

LEGAL GUIDE TO THE GAME INDUSTRY

Reviewed and updated in 2024



GAME LAW REGULATORY FRAMEWORK



The game development industry has been booming in recent years. It escalated especially during the Covid-19 pandemic, but after the crisis passed – the boom did not fade away. With an annual growth rate estimated at 12.1%, the global gaming market size is expected to reach 435 billion USD in value by 2028¹.

With over 3 billion players globally, the industry is bigger than those of music and film combined.

Delivering a game to the market might cause some challenges so it is necessary to be well prepared, especially in terms of legal requirements. It is also necessary to understand the practical realities of developing, distributing, promoting, and protecting the game. They may not all apply to specific circumstances, but those that do can have a heavy and lasting impact on the future of the business. Finding out which problems you should focus on is half the battle. The other half is the ability to ensure compliance.

Key concepts you will find further:

- Game – an electronic game (both mobile or computer) that involves interaction with a user interface or input device (such as a joystick, controller, keyboard, or motion sensing device) to generate visual feedback from a display device, most commonly shown in a video format on a television set, computer monitor, flat-panel display or touchscreen on handheld devices, or a virtual reality headset, hence the name.
- EU – European Union.
- GDPR – Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons regarding the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) – main document regulating personal data protection and privacy in the EU and the European Economic Area (EEA).

¹ Gaming Market Size Worth USD \$435 Billion By 2028 | CAGR 12.1%: Zion Market Research
<https://www.bloomberg.com/press-releases/2022-02-14/gaming-market-size-worth-usd-435-billion-by-2028-cagr-12-1-zion-market-research>



We invite you to take a closer look at the specific legal criteria that are important for the gaming industry and for game production, successful launch, and further compliant maintenance in Lithuania and beyond.

Read more about:

1. Intellectual property;
2. Licensing;
3. Consumer protection;
4. Child protection;
5. Marketing and advertising;
6. Data protection and cybersecurity;
7. E-sports;
8. Tax;
9. Funding and investment;
10. Litigation and dispute resolution.



OWNERSHIP AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS



Who owns the rights to the created work?

In the world of game development, nothing is more important than a company's intellectual property. Everyone understands that intellectual property must be protected, but first, companies must take steps to ensure that the intellectual property created by their employees or under other contracts is their property or they have the right to use it.

What is important when entering into an employment contract with a creator?

It's important to note that merely having an employment contract with a creator does not automatically grant the employer full ownership rights to the work that the employee creates. Failure to address the issue of transfer of intellectual property in agreements with employees would lead to the application of legal presumptions that are not always in the company's best interests.

For example:

- when it comes to **copyright** ownership, it's important to note that according to Lithuanian laws, the employer will only own the copyright to work if it is created as part of the employee's official duties or employment functions and the employer's copyright ownership only lasts for five years (with the exception of the copyrights in computer programs, which are transferred to the employer in perpetuity), unless otherwise agreed;
- in the case of **design**, the employer will have the right to register a design in their own name, if the employment contract specifies the creation of the design, or if it is created using the employer's resources. An important point here is that if the contract of employment provides for the creation of the design, no royalty is payable, however otherwise a royalty must be paid;
- when it comes to inventions, the employer has the right to register a **patent** in their own name if the employment contract provides for its creation, or if it is created using the employer's resources. However, unlike with designs, the mere existence of a contract is not enough to avoid royalty payments. In such cases, royalties can only be waived if the employee has been or will be paid an agreed-upon increased remuneration for the development of the inventions.

So, for companies that want to protect their intellectual property rights and hire an employee who can create valuable intellectual property, it is essential in the employment contract or other document signed by the employee, clearly defines:

- the employee's duties and responsibilities to avoid any ambiguity as to whether the creation of the work is part of his/her duties as an employee;
- the term of transfer or assignment of intellectual property rights to the employer;
- the issue of (non-)payment of royalties for any work created during the course of employment.

What is important when entering into a contract based on which intellectual property is created by a third party?

The conditions of transfer or assignment of intellectual property rights are essential when entering into a contract on the basis of which intellectual property is created not by an employee, but by a third party. Failing to agree on these conditions would result in the application of presumptions set out in the law, which, again, may not align with the company's best interests.

For example, the Copyright Act of Lithuania stipulates that if a contract does not specify:

- the term for the transfer or grant of economic rights – a party to the contract may terminate it by providing one year's written notice;
- the territory – the transfer or grant of economic rights is deemed limited to the Republic of Lithuania;
- the rights and methods of use – the copyright contract is deemed concluded only in respect of the uses necessary for the parties to achieve the purpose of the contract.

To avoid possible misunderstandings, disputes, or the application of statutory presumptions, it is essential to discuss the following in all contracts that you enter in to:

- the scope of the intellectual property rights transferred or granted, and the ways in which the rights may be used;
- the territory in which the rights transferred or granted may be used;
- the term of the grant or transfer of rights;
- the amount of remuneration for the grant or transfer of rights, its terms, and conditions of payment;
- liability, if the work created infringes the rights or legitimate interests of third parties.

If you want to protect your intellectual property, remember that it all starts with the contract. Take the time to make sure that every contract you enter protects your interests and grants you intellectual property rights to the extent and on the terms you need.

TRADEMARKS

One of the most important factors in the success of a game is its identity among customers. The key ingredient of a successful game identity is a trademark – it identifies the source of a game in the market. There are many types of trademarks, and almost everything in the game can be made into a trademark – words, designs, symbols, phrases, colors, numbers, drawings, sounds, slogans, and moving images.

