

IP - Creating It, Using It, and Keeping It

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Intellectual Property Law



Take Home Points

- Understanding IP is critical to your success as a developer and to the success of your game.
- There is a roadmap you can follow to develop and protect IP in your company.
- Early IP planning is far cheaper than later IP litigation or other failures associated with poor IP strategy.
- All forms of IP have a place in game development.



Road Map

- Introduction
- Forms of IP Generally
- A Word on Music Licensing
- A General IP Strategy
- Summary – Take Home Points



Forms of IP

- Patents
- Trademarks
- Trade Secrets
- Copyright



IP is Supposed to be “Hard.”

- Courts have said that IP is “the metaphysics of the law”*

*Folsom v. Marsh, 9 F.Cas. 342, 344 (C.C.D. Mass. 1841)



Why is IP Important for Game Developers?

- Raising money
- Selling the company
- Finding a publisher
- If you build it, and it's good, they will steal it.



Where is IP for Game Developers?

Uses of IP in the Game Industry			
Trade Secret	Trademark	Copyright	Patent
Contract Terms	Company Name	Game	Hardware
Customer Lists	Series Name	Art	Background Tech
Business Contacts	Logo	Music	Game Mechanics



Patents I

- Material covered:
 - ⊙ new, useful, non-obvious
 - ⊙ machines, articles of manufacture, and compositions of matter

- Material not covered: characters, stories, music, worlds

- Strong recommendation: attorney – licensed to practice in front of the USPTO



Patents II

- Length: 20 years after filing
- Cost: 15-30K U.S. Beware of the bargain bin.
- Time: 2-4 years for prosecution
- Provisional applications
- Watch out for 1-year bar for “on sale” or “public use.”



Trademarks I

- Length: Potentially immortal
- Cost 1-3K US (usually 1.5K)
- Material covered: titles, symbols, phrases, designs
- International marks – CTM – first to file vs. first to use.



Trademarks II

- “TM” or “®”?
- Less creative = less protection
- More creative is better: BioWare is a better mark than Game Company



Trade Secrets

- Cost: varies
- Covered by state law
- Material covered: anything secret that could be used for business advantage *e.g.* customer lists and subscription data, price data
- Protected by internal measures



Copyright – Introduction

- Easy to invoke
- Copyright is long
- Copyright violation penalties are tough



Copyright is Easy to Invoke

- What is covered: fixed expression of ideas in a tangible medium – code, games, books, movies, songs
- Copyright vests on creation of the work – No registration required (but registration is encouraged)
- Federal registration is cheap ~ \$35



Copyright is Long

- Currently 95 years after publication of the work or 120 years after creation of the work
- Copyright law has changed several times in the US and it varies in different countries
- Attorneys often use charts to calculate copyright terms of some older works



Copyright Violation Penalties Are Tough

- Willful infringement of copyright may carry a penalty of up to \$150,000 per work
- Destruction of unlawful copies is possible
- Criminal charges are also possible in some situations



Piracy

-Advertisement - Advertisement - Advertisement - Advertisement - Advertisement-

PIRACY IS A CRIME

VIOLATE THE COPYRIGHT LAWS
GO TO PRISON
PAY HUGE FINANCIAL PENALTIES



YONATAN COHEN

United States v. Yonatan Cohen, United States District Court, District of Minnesota
Criminal Case No. 05-12

Yonatan Cohen violated the copyright laws of the United States by selling the POWER PLAYER, a computer game console that contained over 40 copyrighted video games belonging to Nintendo of America.



As a result, Yonatan Cohen was:

- Convicted of criminal copyright infringement under 17 U.S.C. §506(a) and 18 U.S.C. § 2319
- Sentenced to 60 months in prison
- Had hundreds of thousands of dollars in funds and property seized and forfeited by the Federal Bureau of Investigation and the United States Attorney's Office in Minnesota; and
- Will be deported to Israel after serving his prison sentence.

YOU HAVE EVERYTHING TO LOSE BY VIOLATING THE COPYRIGHT LAWS

This ad was paid for by Yonatan Cohen as part of his restitution to warn others about the dangers and penalties associated with violating the copyrights laws.



Copyright and the Public Domain

- When a work passes into public domain is a complex question
- Always check with your attorney, unless it is really obvious
- If you have to guess, pre-1923 is a good rule of thumb for public domain




Scenes a Fair Doctrine

- Once upon a time . . .
- Showdown at high noon
- Fairies, elves, princesses locked in a tower, evil sorcerers



Using Public Domain to Your Advantage

- Classic plays – Shakespeare (Arden Project – Ted Castronova)
- Ancient Mythology (God of War, Titan Quest, Gods & Heroes: Rome Rising)
- Historical Events
- Classical music – Deekin from NWN 



IP Summary (Gross Oversimplification)

<small>*All information tailored to game development</small>	Patents	TM	Trade Secret	Copyright
Length	20 Yr	Immort.	Immort.	95/120 Yr
Cost	High	Medium	Medium	Low
Ease of obtaining	Tough	Medium	Medium	Easy
Use	Some	Often	Often	Often
Registration?	Yes	Should	No	Should
Coverage	Medium	Narrow	Large	Large



Not So Great Moments in Game IP

- Microsoft – Mythica
 - ⊙ (Mythic studios – DAOC)

- Microsoft – Xbox
 - ⊙ (XBOX Technologies)

- Infinium Labs – “Built By Gamers For Gamers”
 - ⊙ Interplay



A Word on Music Licensing

- It is complicated and carries a long history from outside the game industry
- Traditionally games have been “total buyout” licenses – bigger budget games are moving away from this
- Don Passman – All You Need to Know about the Music Business – 6th ed.



