

Point of view

About game authors' participation in the editing of their works by publishers

Time and again, game publishers try to stipulate in their contracts with game authors that they have an absolutely free hand in editing the games. In principle, this can contradict (German and to a large extent also European) copyright law or, more precisely, the moral (personal) rights of authors. Furthermore, if the game authors are not involved, publishers lose the chance to identify and eliminate possible errors in the internal editing of the game before it is published.

§ 4.1 of our model license agreement, which in our opinion regulates this participation fairly, has apparently caused discussion in some game publishing houses. We are happy to face this discussion – with legal facts, examples from practice as well as supplementary content-related arguments.

The moral (personal) rights of authors are very precisely regulated in the German Copyright Act (essentially §12–14):

§ 12 Right of publication: (1) *The author has the right to determine whether and how his work is to be published. (2) The author has exclusive rights to publicly communicate or describe the content of his work as long as neither the work nor the essential content or a description of the work has been published with his consent.*

§ 13 Recognition of authorship: *The author has the right to have his authorship of the work recognized. He may determine whether the work is to be provided with an author's designation and which designation is to be used.*

§ 14 Distortion of the work: *The author has the right to prohibit any distortion or other impairment of his work which is likely to endanger his legitimate intellectual or personal interests in the work.*

In this regard, the Model License Agreement of SAZ states: "§ 4 Design, Marketing, Naming of Author"

4.1 *The title, design and equipment of the game produced based on the Work shall be at the reasonable discretion of the Publisher. Changes to the content of the Rules of the Game, including the theme and essential original equipment parts, shall however require the prior written consent of the Author; this also applies to the final release of the Rules of the Game – an e-mail is sufficient. This shall be deemed to have been granted if there is no response from the Author within 14 days of receipt of the message. Such consent may only be refused for objectively justified reasons. The Contracting Parties shall strive to achieve a constructive cooperation based upon trust during the development phase. The same applies to future changes, further developments, and supplements to the Work.*

4.2 Pursuant to Fig. 10, the Publisher shall determine the anticipated start of marketing, the size of print runs and the respective current sales price. The Publisher undertakes to market the game produced based on the Work in the best way possible and to perform all necessary sales and marketing measures to this end. In this conjunction, it shall have a free hand in all business measures.

4.3 The Publisher shall affix the name of the Author in accordance with Fig. 10 on the top of the box and in the Rules of the Game in a clearly legible manner on each reproduced item covered by the Agreement.

Here are three counterexamples from publishing contracts:

- *"For the best possible exploitation of the rights of use specified in § 2, the PUBLISHER has a free hand in the design as well for the content of the work."*
- *"The Licensor gives its consent for the Licensee to change the game, the game idea, as well as the name and graphic design of the work."*
- *"For the best possible exploitation of the rights of use referred to in § 2, the Publisher shall have a free hand in the design as well as in the content of the Work. The Publisher is therefore entitled to make essential and insignificant changes itself."*

But there are also positive examples - once short and once long:

- *"Modifications to the name under which the GAME is marketed, the theme, the game system, art or the rules of the GAME must be first approved by LICENSOR."*
- *"The title, the design and the layout of the Work produced on the basis of the Game are at the Licensee's reasonable discretion. The Licensee shall have the right to edit the Game. However, the Licensee shall refrain from any interference with the Game that may jeopardize the intellectual or personal rights of the Author in the Game. Changes to the content of the Game require the prior written consent of the Licensor. This shall be deemed to have been approved if no justified objection is received within seven days. In the interest of the best possible implementation of the work, the licensee shall inform the author about the implementation process."*

A look at the contracts shows that there are positive examples of publishers who respect the copyrights of the game authors, rely on a trusting cooperation for mutual benefit, and also anchor this in the contract. A number of practical examples show how sensible this can be, where this went thoroughly wrong due to a lack of prior information and agreement.

Practical examples that game authors reported to us:

- ✚ *The publisher decided to publish a children's game for the first time in its publishing history. There was little communication and agreement between the publisher and the author during the implementation process. The game is quite simple, and the material is not really challenging. Therefore, both sides probably assumed that there would be no difficulties in the implementation. When the finished game was presented at the fair, the author immediately remarked that the illustration would make it impossible for children to play the game. Conclusion: the reviews were scathing and the good chances for an award were lost. A subsequent, corrected US edition, on the other hand, sells very well to this day.*
- ✚ *An American publisher produced a game of mine, which required a larger development effort. Mechanical problems had to be solved, because the publisher wanted to solve it in a different way than in my perfectly working prototype. I was not involved in the details of the development, but I gave a lot of advice in writing about what to look for in a different implementation. After the end of the development, I only saw a video with the future mechanics and parts of the design. I also noted some critical points on this. I was not given a final pre-production version of the game, so I could not point out any mistakes. Conclusion: The game came out, produced in Asia, and was unfortunately unplayable, because figures did not stay in their positions, a mechanism was constructed resp. manufactured incorrectly. Thus, the game, which was well received by the idea, was taken out of the program after a short time. This was a considerable financial loss for the author.*
- ✚ *One of my first publications with my co-author has a skill principle where we realized during prototype development that it was important to arrange a course with start and finish areas in opposite corners. The publisher had chosen a U-shape for the course because it was visually easier to implement on a square game board. There was no communication with us about this at the time. If we had been shown this draft game plan during the planning phase, we would have been able to react immediately and contribute our implementation experience from our prototype phase, namely that players then try to get directly from the start area to the finish area by using their skills, thus bypassing the game appeal of the actually intended sequence.*
- ✚ *It is a game in which everyone acts simultaneously according to the same instructions, but on individual game plans that all vary slightly from one another. As a result, no player is forced to look excessively at the other game plans, the game runs smoothly and copying of the other players is not possible. We have not seen the production documents - despite the publisher's contractual obligation - but the editor somehow missed the importance of the varied game plans, and the same game plan was always printed for all players. Conclusion: The game did not work properly and was quickly off the market.*
- ✚ *The author has developed a game in which domino-like stones must be stacked. In the prototype, the stones made of wood were 5 cm long, 2.5 cm wide and 0.85 cm high. In the misplaced game, the stones made of plastic were 4 cm long, 2 cm wide and 0.3 cm high - only 23% of the original volume. This made it difficult to stack the stones, to place them in front of the players, and to recognize their stacking height (important!). The author was involved in the rules of the game and the theme, but not in the choice of materials. Thus, the promising game unfortunately became a flop. Reviewers said: "The game ... cannot*