To avoid a big loss of investments, it is important to check, in the very early stages of game development, whether others have not registered or are not using the same or a similar name for another game or similar product. It is also vital to decide in advance which markets the game will be sold in – in every country trademarks have to be protected separately. Luckily, there are systems that make this process easier and less costly.



Three different trademark systems:

1. National trademark registration. If the game will be targeted to only one country, this route is the cheapest and the fastest way to register your trademark;
2. Regional trademark registration. In certain areas, a single trademark application can provide protection across the entire region. Importantly for the EU market, EU has this system – one trademark is protected in all 27 countries. This route is the best option if the game will be published in certain regions;
3. International trademark registration. By submitting only one application and having one representative, game creators can apply for trademark protection in 130 countries. This system is especially helpful for game creators that are seeking to sell their games in many countries of the world.

Once you've filed a trademark application, you'll have the ability to protect it, i.e. to prevent other individuals from using it for not only another game, but also for another comparable service in the territory of protection.

The majority of countries have a trademark validity period of 10 years, which can be extended for a further 10-year period. There are typically no restrictions on the number of times a trademark can be renewed.

COPYRIGHT

Origin of games

Games can be characterized as complex works of authorship which usually contain such art forms as: plots, scripts, paintings and characters, music, etc. Creating all these elements involves human interaction which means that like any other human creative output, games can be a work of authorship. Furthermore, as a rule, games are not created as single, simple works, but rather are the combination of individual elements that can each individually be copyrighted (soundtracks, characters, etc.) if they achieve a certain level of originality and creativity.

It is worth noting that all games and/or their individual components share a common element – the computer program that runs the game and which is undoubtedly also subject to copyright.

It is undeniable that games are a certain type of art, the legal nature of which makes aspects of copyright law fundamental.

Copyrightable objects of games and their legal protection

Games have long ceased to be only a complex of simple geometric shapes and basic functionalities. Technological advances in game innovation allow developers to create sophisticated arcades of different genres of games, including action games, action-adventure games, adventure games, role-playing games, simulation games, strategy games, music games, party games, sports games and trivia games.

Accordingly, games now containing multiple elements each of which can receive copyright protection, e.g.²

² Computer and Video Game Law – Cases, Statutes, Forms, Problems & Materials, by Ashley Saunders Lipson and Robert D. Brain, Carolina Academic Press, 2009, p. 54.



Audio elements	Video elements	Computer Code (Source Code and Object Code)	Other
1. Musical Compositions	1. Photographic Images (p.e., Giff, Tiff, Jpeg)	1. Primary Game Engine or Engines	1. Script, Plot and other Literary Works
2. Sound Recordings	2. Digitally Captures	2. Ancillary Code	2. Developed Characters
3. Voices	Moving Images (p.e., Mpeg)	3. Plug-Ins (Third-Party Subroutines)	3. Choreographies and Pantomimes
4. Imported Sound Effects	3. Animation	4. Comments	4. Maps
5. Internal Sound Effects	4. Text		5. Architectural Works

Unlike trademarks or designs, which acquire legal protection from the moment of their registration, original work is under copyright protection from the moment it is created and expressed in a tangible form that is perceptible either directly or with the aid of a device.

Creators and developers

In essence, the legal protection of a work of copyright arises from the following basic conditions, i.e. (i) the work is original, (ii) the work is expressed in an objective form, and (iii) the work is the result of creative activity. The benchmark of originality is low; however, it requires activities of a human author. In most jurisdictions without a human author, the work cannot be considered original.

Certain works created by AI may not therefore be designated as copyright works because of the absence of a human author. That is why original games can gain legal protection only if they are created by the artistic and technical employees, freelancers, and other partners. These professionals may include the following:

- **Producers** who supervise and oversee the work of all those involved in creating the game. Game producers have a similar role to that of movie directors;
- **Game Designers**, i.e. lead designer, content designer, writer, scriptwriter and etc.;
- **Artists**, i.e. the creators of the visual art of the game;
- **Programmers or engineers**, who create and adapt the game code;
- **Audio designers**, responsible for creating sound effects and other related sound elements;
- **Owners of neighboring rights**: (i) performers and actors, in relation to both voice and movement, (ii) producers of audiovisual and sound recordings, etc.

Whether these professionals hold copyrights will depend on their contribution to the work and the specifics of each jurisdiction. In most cases, these authors have an employment relationship with the gaming company, therefore the rights in the works are retained by the employer. However, if the work is not created within this relationship, the producer must ensure the proper transfer of rights in order to publish and market the game appropriately.

For more information, please see [IP Guide for Start ups](#).



LICENSING AND CLEARING OF RIGHTS

The complexity of games as works of art also means that these works may include a set of different intellectual property rights, not all of which may be owned by the game developers. Accordingly, it is often necessary for developers to enter into various licensing arrangements with different rights holders, e.g. in order to incorporate certain music, trademark or protected design, hardware solutions or other objects created or controlled by third parties into the game. This process is called the Right Clearance.

Furthermore, note that licensing agreements are not only a necessary tool for game development to clear the way for third parties' intellectual property rights. Licensing relationships often enable developers to distribute their games to the public and, therefore, monetize them.

