

Video gaming development in the UAE: legal issues

- Associate

- Dubai International Financial Centre

Charlotte Sutcliffe - Digital & Data

Introduction

The UAE is currently ranked 35th out of 100 in world video gaming industries. The global gaming industry is now valued at \$129 billion a year. That is more than the annual worldwide numbers taken in by box-office, music streaming and album sales, and major sports leagues all put together. It has been suggested that the e-gaming market in the GCC will be worth \$821 million (AED 3 billion) by 2021.

The UAE Government enthusiastically pioneers to position Dubai at the forefront of innovation. Supporting video gaming ventures offers huge opportunities in the technology innovation space, and it is clear that the UAE Government is aware of that. For example, Dubai Tourism and Dubai Media Office hosts a Girl Gamer Festival where gamer girls from around the world compete to win \$100K. Paul Roy, CEO of Galaxy Racer eSports said: "Hosting this event will add new value to Dubai's emergence as an innovation-driven city." Also, last year, a UAE telecoms provider launched the first-ever cloud gaming service to promote e-gaming in the region and encourage non-gamers to join the ecosystem. Etisalat identified that increased gaming means increased data usage which, in turn means, bringing in extra revenue for operators. Gaming also offers huge revenue opportunities for developers, contractors and telco companies. Clearly it is no secret that gaming is huge in the UAE!

This means huge opportunities for our technology and media clients to diversify their business. This article will provide a snapshot guide for those wishing to launch in the video gaming industry in the UAE, as well as some ways to avoid those pesky legal pitfalls.

Video game development

If you dream of becoming the next 'Epic Games', be prepared for the Call of Duty to work with a great deal of talented people with varying skills and one thing in common: the protection of their legal interests. Remember, no man (or woman!) is an island and it is unlikely that one person will possess all the skillsets needed, so you will need to engage with everyone from graphic artists, to animators, voice actors, sound engineers, software programmers, songwriters and scriptwriters. Assuming you have a company structure, a trade name, a brand and sufficient financing, the next steps are to work with industry professionals to bring your vision to life.

Pre-development stage

The most important aspect of game development is that the you own the intellectual property rights in the finished product, and all the rights created through the development process. The best and most effective way of protecting your rights is through properly drafted contracts with all of your stakeholders. Remember however, that intellectual property law does not protect the underlying idea or concept of a video game. If you are discussing your concept with stakeholders with whom you do not yet have an agreement, you must first have both parties sign a non-disclosure agreement, and ensure to identify any

materials you disclose as confidential.

Development stage: ensuring IP ownership over developed work

Through your journey, you may engage with some entities on a contractor basis, and some on an employee/employer basis.

Typically, if the person is a contractor, they will own the IP in whatever they create. Whereas, if they are an employee hired by you, you will own the IP. However, in most cases, the difference between employees and contractors is not resolved by simply calling someone an employee or contractor. For this reason, you will need to express, in writing, that you own the IP in all materials, and prepare a written assignment (or broad licence) of IP to that effect.

The ownership of IP will need to be covered in every area of development. Whether or not you own or have a licence to use the developed IP and any adaptations of that IP will usually depend on how much you are paying for the development of that IP, and which party is more likely to find that IP valuable to their business venture. For example, a coder may wish to own the IP of specific routines or modules of code that augment or improve the operation of the authoring programme so that they can use those routines or modules of code in future projects. If the game design is contained in a 'design document' which records details of the ideas, stories, worlds, characters and gameplay mechanics, you should be aware that there is copyright in the 'design document' because it is written down into material form. However, copyright protects the words used in that document to express the 'game design' rather than the ideas, concepts or stories it describes. Therefore, you are only able to protect the precise expression of the idea, and for a successful copyright claim, you will need to prove that the particular characters, stories, dialogue and mechanics of the game were copied; not just the general concept of the game.