compete with the competition in this implementation. A great opportunity has been missed here". "The game would be super if the material were better."

- ✚ A game has been in the publisher's program for some time. In a complementary version as a travel game, all game materials, including two different dice, are included in a scaled-down form. The game rules are new, shortened and written with modified rules. In the original rule, the players choose a die. Depending on the choice of the die, two different game sequences with different actions result. According to the rules in the travel game, two dice should be rolled simultaneously, which then determine one action. A new game variant has also been added. Conclusion: The game rules, which were arbitrarily revised by the editors, unfortunately make the game significantly more luck-dependent and thus less appealing. The publisher later promised not to use the incorrect game rule in the future.*
- ✚ This is about an edition of an educational game that has already been successful in other markets. Vehicles are loaded and are not allowed to leave until they are fully loaded. The vehicles have different cargo spaces. For example, a size 12 vehicle can be loaded with 7+3+2. Our game contains – of course – many smaller loads (for example 2x8 and 15x1), so that the chances are good to still load the missing rest. We have not seen the production documents - despite the publisher's contractual obligation - but to "simplify" production, the publisher has included all the loads in the same quantity (now 4x8 and 4x1). After the release of the game, the publisher is surprised by the scathing criticism that the game does not end. Conclusion: The publisher took the game off the market and even complained to us that the game does not work at all.*

Note: All examples have been deliberately anonymized, as we don't want to expose anyone, but only to draw attention to avoidable mistakes. For most publishers, flops are negligible losses. For the individual game authors, it is about damage to their reputation and sometimes considerable financial losses.

Of course, there were also a number of cases where the involvement of game authors and their advice led to the avoidance of serious errors and economic losses for both sides.

The above negative examples should also not displace the fact that in most published games the cooperation between publishers and authors works relatively well. We do not deny that there are many cases where the work of the editors has improved a game. At the end of the day, the common intention is to bring an excellent good and successful product to the market.

Conclusion

Apart from the legally established rights of the authors – it is their work (!) – it is about a process on an equal footing in the finalization of the games in the publishing houses. The rules of the game and the theme are here both important cornerstones.

The cooperation between game authors and publishers is an essential element in the publication of a game. The closer the collaboration, the better the final product will perform. This is another reason why game authors must be integrated into the decision-making process for the market-oriented realization of a game. This applies to the definition of the target group, the presentation (theme, title, illustration) and the content of the game (game material and rules).

From experience and on the basis of the current reports, we would even suggest expanding the contractual regulation and the resulting procedures in such a way that the game materials must also be submitted to the authors in advance as pre-production samples, proofs, or PDFs, in order to allow a critical look and practical tests with regard to functionality before going to print. We will therefore shortly clarify one sentence in § 4.1 of our sample license agreement as follows:

"However, changes to the content of the game rules, including the theme, as well as the design of essential equipment parts with regard to their functionality, require the prior written consent of the author; ..."

Normally, game authors know their games and have tested many variants in the rules and in the handling of the game material in the corresponding target group over a long period of time. Not making use of this experience can lead to considerable additional and duplicated work in the publishing houses and to serious errors.

We often hear the argument that there was no time for an intensive exchange with the game authors or for the submission of the final game rules and designs. Time can be planned – and experience shows that products knitted with a hot needle are more prone to errors.

Of course, we do not deny the competence of the editors in the publishing houses, but the four-eyes principle should be standard in the decisive development phases. *Nobody is perfect*. It is important for BOTH sides to understand the point of view and the competence of the other side, to contribute constructively to a feasible solution with objective arguments, and to be prepared to compromise if necessary. The following also applies to game authors: Stubbornness is no proof of competence – and no recommendation for a possible future cooperation!

Games are often more complex in their structure than a book – but in book publishing houses the approval of the edited and typeset work by the authors BEFORE going to press is a matter of course – because it is and remains THEIR work even after editing.

Why should this be different for game authors? These are our games – that is what we stand for with our name!