Regardless of what the license agreement is focused on, i.e. whether it is about clearance of intellectual property rights, or publishing agreements, every licensing agreement has these key considerations (the list under each category is not exhaustive):

Intellectual property	<ul style="list-style-type: none">• What intellectual property/objects are licensed?• Who will own or control intellectual property rights?
Scope	<ul style="list-style-type: none">• How the intellectual property rights will be used?• Whether the scope of the licensed intellectual property rights will grant the licensee the necessary rights?• Whether the license is limited in territory, limited in time, whether the license granted will be exclusive or non-exclusive?
Sub-licensing	<ul style="list-style-type: none">• Should the licensee have the right to enter into sub-licensing agreements for the purposes of developing and/or to commercialize the game?• Should sub-licensees' candidatures be approved by the licensor?• Should the licensor or licensee be liable for acts of the sub-licensees?
License price and payment procedure	<ul style="list-style-type: none">• Should the licensee pay a one-off license fee, or will there be an on-going commitment for the payment of royalties?• Whether the license fees will cover the required taxes?
Liability	<ul style="list-style-type: none">• What will be the maximum limit of the parties' liability?• Will the parties be obliged to cooperate and assist each other in the event of disputes with third parties?
Termination	<ul style="list-style-type: none">• Under what conditions will the parties be able to terminate the agreement before the expiry of its term?

LICENSING & CLEARING OF RIGHTS



OPENSOURCE LICENCES

When creating games, developers are often tempted to use and build on software distributed by opensource licenses. Opensource licenses can be used in creating games, however, creators should be aware of a few legal risks before using this software.

It is highly recommended to get the advice and assessment of intellectual property lawyers before using software distributed with opensource licenses for the following reasons:

- It is crucial to know and understand the terms of the opensource license. Some licenses dictate that the source code of the game must be made available to the public for free, others may put restrictions on how the software can be used, and almost all terms require to indicate the original author. Obviously, some requirements, such as the obligation to make your game's software free, can make it impossible to sell your game;
- Risk of breaching intellectual property rights. By using software created by a third party, and without proper legal agreements, game developers risk breaching someone else's intellectual property rights. It can have significant implications, from possibly paying large fines to the original authors, to having to stop using all the software that includes the breached intellectual property, e.g. to stop using the game and having to redo it completely;
- Not being able to defend your own intellectual property rights. It can be quite difficult to present claims and stop others from using your software if it includes code owned by third parties that was distributed by the opensource license.

The decision whether to use the software distributed by opensource licenses must be made with all risks assessed. It can be a great tool to help build game software, but it must be used with careful legal and technical research made beforehand, with the best intellectual property lawyers ensuring your rights for the future.

CONSUMER PROTECTION



CONSUMER RIGHTS

In the EU gamers, i.e. the natural persons that in the sense of law are considered to be consumers, have certain rights when it comes to the delivery of games, including those which aim to safeguard them when they buy or play games online. Here are some key considerations for game development and distribution companies to be kept in mind:

Pre-Contractual and Contractual Information

Companies must provide their gamers with clear and accurate game information, such as:

- main features and content, age limit, system requirements, and any technical restrictions;
- the game's total price, and any applicable fees or charges, such as in-game purchase fees;
- refund policies;
- terms and conditions of use of any feature of the game, including what is permitted and what is not allowed, what are the penalties for breaking the rules, and how disputes will be resolved.

This information should be easily accessible to gamers before they buy or start playing the game. Gamers should be able to understand their rights and obligations before agreeing to any terms and conditions.

Right to Access

Online games may have additional consumer rights requirements, including the right to access the game without undue delay for a reasonable period after purchase. If the company fails to provide the relevant game on time and the consumer requests to do it, the consumer may terminate the contract.

Right of Withdrawal

Under EU regulations consumers have the right to withdraw from a contract within 14 days of making an online purchase, without giving any reason. This allows gamers to reconsider their purchase and get a full refund if they change their mind or are unhappy with their choice. Companies must provide clear information about the right of withdrawal, including the main conditions, the time limit, and the procedure for exercising it.

However, this right does not apply if the performance of the contract has been initiated with the prior express consent of the consumer and on the understanding that they will not have the right to withdraw from the contract once the company has fully performed the contract. In the case of online games, this means that if the consumer has downloaded or activated the game, they may not be able to exercise their right of withdrawal unless the company has not provided the required information.

The restrictions on the right of withdrawal do not affect the consumer's other rights, such as their right to receive updates for the game, and their right to a remedy if the game is defective or does not meet the quality standards.

Right to Conformity

Games must comply with the description, quantity, quality, functionality, compatibility, interoperability, and any other features set out in the contract. Consumers have the right to expect that the game they purchase, or access online will be of adequate quality, fit for purpose, and will be compatible with their hardware and software. This means that the game should work as expected and should not contain any significant errors or glitches that prevent the user from playing it.

If a game is of poor quality or does not meet the consumer's expectations, the consumer has the right to have it repaired, replaced, reduced in price, or to terminate the contract, depending on the circumstances. The consumer may also be entitled to compensation for any damage or loss suffered because of the defective game.

Right to Updates

Games are subject to contractual renewal. If a game is updated by the company, consumers are entitled to receive these updates free of charge, unless otherwise agreed. This is particularly important for online games, which may need frequent updates to correct bugs or add new features.

Automatic Renewals

Under EU regulations, game companies are required to provide consumers with information on how long the game subscription will last and how often it will automatically renew, the total cost of the subscription, the cancellation policy, and the consequences if the consumer fails to pay for the subscription



CHILD PROTECTION



General considerations

As some of the games might be intended for adults, teenagers, or children of a certain age, it is important to make sure that age declarations made by the gamers are correct.

