Understanding the Developer-Publisher Relationship and the Publishing Agreement

Panel Description: Every developer seeks to advance to AAA status and make the richer developer deals that spring from that reputation. The panel of developer and publisher business executives and games industry lawyers will examine the current state of software development deals, covering key contracting issues that are part of every deal, and giving their own perspectives on how to make the deal that will serve the best long term interests of both sides. The panel will offer comments on negotiating development and publishing contracts and the expectations of both developers and publishers in a development and publishing deal. The discussion will include a brief analysis of developer and publisher business models, developing and building a developer- publisher relationship over the long haul, and an analysis/discussion of games development contracts. Audience questions on all aspects of developer contracts and negotiations will be invited.

Outline of Presentation:

I.   Introducing the Topic and the Panel

II.   Understanding the Publisher and Developer Business Models.

         A.   The Publisher-Centric Industry Model

                  1.   A "Hit-Driven" Business. The "hits" support the rest of the release schedule and the "riskier" titles.

                  2.   Publishers assume the bulk of the expenses in making games.

                           (a)   Development Costs: In the traditional "developer-for-hire" deal, the publisher is advancing most of the developer's costs.

                           (b)   Marketing, sales, manufacturing, inventory costs: developers don't pay for these expenses directly and assume some expenses in the form of deductions in calculating royalties (manufacturing and co-op, mdf), but the bulk of marketing, PR and inventory expenses are not passed on to developers.

                           (c)   Licensing Costs: developers don't contribute to these costs directly but assume some of the costs through deductions in calculating royalties.

                  3.   Publishers assume the financial risk of late delivery, regardless of which party is at fault for being late. Releases tied to achieving quarterly results for Wall Street.

                  4.   Ownership. The traditional view is that the reward for assumption of financial risk is ownership of the IP and the assets.

DISCUSSION POINT: Given the above description, what do publishers see as the biggest misconceptions developers have about the business?

         B.   Developer Challenges

                  1.   Determining what hardware to support

                  2.   Building teams – identifying needs; recruiting; finding; retaining talent

3.   Tools and Technology - How much time and effort should be invested into pure R&D? Is the niche for developers their tools and tech or art and design?

DISCUSSION POINT: Given the above description, what do developers see as the biggest misconceptions publishers have about the developers?

II.   Pitching Projects and Negotiating Deals

      A.   How to connect with a publisher and what needs to be in the pitch to get the deal.

      B.   How the "greenlight" process works.

      C.   How much time, man-hours and money should a developer invest in uncompensated demos and prototypes before executing a publishing agreement?

      D.   LOIs vs. Formal Contracts

      E.   How long does it take to pitch and negotiate and execute a contract and what to do during the process.

III.   The Contract: the key issues

      A.   Ownership of IP: Will the game be a "work-for-hire" or will it be owned by the Developer.

            1.   Game code.

            2.   Tools and technology.

            3.   Trademarks and characters.

      B.   Contractual assurances of timely delivery: publishing agreements typically vest complete discretion with publishers but "time is of the essence" for developers.

            1.   Approval periods.

            2.   Delivery of publisher assets to developers.

            3.   Change orders.

      C.   Payment: Advances and royalties. What's negotiable?

      D.   Future Work – Sequels, conversions, add-ons and other projects.

            1.   Who develops them? Who owns them?

            2.   Rights of 1st negotiation; last refusal.

            3.   Requiring developer to do sequels and conversions or options on "next project".

4. Passive royalties for use of content and/or developer technology.

E. "Hot Button Issues"

1. Non-competes.

2. No raiding, no poaching clauses.

IV. Q&A