

# **Contract Killers**

## **What developers should eliminate from their publishing agreement**

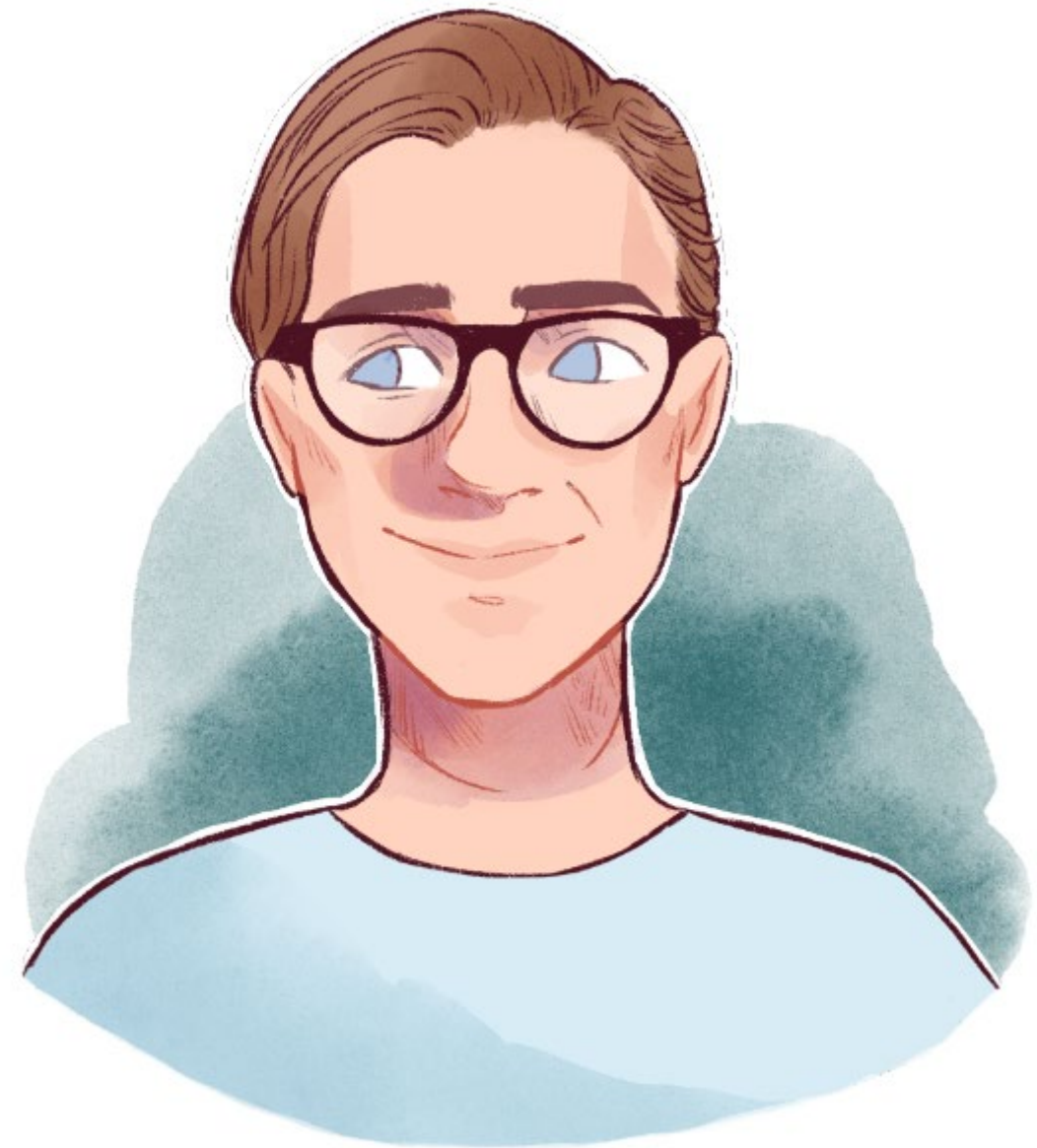
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# Who am I?

# SHERIDANS

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# The Small Print

- This talk is not legal advice ☹️
- Not a definitive list
- Check out “Practical Law 101, 201, and 301” in the Vault and on YouTube



# Contract Killers – My Aim

- It's ok to negotiate your contract
- Make fair and reasonable changes
- @Publishers – can you make your contract more developer friendly without sacrificing your position?

# What factors can affect your publishing terms (or your negotiating position)?

- The Publisher
- Budget
- Experienced team
- First game
- Stage of development

# Start Menu

## Contract Killers

- What's happening to your Game IP?
- Assignments suck
- Bad Licence Terms
- Bad Payment Terms

# Contract Killer #1

What is happening to your Game IP?



# Contract Killer #1

## What is happening to your Game IP?

- Grant of Rights: Underpins the entire contract
- Licence vs. Assignment
- Worst Case?