There should be a reasonable degree of certainty that the age of the gamer is true also because of legal age requirements. For instance, in Lithuania only children from 14 years old may enter into transactions, like in-game purchases, and give consent under GDPR, where such legal basis is used. Parents of younger children can enter into transactions and provide consent on behalf of their children.

These aspects must be considered when developing any game and relevant disclaimers and provisions must be included in the terms of use of the game. The developer of the game should also decide on the way the consent of the holders of parental responsibility over children is to be obtained.

Loot boxes

Special legal considerations should be made regarding loot boxes – a type of in-game purchase found in many video games, particularly in free-to-play or freemium games. They typically contain randomized virtual items, such as character skins, weapons, or other in-game assets, which can enhance a gamer's experience or provide cosmetic customization.

These items are especially attractive to young players. From a legal standpoint the gaming company should assess whether in-game loot boxes may encourage gambling-like behaviour and mitigate legal risks in this regard. Several EU countries, like Belgium and Austria, are considering loot boxes as a form of gambling. The game development company may be required to obtain a license if the game is to be offered in those countries. The game development company should also think about implementing measures like age restrictions, disclosure of odds, implementing spending limits as well as educating and spreading awareness among the players on how the loot boxes work.

Transparency and simplicity

When the game's target audience includes children, simplicity and transparency are key. It is essential to ensure that children understand the game terms and conditions, their personal data processing activities, etc.

Not only this is a good approach towards building trust with children and their parents, but special protection of children personal data is also required by the GDPR, as children may not fully understand the risks, consequences, safeguards, and rights involved in the processing of personal data in the game. Because of this special protection, any information or communication that is targeted towards them should be presented in clear and simple language that can be easily understood by the child. Good and transparent privacy and other information design can be achieved by making age-appropriate visuals, videos, in-game pop-ups, stories to introduce the games terms and conditions and privacy related information.

Marketing to young players

The game developer should by default disable behavioural profiling for marketing purposes. If a child opts to receive ads, the game developer should establish measures to regulate or supervise the placement of products, advertising, or sponsorship deals. If the game developer intends to process children's personal data for direct marketing purposes, assess children's personal aspects based on automated processing and profiling, or offer information society services directly to children, the game developer should perform data protection impact assessment (DPIA) – a step by step exercise used to assess and document data processing implications to the protection of personal data. Even though the game developer would not intend to do any of the mentioned marketing activities towards children, the DPIA may still be required, because many games can be regarded as information society services.

The game developer should refrain from using techniques that lead children to make inappropriate privacy decisions. This includes reviewing the marketing strategies for social media competitions and partnerships aimed at children and discouraging the creation of social media accounts among children out of fear of missing out on rewards.

All these and other legal considerations must be made when designing and developing a game. It is important for gaming companies to be mindful of the legal obligations that are applicable in the jurisdiction where they conduct their operations. In Lithuania the GDPR, the Law on Legal Protection of Personal Data and other laws on consumer protection and advertising should be given special consideration. Therefore, it is vital to comprehend which requirements are relevant and to adhere to them by putting in place appropriate policies, procedures, and measures.



MARKETING & ADVERTISING



Game developers need to have a good understanding of advertising regulation and practice to ensure compliance, optimize monetization, and maintain their reputation. Game developers need to ensure that their advertising practices are compliant with legal regulations to avoid any legal issues. Misleading or otherwise intrusive advertising can lead to frustration of users, which can result in their negative reviews or them leaving the game. Intrusive or misleading advertising may also negatively impact the revenue of the game developers and cause damage to their brand.

By understanding advertising regulation and practice, game developers can create a better user experience and improve user engagement, leading to increased revenue, better reputation, and success in the industry.

General requirements for advertising

Game developers should be aware that all the information disseminated in any form and by any means related to its economic, commercial, financial, or professional activities, encouraging the purchase of goods or services (including acquisition of real estate and other rights and obligations) is considered to be advertising.

The Law on Advertising of the Republic of Lithuania establishes that any advertising must be decent, accurate and clearly recognizable. The advertising in Lithuania must be disseminated in the Lithuanian language.

The advertising must not:

1. Be surreptitious – advertising must be clearly identifiable by the form in which it is presented;
2. Violate the principles of public morality;
3. Humiliate a person's honor or dignity;
4. Incite any form of discrimination;
5. Disseminate defamation or disinformation;
6. Contain violence or aggression;
7. Encourage panic;
8. Promote behaviour that poses a threat to health, safety and the environment;
9. Abuse superstition, people's trust, lack of their experience and knowledge;
10. Mention a person's name or use their image, opinion, or information about their private or public life without their consent;
11. Use any special subconscious means or such technologies;
12. Violate copyright in literary, artistic, scientific works or related rights;
13. Deface the religious symbols of religious communities registered in Lithuania.

Advertising and children

Advertising is prohibited if it has a harmful moral and/or physical effect on children, i.e.:

1. Abuses the trust of children in their parents, guardians, teachers or other adult individuals;
2. Forms the opinion of children that the use of certain goods/services will give them a physical, psychological or social advantage over peers or other persons;
3. Unreasonably shows children who have fallen into situations that threaten their health and life.

