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Game Designers Call for More Fair Play in Contracts

Unfortunately, cases have come up more frequently lately in which game publishers want to force game designers to abide by contractual conditions that lack any fair play. The previous conditions of the utilization of intellectual property rights have worsened dramatically. The Game Designer Association (SAZ), representing more than 400 game designers worldwide, vehemently protests against this.

One of the key points is the liability regarding the rights of third parties. In this context, one needs to know that over 1,000 new games are released every year; consequently, no designer (and no publisher either) is actually able to fully examine whether a parallel development might already exist somewhere in the world or has just come on the market.

Example Asmodee: The French company demands the designers assume all liability and grant the company the continued distribution of a work even if it is subject to allegations of an infringement of intellectual property rights. In our opinion, a contractual commitment providing for the sale of games that infringes on the rights of a third party is legally void because one cannot demand or stipulate the impossible. But even if you consider that the allegations might come to nothing, the publisher's signal is clear: The designer is supposed to take on the full responsibility that the company can sell the entire print run, even if there are legal obstructions.

The game designers are not against taking on responsibility; this is part of any authorship. In the case of gross violation of due diligence or even of clear plagiarism, the author has to be liable, of course. But the publishers refuse to include in the contracts their own responsibility to check the market and to create accordingly fair arrangements if a serious issue arises.

The Ravensburger Spieleverlag acted in a similar way. In some points of the new license contract for game designers, the publisher has accepted the reasons given by the SAZ, e.g., in terms of liability; however, the publisher refuses to declare its own duty of checking and thus its co-responsibility. Regarding this and other key points, the company unfortunately remained inflexible during the discussion that took place in early September 2012 at the urging of the SAZ.

This new Ravensburger contract is virtually a perfect example of how the former trusting collaboration with designers is virtually rescinded. This is all the more unfortunate as the previous contract was discussed thoroughly twelve years ago, in the course of a workshop involving the SAZ. At that time, the participants

came to largely acceptable arrangements, which set a standard in the game industry.

For example, the new Ravensburger contract penalizes the designer with a one-percent reduction in royalties if his game is advertised on TV. Nowhere in the world has this been done before. Other publishers make it a condition that the game be suited for TV advertising, or they are at least content if they are offered "gems" that have such a potential. It is quite bizarre that Ravensburger makes the designer pay for the company's natural obligations, such as promoting the game.

Ravensburger now stipulates that the title of the game does not become a part of the work and belongs to the company when the contract expires. With this, they clearly stand against the prevailing legal practice (which is possible, however, due to the freedom of contract definition). The list of setbacks which are to the designers' disadvantage is too long to be listed here completely. The detailed comments by the SAZ – regarding the reaction to the discussion in Ravensburg of all the objectionable points in the revised contract version – have unfortunately remained unanswered as yet.

The game companies and their association, the *Fachgruppe Spiel*, have gotten concrete suggestions from the SAZ regarding fair minimum standards (see below). For some resolution, the parties involved should come to the table. A positive example, we think, is the standard contract that the *Verband Deutscher Schriftsteller* (Association of German Writers) and the *Börsenverein des Deutschen Buchhandels* (German Publishers and Booksellers Association) agreed upon years ago. We don't ask for more or less than FAIR PLAY, in order that designers and publishers continue to see each other as partners.

- [11-Point List for Minimum Standards in Contracts between Game Publishers and Game Designers](#)
- [Code on Matters of Intellectual Property Rights With Respect to Games](#)

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**The SAZ represents game designers' rights and interests,
and advocates the strengthening of the cultural assets of games in society.**