# Contract Killer #1

## What is happening to your Game IP?

### Assignment of IP

- All or part?
- Reasons?
- Co-ownership can be messy

# Contract Killer #1

## What is happening to your Game IP?

- Assignment: Example

*Subject to payment of the applicable Development Fees, **[[[ALWAYS MAKE AN ASSIGNMENT SUBJECT TO YOUR RECEIVING PAYMENT FROM THE PUBLISHER]]]** Developer hereby irrevocably conveys, transfers and assigns to Publisher, and Publisher hereby accepts, 50% of Developer's right, title and interest in and to the Game IP, after which Developer owns 50% of the Game IP and Publisher owns 50% of the Game IP **[[[IN THIS CASE THE PUBLISHER IS ASSIGNED 50% OF THE IP IN THE GAME]]]**.*

# Contract Killer #1

## What is happening to your Game IP?

Beware “sneaky” assignments

*Developer hereby...grants, transfers and assigns to Publisher one per cent (1%) of its right, title and interest, as tenant in common, of the worldwide copyright in the Game*

# Contract Killer #1

## What is happening to your Game IP?

### Quick Fixes

- Make sure you can get your rights back
- Carve out your proprietary code, tools and tech



# Contract Killer #1

## What is happening to your Game IP?

### Exclusive Licences

*Developer hereby grants to Publisher an **exclusive right** ... **during the Term** and **throughout the Territory** to publish and otherwise exploit the Game **on the Platforms***

# Contract Killer #1

## What is happening to your Game IP?

### Exclusive Licence

- **Term**
- **Territory**
- **Platform**

# Contract Killer #2

Bad Licence Terms  
(Time and Territory)

# Contract Killer #2

## Bad Licence Terms (Time and Territory)

**How long does your publishing agreement last?**

*The Agreement shall become effective on the date of execution of the Agreement by both parties and **shall continue for five (5) years after commercial release on the last platform version of the Game**, or until terminated by either party in accordance with its terms*

# Contract Killer #2

## Bad Licence Terms (Time and Territory)

### Beware of long or never-ending licence periods

*This Agreement shall become effective from the Effective Date and **shall be in full effect perpetually** or until such time that it is terminated by one or both parties under the terms of this Agreement*

*This Agreement shall become effective upon execution by both Parties and **expiring twenty-five (25) years after signing this Agreement***



# Contract Killer #2

## Bad Licence Terms (Time and Territory)

### Does the licence auto-renew?

*Five (5) years after the commercial release on the last platform the Term shall be extended by additional periods of one (1) year. **If the Royalty of the preceding year did not exceed ten thousand (10,000) Euros then either party may terminate the agreement on written notice.***

# Contract Killer #2

## Bad Licence Terms (Time and Territory)

- Worldwide rights (and beyond)

***“Territory”** means the world and each part of the universe touched by mankind*

- What’s in the marketing plan

# Contract Killer #3

## Bad Licence Terms (Platforms and Porting)

# Contract Killer #3

## Bad Licence Terms (Platforms and Porting)

*“Platform” means: (1) Mobile (iOS, Android), PC (Mac, Linux, Steam OS), Microsoft platforms (Xbox 1, Xbox Series S/X and Windows 10 Store), Nintendo (Switch), and Sony (PlayStation 4 and 5) **[[[PRETTY MUCH ALL PLATFORMS]]]**; and (2) any successor platform to those listed above released within ten (10) years following the release date **[[[CATCH ALL FOR NEXT-GEN]]]***

# Contract Killer #3

## Bad Licence Terms (Platforms and Porting)

- What is the publisher asking for?
- What platforms are you being paid for?
- Right of first option



# Contract Killer #3

## Bad Licence Terms (Platforms and Porting)

- Who is doing the porting?
- First option to develop
- Is the publisher guaranteeing the quality of the ports?

# Contract Killer #4

Bad Licence Terms  
(Future Games and Other Rights)

# Contract Killer #4

## Bad Licence Terms (Future Games & Other Rights)

- Sequels, prequels and spin-offs

# Contract Killer #4

## Bad Licence Terms (Future Games & Other Rights)

- Other restrictions i.e. competing games

*Developer shall not develop or distribute a game of the same genre and mechanics as, or similar look and feel to, the Game **in the 12 months from the release date***

- Merchandise, soundtrack, film/TV rights

# Contract Killer #5

## Bad Payment Terms (Front End)



# Contract Killer #5

## Bad Payment Terms (Front End)

- Cash received before your game is released
- Often tied to milestones
- Publisher approval

# Contract Killer #5

## Bad Payment Terms (Front End)

- Evaluation and approval mechanics
- Set time limits to avoid publisher delay
- Deemed approval after an agreed time limit

# Contract Killer #5

## Bad Payment Terms (Front End)

- Rejections require feedback
- Creative control
- Avoid scope-creep

# Contract Killer #5

## Bad Payment Terms (Front End)

- Timing and Cashflow
- Check payment terms

# Contract Killer #6

## Bad Payment Terms (Back End)



# Contract Killer #6

## Bad Payment Terms (Back End)

- Revenues “attributable to the game”
- Gross vs. Net Revenue
- How much does your publisher cost?

# Contract Killer #6

## Bad Payment Terms (Back End)

- What costs are deducted from Gross Revenue?
- Deductions should be evidenced
- Be wary of “internal costs”

# Contract Killer #6

## Bad Payment Terms (Back End)

- Check payment terms (again)

# Contract Killer #6

## Bad Payment Terms (Back End)

- How does the publisher recoup its costs?

# Contract Killer #7

Publisher Delays  
and other timing issues



# Contract Killer #7

## Publisher Delays & Timing Issues

- The developer should not be liable for publisher delays
- Know your cure periods

# Contract Killer #7

## Publisher Delays & Timing Issues

- Is “time of the essence” for delivery?

**Thanks for listening!**

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