Misleading advertising

Misleading advertising is prohibited in Lithuania. Misleading advertising is defined as advertising which, in any way, including the manner of its presentation, misleads or is likely to mislead the persons (average consumers) to whom it is addressed or whom it reaches, and which, due to its misleading nature, affects their economic behaviour or, for these reasons, harms or may harm the opportunities of another person to compete.

When judging if the advertising is misleading three main criteria of misleading advertising is separately applied:

Accuracy

The criterion of accuracy requires that all information provided in the advertisement is correct and that the advertiser has evidence at the time of its use to prove the accuracy of the statements used in the advertisement.

Comprehensiveness

The criterion of comprehensiveness requires that the information contained in the advertising is complete, i.e., a certain part of the information, in the light of other information contained in that advertising, is not omitted. The information provided in the advertising would also be considered incomplete if it does not disclose, conceals or, in a vague, incomprehensible, ambiguous, or untimely manner provides the average consumer with the essential information and thereby may induce the average consumer to take a transactional decision which they would not have taken otherwise.

Presentation

The criterion of presentation requires that the manner or form in which the advertising is presented is not such that the average consumer of the advertising may perceive the implied incorrect (misleading) statement of the advertising, even though the information provided therein is correct.



For the advertising to be considered misleading, it is sufficient to establish that it does not meet at least one of the three criteria explained above.

Comparative advertising

Comparative advertising is allowed in Lithuania, as long as the comparative advertising:

1. Is not misleading;
2. Compares goods/services that meet the same needs or are intended for the same purposes;
3. Makes an objective comparison of the significant, relevant, verifiable features of goods/services. The prices can be compared;
4. Does not create confusion between traders (including between advertisers and their competitors), between the trademarks, names, other signs with distinctive features, goods/services of the advertiser and the competitor;
5. Does not discredit or diminish a competitor's trademarks, name, other signs with distinctive features, their goods/services, activities, financial or other situation;
6. There is no unfair recourse to the reputation of a competitor's trademark, name or other signs with distinctive features or to the indication of origin of a competing product/service;
7. Does not present goods/services as imitations or copies of goods/services bearing a protected trademark or name;
8. Goods/services bearing a designation of origin are compared with goods/services with the same designation of origin.



DATA PROTECTION & CYBERSECURITY



PERSONAL DATA PROTECTION

Game developers should take personal data protection into consideration when developing new games and comply with data protection principles and requirements in GDPR.

The personal data in the game should be processed lawfully, fairly and in a transparent manner. Lawfulness means that personal data can only be processed if there are appropriate legal grounds for such processing. In the gaming industry consent, performance of the contract, legitimate interests of the game developer would be the main legal grounds for data processing.

As most of the games will also be played by young people, including children, it is of huge importance to ensure compliance with principles of transparency and fairness. Information on the personal data that is processed should be provided in an easily readable and understandable format, which is tailored to the audience playing the game. Game developer should consider the possibility of using legal design techniques to make the privacy documents user-friendly and easy to understand. Iconography, video, cartoons, audio, and characters can all be really effective in engaging children with privacy information. Overall, the game developer should be open and transparent to the gamer from the moment of the first engagement with the game, throughout the gameplay and until the end of the gaming experience.

The purpose limitation principle must be accounted for by the game developer as well. It means that personal data must only be collected and processed for specified, explicit and legitimate purposes.

Another principle of the GDPR to be kept in mind is data minimisation. This principle requires that only relevant, necessary, and adequate personal data suitable and reasonable for the achievement of the purpose of processing within the game can be collected and processed.

The rest of the principles of the GDPR like the principle of accuracy, storage limitation principle, integrity and confidentiality, accountability should also not be ignored at the design and development of the game.

As a rule, if the processing is likely to result in a high risk to individuals, it is necessary to carry out a DPIA.

To sum up, the protection of data subjects' personal data should be considered already from the initial stages of the development and design of the game, through the effective implementation of the GDPR principle of privacy by design and by default. Such implementation involves the use of tools and measures focused on risk management and accountability that help to determine privacy requirements and apply them in the game.

CYBERSECURITY

As the game industry has grown tremendously recently, cybercriminals are also trying to exploit it for negative purposes. The industry circulates vast amounts of personal data – personally identifiable information (PII) and credit card information. It is the responsibility of game creators to protect this information and ensure that their platforms are a safe environment for all kinds of users, gamers, and consumers.

The most common cybersecurity challenges creators of games and gamers themselves face are PII leaks, phishing attacks, distributed denial-of-service (DDoS) attacks, malware installations, game mods, etc. These are all common ways hackers might attempt to steal information or disrupt the gaming experience.

Other than making gaming industry participants vulnerable via disclosure of sensitive personal data, gaming companies themselves are at risk of reputational and financial damage. Regulations around privacy and personal data protection are also becoming increasingly stringent to protect gamers. For instance, the GDPR gives supervisory authorities the ability to fine non-compliant organizations €20 million or 4% of global annual turnover. Various local regulations also provide that gaming transactions can be audited in order to make them transparent.

However, the most significant impact of security breaches is on customer trust. Gamers often spend a lot of time and money building their online identities, making them a valuable asset that must be protected. Even if a game does not circulate real money, virtual assets in multi-player online games can often be sold for cash. Gaming industry participants increasingly expect gaming companies to protect their identities and therefore their assets. A breach of this trust can cause irreparable damage to customer loyalty. The answer to a secure and trustworthy system lies in a strong cybersecurity approach.