The next stage of game development, before any coding is done, is to decide on what platform the game will operate. A platform is the operating system used by the hardware that the game will be played on, such as Nintendo, Xbox or Android. This may require obtaining a platform licence from the game console manufacturer so that coding can be developed in accordance with the right specifications. This is likely to be a standard licence with no room for negotiation.

Development stage: obtaining permissions to use existing work

If the visual images developed for your game draw upon existing images (including photos of actual buildings, cars, products or even people), you may need to obtain a licence or consent to use them in your game. For example, using a photographer's work could land you in a copyright infringement claim. In addition, using a celebrity or civilian's image could mean you are liable for misrepresentation, false endorsement or privacy related claims.

Similarly, you could face legal repercussions for using music without a licence. If the music in your video game is produced specifically for the game, you will just need to ensure you have the right to use the IP, and that the person who developed the music also did not infringe any third party's IP when he or she created the music for you. Otherwise, you will need to seek permission from the owner of existing music in order to incorporate it into your game.

Either way, it is important to recognise that each component of music is a separate piece of IP. The components include the musical composition, the lyrics (if any) and the sound recording which is synchronised with the video animation. Each component could be owned by one person, or each component could be owned by different people.

Development stage: ensuring content complies with UAE content laws

The UAE has some restrictions on the kind of content that is able to be produced. Below is a snapshot of the kinds of rules that apply:

- media content, Videos and pictures must not contain instigation about Islam; no criticism of rulers of Emirates; and no encouragement of the commission of sin or crimes, etc. Board Resolution No. 26 of 2017;
- the National Media Council provides ratings regarding video games. Gaming classifications go up to 21 years and those are games that contain references and depictions of nudity/sexual themes, references to gambling and direct use of alcohol/illegal drugs. Games that are more explicit may be banned;
- anything that suggests dangerous or anti-social behaviour, imitable acts (e.g., dangerous stunts, suicide or self-harm), instructional criminal behaviour, offensive on-camera gestures (e.g., middle fingers, chin flick, clenched fist, forearm jerk, etc.) are ill advised to say the least;
- content is not allowed to promote alcohol. The Content Res states in Article 44(7) that “No advertisement on alcoholic drinks or prohibited drugs shall be allowed by any means directly or indirectly. drug abuse is not tolerated in the UAE however, depictions in foreign content are usually acceptable. It would be unacceptable to depict a local person partaking in such activities, even in fictional accounts.

Post development: distribution

Now your game is complete, you own all the IP rights (or have broad rights of access to them) and you are sure your content is in line with relevant laws, you want to start distributing. Typically, there are two options:

- publisher: typically funds the development and has the rights to manufacture and market the video game; and
- distributors, retailers and online stores: with which the publisher (or indie developer) will enter retail and wholesale distribution arrangements to release and sell the video game.

However, the digital age has rocked the boat when it comes to in-person shopping. In fact, streaming services such as xCloud and PlayStation are now literally running the show. To distribute your game on such subscription services, you can register and upload your finished product. Some subscription services allow you to use their tools to assist in the development process. Be aware that you will need to sign up to the subscription service’s terms (which will likely be non-negotiable). Such terms are also likely to ask for an undertaking that you own all the IP in the game you have developed (or have the right to use such IP).

Conclusion

There is a vast array of development opportunities in the video gaming industry. The UAE is an innovative and exciting place, where its Government pioneers new technologies at the forefront of gaming development. However, gaming introduces content development issues including ensuring effective IP ownership and that content respects media content laws. Insisting on written agreements with all stakeholders, and keeping creative control over the process may save you a lot of money and pain on your way to the top; so for game developers in the Middle East, having proper legal protection is far better than venturing into uncharted territory.

For further information, please contact [Fiona Robertson \(f.robertson@tamimi.com\)](mailto:f.robertson@tamimi.com) or [Charlotte Sutcliffe \(c.sutcliffe@tamimi.com\)](mailto:c.sutcliffe@tamimi.com)