General IP Strategy for Your Company

- Find an IP attorney (preferably one that has represented other game companies).
- Employment/IP assignment contracts
- Plan internally, do a cost-benefit analysis
- Select from the buffet
- Re-visit the planning stage twice a year



Types of Enforcement

- Writing a letter
- DMCA take down notices
- ICANN proceedings for domain names
- Filing a litigation



Can You Afford to Be Right or Wrong?

- Litigation is expensive and variable
 - ⊙ 700K-1.5 million for copyright/trademark*
 - ⊙ 1-4 million for full patent litigation*

- All this varies based on complexity of the case and appeals

*These vary greatly and should be considered as rough estimations.



Take Home Points Redux

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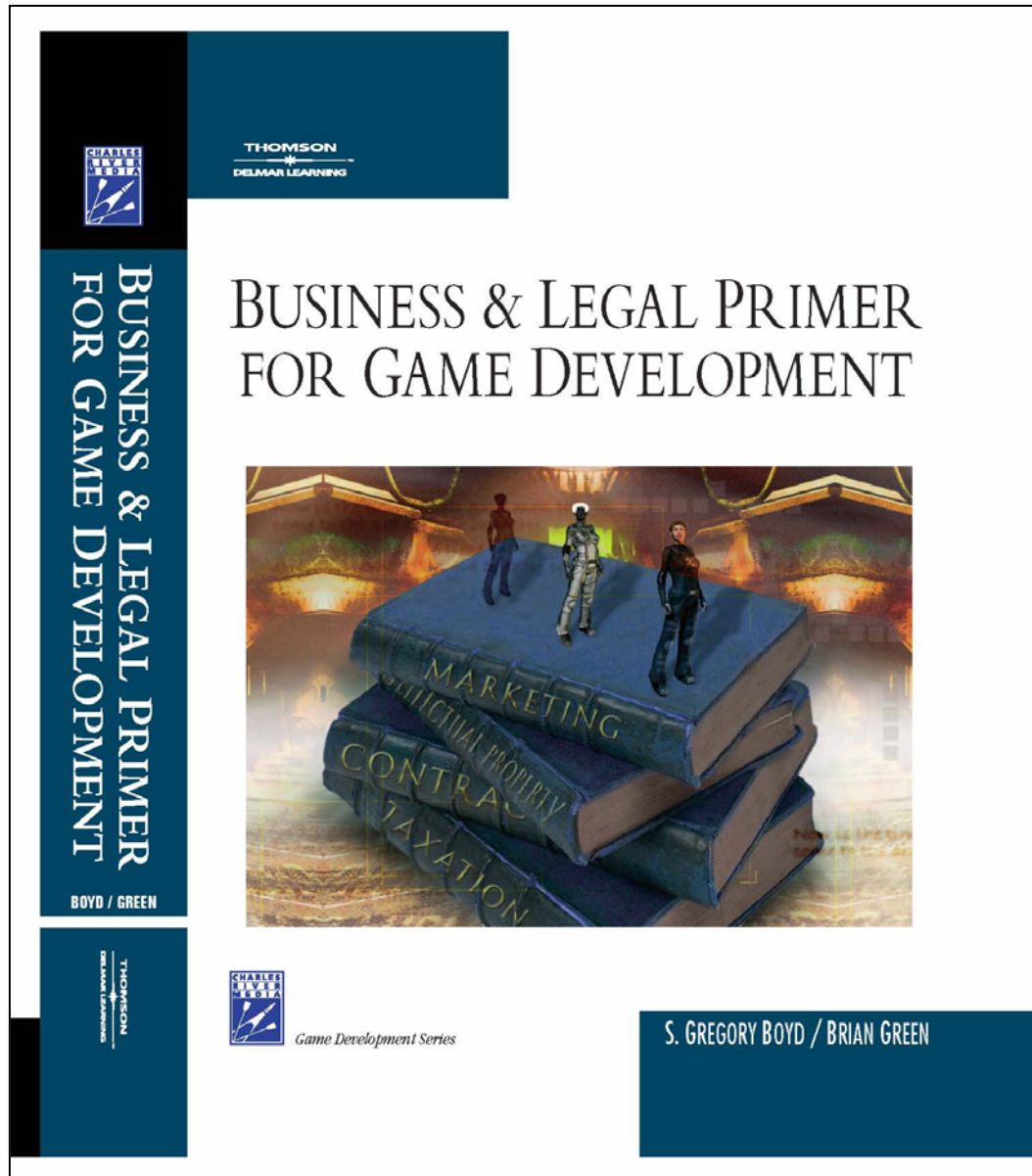


Links

- US Patent and Trademark Office:
www.uspto.gov
- US Copyright Office:
www.copyright.gov
- Kenyon & Kenyon:
www.kenyon.com



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