Nowadays, when cyber intruders are getting bolder, it's crucial that gaming companies invest in and make use of the right security controls. Cyberattacks are successful when there are failures in cybersecurity in gaming software or when users are tricked into giving away valuable information. Creators of games and related companies should adopt cybersecurity measures throughout the entire lifecycle of game production, development, and deployment along with the platforms on which these are used. Some important things to which the creators should pay attention:

- **Secure infrastructure** – databases, networking, servers. Code should use principles of least trust to limit the scope of any attacks through servers. Place protection on endpoints against DDoS attacks, so the game experience is not interrupted. Ensure databases are encrypted at rest and secure, especially when personal information is stored in them. Wherever possible, separate data into different storage locations so breaches are limited in scope;
- **Security as a main priority** during the game creation process. Code reviews and design discussions should include identifying security loopholes and potential exploits so they can be closed before writing code or putting code into production. Best practices should be applied to game development, like practicing threat modelling and running static analyses;
- **Games monitoring in production.** Relevant monitoring data should be collected from the software. This data can be exported to a security information and events management (SIEM) tool to monitor security issues. When dynamic alerting and automated incident response is available, teams can respond to cyber threats quickly, reducing impacted users;



- Be a hacker yourself for your platform. **Penetration tests** and other techniques allow you to check your systems and prepare possible solutions for handling real cyber-attacks;
- **Smart and engaged users.** Engage with users where possible. Educate them about phishing attacks and ensure clear communications about what data the game could request from them. Inform them when phishing attempts are known to occur, so they are less likely to be caught. Encourage strong passwords and inform users to avoid reusing passwords across different applications. Provide the option of using multi-factor authentication to prevent online identity theft and account takeovers;
- Define all the security measures and any other you implement as your company's **cybersecurity strategy**. It is an important plan of action designed to maximise the security and resiliency of an organisation.

At the end of the day, most people indulge in gaming for entertainment. If it becomes a threat to their financial and reputational well-being, they will shy away from it and seek other, safer modes of entertainment. To prevent such a scenario, the gaming industry needs to take cybersecurity very seriously. Finally, a large number of gaming industry participants are young gamers with limited understanding of security practices. It is important for the industry to provide them with a trusted community to play in.



E-SPORTS



Simply put, e-sports are organized competitive gaming, which primarily involves teams competing against each other in tournaments for cash prizes. Functionally, it is the same as traditional sports, as world-class athletes are constantly vying for top spots in games which they practice.

In the 1990's, gaming went from a casual hobby to an organized professional sport, which incorporates legal entities with the aim of making a financial profit, and the approach shifted to incorporate not only the sports perspective, but also a business angle.

Today competitive professional gaming is a soon-to-be 1 billion USD industry, events are watched live by tens of millions of people and there is even a potential Olympic games debut on the horizon. An increasing number of professional traditional sports and leagues worldwide (e.g. NBA – National Basketball Association and NFL – National Football League) have added ownership stakes in e-sports teams.

It is noteworthy that Lithuania is also firmly paving the path of e-sports and the names of Lithuanian gamers and emerging teams are increasingly being highlighted at the global e-sports level in the media.

In this context, while the specific legal framework for e-sports is still in the development phase, there are a number of legal issues and solutions to be considered before Lithuania's name becomes known in the e-sports arena, which are worth thinking about in order to safeguard the interests of each gamer, teams, e-sports leagues, and other subjects.

Endorsements and Sponsorships

Apart from broadcast rights, the principal sources of revenue into the e-sports ecosystem are sponsorships, advertising and endorsements. Sponsorship deals may involve “endemic” brands (products or services that have a connection to e-sports, like computer hardware) and “non-endemic” brands (those with no connection to e-sports, like energy drinks and snacks). Sponsorships may involve these companies paying millions or even tens of millions of USD to game publishers, tournament organizers, team organizations, individual gamers and influencers.

Typically, endorsement and sponsorship agreements are quite complex and contain numerous legal elements, which make it essential to have proper advice and representation from professional advisors, in particular at the time of the conclusion of the agreement. This is to ensure the agreement's terms and conditions are within the bounds of the Lithuanian advertising laws and other legal acts, as well as suitable for all the parties to the agreement, with a long-term view of avoiding disputes in the future, which are often beyond the scope of the imagination, both in time and financial terms.

Endorsements and sponsorship deals with teams typically involve the gamers displaying the sponsor's branding on team jerseys and team merchandise and using the sponsor's products in tournaments or other public settings. Particularly successful gamers may also be able to negotiate their own endorsement agreements. However, gamers are typically restricted by their team agreements from displaying branding of companies other than the team's sponsors.

All of these parties must be mindful of the long-term impact of these agreements and should consult with an e-sports lawyer. Often there are restrictions that apply to competing products (for example, game controllers), which if breached could result not just in lost sponsorship payments but liability for damages. In addition, long-term agreements could prevent teams and gamers from stepping up to higher-value sponsorships as they become more successful and build their following.

Gamer contracts

Professional e-sports gamers typically are part of teams, which pay them salaries (often with substantial bonuses payable from tournament winnings) and provide training resources and opportunities for tournament participation. The most successful teams are "organizations" fielding teams in multiple games, with their own dedicated facilities and training staff.

Both e-sports teams and gamers need to be aware that remuneration for performance of services also has different qualifications in both Lithuanian and foreign law.

