

need to know

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Ten legal issues to consider when making a film-based game

This document has been prepared by Ukie Partner Member Hamlins. The information in this leaflet does not constitute legal advice and does not provide an all-inclusive review of the applicable law.

This need to know looks at some of the key legal issues to consider when aiming to secure rights to develop and publish a film franchise-based game.

1. Grant of rights

It is not uncommon for there to be multiple owners of the rights you need. For example, it is common knowledge that the BBC only partially owns many of the key characters featured in the Doctor Who franchise. So make sure you're clear:

- + What rights is the franchisor giving you?
- + Are you getting all the rights to develop and publish the game across all languages and territories?
- + Does the franchisor own all the rights it is purporting to grant?
- + If not, who does? And does the franchisor have the owner's permission to licence the rights?
- + Are you getting sequel, prequel and conversions rights? If not, why not? Could a first refusal option be granted instead?

2. Talent, voiceover and other third party rights

There may be other third party rights you need for the game. For example, do you want to feature any actors from the film or use their voices? Do you have these rights?

- + Is this covered by the deal with the franchisor or do you need to negotiate separately with each individual?
- + Do you need to consider how the collecting schemes run by Equity (or other equivalent trade unions) interact with the grant of these rights?

3. Music

Music can make a franchise. You will want to be able to use the film's music and typically the franchisor will want you to use it for brand consistency.

- + Does your deal with the franchisor include the use of theme or background music in the game?
- + If not, what would it cost to licence the theme or background music? Who would this be from? Who will bear the cost?

4. Localisation

The game may be released in different countries and in different languages.

- + Is the game's release limited to certain countries? Do you want it to be? Does it match where the film is popular and/or released?
- + Do the rights cover the game in all languages? Typical languages include English, French, Italian, German and Spanish (EFIGS).

5. Marketing and merchandising

You will need to market the game to maximise sales, but the franchisor will want to control use of the film brand and potentially incorporate your marketing in its overall strategy.

- + Who is responsible for marketing and marketing strategy for the game? Is it tied to the franchisor's marketing for the film?
- + Make sure the marketing support from the franchisor and the studio you need to properly market the game is clearly set out in the

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- agreement and list marketing activities / joint marketing activities.
- + Will there be game specific merchandising? Who will be responsible for providing it?
- + Do you receive a share of the merchandise sales from the video game elements?

6. Release dates

The franchisor will want to co-ordinate the release of the game with the film and/or its marketing plan.

- + Can you meet the release date deadlines?
- + What are the consequences if you don't make the release date deadlines?

7. Support from the franchisor

Support, information and direction from the franchisor will be required to develop the game. You will need to be provided with certain assets such as scripts, images and branding.

- + What support do you need from the franchisor to develop the game? What assets should the franchisor provide?
- + Are the franchisor's obligations to provide support and assets clearly set out in the agreement?
- + Are the support requirements and assets clearly set out in the agreement?
- + What are the consequences if the franchisor delays or does not provide the required support and assets? What is the impact of the development deadlines?

8. Approval of game

The franchisor will want to approve the game before it is released.

- + What approval rights does the franchisor have? The franchisor should not unreasonably withhold approval.
- + Provide a timeframe for the review and approval of the game by the franchisor and the criteria against which the game is being assessed.

- + What happens if approval is not granted? Does the franchisor provide feedback? Can the game be resubmitted after improvements?
- + What happens if approval is delayed? Does this delay impact on your deadlines?
- + Make sure the specification of the game is as clear as possible, setting out measurable / quantifiable criteria and expectations for the game and submission / approval deadlines.

9. Flexibility

- + The franchisor will want to retain control of the film brand and prevent you from going 'off message'. However, the best film scripts are not always the best games or game scripts.
- + How much scope and flexibility do you have to edit, adapt and change the film to meet game play?
- + Do you have the ability to create a standalone game?

10. Intellectual property ownership

The franchisor will want to retain all intellectual property in the film and control over related rights, including those in the game.

- + Does the franchisor require you to assign all intellectual property rights in the game generated by you in developing it?
- + If so, ensure you have the rights to assign and it does not cover your background proprietary intellectual property rights (i.e. existing intellectual property rights not generated by your development of the game).

What should I do next?

For further information on this topic or the legal issues involved in making a game, please contact Julian Ward at Hamlins (jward@hamlins.co.uk) or visit hamlins.co.uk.