AFTER you are out the door.

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- ④ There may be an issue of ownership of such work product.

CA Labor Code Section 2870: (a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall **not apply** to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information **except** for those inventions that either: (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) Result from any work performed by the employee for the employer.

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- ④ When you start work with your new partners/co-venturers:

Some sort of collaboration agreement is highly recommended.

Otherwise, under copyright law, each contributor would retain the copyright in his or her contributions to the work --- with the result, a mess.

A simple collaboration agreement should set forth what each contributor will do, and that ownership is assigned by each to the new venture. These contributions can be part of the consideration for the member interest or stock of the new entity, when formed.

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- ④ Choosing and setting up your entity
- ④ LLC vs S-Corp vs C-corp
- ④ Self-funded/bootstrapped vs investors (angels, family, friends?)
- ④ If you have outside investors, they will dictate structure (and a lot more!) – plan on extensive legal fees – get a lawyer – this type of financing is beyond what we can cover in an hour!
- ④ LLC is easiest and requires the least “maintenance”

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Which state?

Start with your home state – you need a good reason NOT to organize there

Nevada (not a tax haven if your studio will be in CA!),

Delaware (extensive corporate law; may be protective of management in shareholder disputes – this is probably unnecessary at this early stage)

Selection of an entity, and selection of state of organization should be discussed with local counsel – NOT an internet service

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- ③ LLC: needs Operating Agreement
- ③ C-Corp or S-Corp: needs Bylaws, Initial organizing resolutions, and Shareholders Agreement
- ③ See local counsel for each – seems like a formality (it is) – but when you have member or shareholder difficulties down the road, these documents often provide a method to resolve them.

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- ⌚ In CA (and maybe elsewhere), don't forget the "Spousal Consent!" – Equity interests in an entity are community property. It is in the interest of all members or stockholders to retain holdings within the group in the event of a divorce. The spousal consent acknowledges the divorcing spouse has read and agrees with the Operating Agreement or Shareholders Agreement, will look elsewhere for equivalent assets, and not take the interest in the entity to satisfy his or her rights in the marriage estate.

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- ④ OK – so now you're in business.
- ④ Apply for Federal Employee ID Number – it's your new company's "social security number"
- ④ Find an accountant or bookkeeper
- ④ Engage a payroll service
- ④ Begin (or complete) your demos and start to pitch!

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Hiring:

Employees vs Contractors

If you go the contractor route, there must be a written agreement with each contractor – covering ownership of work product (*critical!*), NDA-related issues, reps and warranties of non-infringement, no poaching, and a description of what they being engaged to do.

If you go the contractor route, be aware the IRS may see things differently! (google: “Microsoft treatment of contractors”).

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Hiring:

Employees vs Contractors

If you go the employee route, you'll need to comply with tax withholding and deposit requirements. Best move is to engage a payroll service, or consult with your accountant or bookkeeper.

Along the way, you'll need an employee handbook that covers policies and benefits. Paid vacation, medical insurance, etc. are NOT required – but generally, can not be granted in a discriminatory manner (some get them, some, *similarly situated*, do not).

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Hiring:

Employees vs Contractors

Hiring employees: the whole hiring process is a defensive action meant to shield the company from claims that a disgruntled employee may later choose to bring.

Starts from the offer letter.

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Hiring:

Employees vs Contractors

Offer letter. Straight ahead, objective statement of the offer – (i) salutation; (ii) job title offer; (iii) summary of responsibilities; (iv) supervisor; (v) monthly salary; (vi) eligibility for bonus (if any); (vii) initial probationary period (if any); (viii) date of initial salary review; (ix) EMPLOYMENT-AT-WILL nature of employment (IMPORTANT!); (x) location of employment; (xi) overview of bonus, vacation, and other benefits but these are subject to change by the company without notice; (xii) start date.

Candidate should sign letter to signify acceptance of the offer and terms.

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Hiring:

Employees vs Contractors

On the first day, employee should sign an “Employee Agreement” confirming: (i) ownership by the company of all work product of the new employee; (ii) the new employee will maintain the confidentiality of company/client info and material, not bring any code or other material onto the premises, not use any proprietary information of any prior employer, and not, in the course of his job performance, disclose, or make use of any confidential information, or violate any confidentiality agreement to which your new employee is a party.




Restrictive covenant/non-compete – but enforcement issues (CA; elsewhere)

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Pitfalls

Who is REALLY critical to getting your new venture going – and who is along for the ride? Requires hard-headed analysis.








The more “partners” / stakeholders, the more difficult/complicated, and the less likely it will succeed.

-  More voices
-  Risk of “dead weight partners”
 -  Shareholder agreement / operating agreement can provide for removing inactive stakeholders

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Pitfalls

Alternatives to equity:

-  Phantom Stock
-  Bonus Plans
-  Payouts on "Liquidity Events"
-  Who is REALLY critical to getting your new venture going – and who is along for the ride? Requires hard-headed analysis.
-  Each stockholder / member / stakeholder is a potential litigant if things do not go right
-  Steer away from the "Let's Put on a Show**" mentality (**Judy Garland – Mickey Rooney)
-  You're a business – it's not "one for all – all for one"

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- ④ Starting a new company from scratch can be the most satisfying accomplishment in business.
- ④ It is also enormously difficult; challenging; demanding; unforgiving; cruel (pick your adjective).
- ④ Making payroll twice a month may be the greatest challenge (even more difficult than “rescuing the princess”)!
- ④ “The only mistake for which an entrepreneur cannot recover is to run out of money.”

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- ⦿ The goal here is not to discourage anyone – because start-ups are the lifeblood of the industry – that's where we get innovation, maximum creativity, killer apps. But go in with your eyes open.
- ⦿ And get help – lawyer, accountant, advisors, mentors
- ⦿ Today's start-ups are tomorrow's mega-hitmakers.
- ⦿ Everyone, even Bill Gates and Steve Jobs, started in your position!
- ⦿ So .. Questions?

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