For example, under Lithuanian law, the arrangement through which gamers are remunerated could be construed as a service provision relationship. However, depending on specific details, the gamer could also be deemed an employee. Therefore, it is imperative for lawyers to evaluate each gamer's relationship with a team, league, or any other entity. This assessment is necessary to discern the content and specifics of the agreements linking gamers and teams, thereby assessing potential risks.

Cheating

Not surprisingly, cheating in professional e-sports is a serious offense and can result in a range of consequences.

Penalties depend on the policies and practices of the league and potentially even local law. Repercussions from cheating may include automatic forfeit, bans from participation, fines, and, in rare cases, criminal prosecution. E-sports lawyers may be required to advise on whether particular actions constitute cheating under the applicable rules or applicable law.

It is essential, before planning to establish specific e-sports leagues, to define clear sanctions in the league regulations, to set up certain codes of ethics to be followed by gamers, league bodies that can legally rule on cheating by specific gamers, decision-making processes etc. where lawyers are the ones who can really assist with the issues.



Immigration and international issues and taxes

E-sports law is often regulated by laws of various countries, as online tournaments and live events bring leagues, teams, gamers, and spectators together from throughout the world. The international aspect of e-sports brings a host of logistical challenges. For example, gamers travelling for tournaments in other countries often need visas, and local immigration authorities may not know what e-sports are or consider it to be covered by the visa categories available to participants in athletic sports.

Therefore, before each journey to an international tournament whether the gamers have the appropriate visas to travel to foreign tournaments should be taken into an account. Also the possibility that the fees will be taxable in Lithuania or abroad, or perhaps in both countries should be assessed, which is exactly the kind of challenge that always requires an upfront and accurate analysis.

Mergers & Acquisitions

As e-sports industry continues to grow at a dramatic pace, competition to invest in team organizations has resulted in valuations reaching levels that many believe to be unsustainable. M&A involving team organizations, e-sports platforms and e-sports related businesses will continue to grow as the industry matures.

Consolidation is already happening in the industry, with e-sports leagues, teams, and companies joining forces to maximize their viability, marketing reach, and economic growth. Stakeholders are buying teams, and some leagues are allowing teams to sell their spots within their league.



TAX



Game developers and designers currently fall under general taxation rules, as tax administrators and other authorities do not have any special rules and laws in place yet. Although, game developer representatives work tirelessly to implement tax incentives for game-developing companies which most likely will be adopted in the very near future.

Corporate income tax

The standard corporate income tax (CIT) rate in Lithuania is 15%.

However, Lithuania might be a perfect place for game developers to start, as gaming companies can apply a reduced CIT rate of 0% or 5% if certain conditions are met. Gaming companies with fewer than ten employees and less than EUR 300,000 in gross annual revenues can benefit from a reduced CIT rate of 0% for the first year of operations and 5% for following periods.

License fee

As mentioned above, it is often necessary for developers to enter into various licensing arrangements. The fee received under the licensing agreement is subject to CIT – either the standard 15% or reduced 5%. Due to extensive double taxation avoidance agreements currently in force in Lithuania, it is an attractive jurisdiction for licensors to collect license fees from around the world.

Freelancing income taxation

Lithuania offers one of the most lucrative taxation systems for freelancers in the region.

Game developers (programmers, designers) do not need to act as a company, but rather as an individual. Registration is super easy, done electronically, and takes only a few moments.

There is also no need for starting capital. Generally, freelancer's income effective taxation³ is around 22% with almost zero accounting obligations and only once per year payable taxes.

³ An effective tax rate is the actual percentage you pay on the entirety of your taxable income.

FUNDING & INVESTMENT



Publishers and investors make up the two main game development industry specific business funding models. So, let's dig a bit deeper to see the main differences between these two patterns.

Publishers typically work with game developers to help finance, market, and distribute their games by the publisher themselves or through game portals. In exchange for their support, publishers, as a rule, receive exclusive rights to publish and distribute the game as well as a portion of the game's sales revenues.

While investors, whether angel investors¹ or venture funds², provide funding for game developers in exchange for equity in the company. This allows them to have a share in the game development business's profits (and losses if the project happens to be unsuccessful). At the same time this usually means that the developer must give up some control over their intellectual property or the company.

Typically, investors are concerned with the financial return on their investment, while publishers are more interested in ensuring the game is successful. Hence, publishers may want to invest more in marketing and promotion to boost sales.

Another difference between investors and publishers is that investors tend to be more hands-off in game development, while publishers are usually more involved. This is because publishers want to ensure that the games in their portfolio meet quality standards and comply with their marketing strategies. As a result, publishers often have quite a strong word in what goes into a game, from its mechanics to its narrative.

Sometimes a publisher becomes an investor and vice versa, and their roles interchange.

What are the key steps and what main legal documents would be needed for each type of funding?

Publishers

- Term Sheet to list the main points of future cooperation;
- Legal Due Diligence to ensure that all IP rights belong/ are legally obtained by the game developer;
- Publishing agreement which, among other things, addresses the revenue-sharing model.

Investors

- Term Sheet to list the main points of future cooperation;
- Legal Due Diligence to ensure that all IP rights belong/ are legally obtained by the game developer;
- Shares sale – purchase agreement along with the shareholders agreement to agree decision making, sharing the revenue etc.

LITIGATION & DISPUTE RESOLUTION



In the game development industry, disputes can arise in various areas. For commercial disputes, the general rules of dispute resolution would apply (for more information on commercial disputes in Lithuania, see the Lithuanian section of Lexology's Complex Commercial Litigation Guide, published by Lexology's GTDT prepared by TRINITY JUREX).

It is also possible and often advisable to provide for an arbitration clause in commercial contracts, which would enable disputes to be resolved through arbitration proceedings rather than litigation.

Although there is no specific legislation governing the games industry, the law provides for certain areas that game developers may also encounter and where specific dispute resolution procedures or pre-litigation rules must be followed.

Advertisement. Complaints about non-compliance with the Advertising Law are handled by different supervisory authorities depending on the nature of the infringement. For example, violations concerning consumer rights would be handled by the State Consumer Rights Protection Service, while violations regarding food or veterinary services would be handled by the State Food and Veterinary Service. Other supervisory authorities may include municipal executive authorities, the Department of Cultural Heritage under the Ministry of Culture, or the Directorate of Protected Areas. Any decision made by the supervisory authority can be appealed to the administrative court.

Consumer rights. Consumers who believe that their rights or legitimate interests related to the consumer contract have been violated may contact the seller or service provider directly, seek an out-of-court dispute resolution or go to court to defend their violated or contested rights or interests.

Data protection. The State Data Protection Inspectorate can initiate an investigation or inspection on its own initiative or upon receiving a complaint regarding a violation of legal acts regulating personal data protection. Decisions of the State Data Protection Inspectorate can be appealed to the administrative court.

Trademarks. The State Patent Office of Lithuania in certain cases is the first instance for disputes in relation to trademark registrations.

SUMMARY

Intellectual property

- An employment contract with the creator does not automatically give the employer full ownership rights to the work created by the employee;
- In a contract on the basis of which IP is created, without agreement on the terms of its transfer or assignment, the presumptions established by law would apply, which may not correspond to the best interests of the company;
- There are few main things to consider when creating and registering trademark, including similar trademarks in the game market, and the territories where games will be available in.

Licensing

- It is essential that the game developer clears the rights into the IP belonging to third parties before using them while developing the game;
- While licencing your game, make sure you don't get it wrong and lose the IP rights to what you've created;
- Using open-source licences is tempting, but very thorough research with IP lawyers before using it must be concluded, otherwise game creators risk losing their rights to the created game.

Consumer protection

- Under EU regulations, video game companies must provide consumers with clear and accurate pre-contractual and contractual information, including details of the game's features, content, and technical requirements, also clear information on the automatic renewal terms;
- Consumers have the right to access the video game without unnecessary delays and the right to withdraw from the contract within a specific period if they are not satisfied with the product;
- Consumers have the right to conformity, meaning that the game must work as advertised, and the right to updates to ensure the game remains functional.

Child protection

- Age verification is important for games with specific legal age requirements and appropriate disclaimers and provisions to be included in the terms of use;
- Special attention should be given to the higher risk game features, like loot boxes;
- When developing games for children, transparency and simplicity are essential, and special protection of children's personal data should be considered, including the need for age-appropriate visuals, videos, and in-game pop-ups;
- Game developers should also avoid techniques that lead children to make inappropriate privacy decisions and conduct a DPIA, if children's personal data are, for instance, processed for direct marketing purposes.

Marketing and advertising

- A good understanding of advertising regulation is crucial for game developers to ensure that their advertisements comply with legal requirements and avoid potential legal issues and harm to their brand's reputation;
- For game developers, one of the most important things in the legal regulation of advertising is a good understanding of the criteria applied to advertising when deciding on its possible misleading effects, and the requirements of advertising aimed at children.



Data protection and cybersecurity

- Transparency, fairness, appropriate legal grounds for data processing and other GDPR principles and requirements should be considered, especially when the game will be played by children;
- DPIA might be necessary to be carried out during the development of the game, especially if the game will be played by children;
- A cybersecurity strategy is a “must have” internal document for gaming companies which outlines all security related procedure.

E-sports

- Before each journey to an international tournament, it should be taken into account whether the gamers have the appropriate visas to travel to foreign tournaments, and also to assess the possibility that the fees will be taxable in Lithuania or abroad, or perhaps in both countries, which is exactly the kind of challenge that always requires an upfront and accurate analysis;
- It is essential, before planning to establish specific e-sports leagues, to define clear sanctions in the league regulations, to set up certain codes of ethics to be followed by gamers, league bodies that can legally rule on cheating by specific gamers, decision-making processes etc. where lawyers are the ones who can really assist with any arising issues;
- Typically, endorsement and sponsorship agreements are quite complex, which make it essential to have proper representation from professional advisors at the time of the conclusion of the agreement, so as to ensure the agreement’s terms and conditions are within the bounds of the Lithuanian advertising laws and other legal acts, as well as suitable for all the parties to the agreement, with a long-term view of avoiding disputes.

Tax

- New game developer companies might enjoy a reduced corporate income tax of 5% (subject to certain conditions);
- Lithuania offers one of the most lucrative taxation systems in the region for freelancers. Together with comprehensive immigration laws, it makes one of the most attractive jurisdictions for freelancing developers.

Funding and investment

- Publishers and investors make up the two main game development industry specific business funding models;
- In exchange for their support, publishers, as a rule, receive exclusive rights to publish and distribute the game as well as a portion of the game’s sales revenues;
- Investors, on the other hand, provide funding for game developers in exchange for equity in the company.

Litigation and dispute resolution

- For commercial disputes, the general rules of dispute resolution would apply. However, it is essential to consider that in some cases specific dispute resolution procedures or pre-litigation rules must be followed.

