



WHEN SHIT HITS THE FAN YOU NEED A PLAN (HANDOUT)

OR: DEALING WITH YOUR PUBLISHER WHEN THE GOING GETS ROUGH

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DISCLAIMER

This lecture was first held in October 2018 at the 4C Conference in Prague. The presentation may not include all original materials shown during this talk (pictures, videos etc.). – but has been enhanced with additional explanation text which was given during the presentation in form of voice over from the speakers.

AGENDA

- Intro
- Most common Causes of Conflict
- Active Fire Protection
- Fire-Fighting Measures



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INTRO

ABOUT US



Vera Frisch

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- >10 years Industry Experience

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- >25 years Industry Experience



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MOST COMMON CAUSES OF CONFLICT

COMMON CAUSES OF CONFLICT

- Contacts and/or Stakeholders at Publisher are changing: e.g. Producer is leaving, Head of Development changes etc.
- Strategy of Publisher changes: e.g. Parent Company overseas decides to not do mobile games anymore
- Publisher wants Feature changes - while at the same time does not want to give more time & budget
- Publisher wants additional Features - but again wants to stay in time & budget
- Publisher can't/does not want to approve Milestone
- Publisher wants to change (release) planning: game needs to be out earlier, certain features have higher prio etc.

COMMON CAUSES OF CONFLICT (CONT.)

- **Publisher requests extra services from Developer for free/without extra budget:** e.g. trailer, artworks, 50 screenshots for conference/trade show etc. (Quote: „Should be also in your interest, dear developer“)
- **Publisher does not keep his part of the bargain according to contract and agreements:** PR, User Acquisition, Marketing, QA, Milestone input in time etc.
- **Development is slipping/developer does not get game done in time:** e.g. because developer underestimated effort, some features are tougher to implement than thought etc.
- **Publisher is late with paying Milestones** (or is withholding payments on purpose)



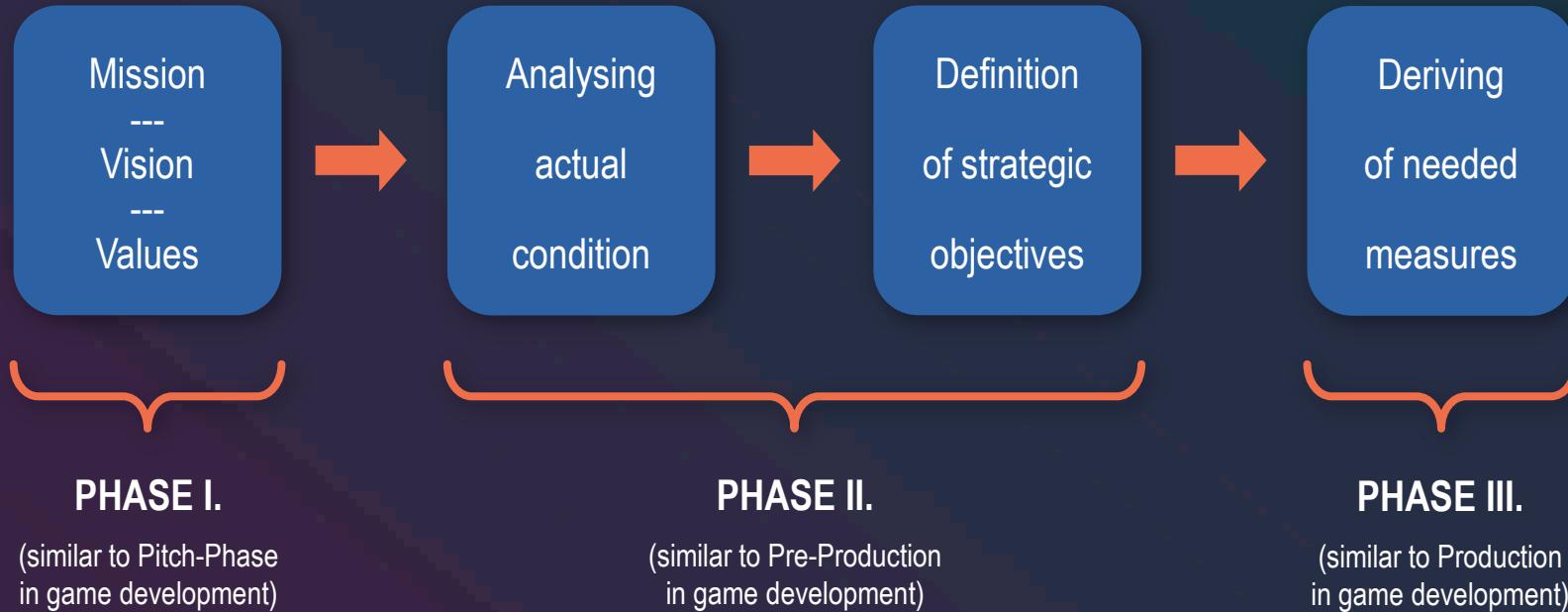
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ACTIVE FIRE PROTECTION

IMPLEMENTING ACTIVE FIRE PROTECTION MEANS

- Studio Strategy
- Pitching
- Contract
- Planning
- Collaboration

STUDIO STRATEGY: HOW TO GET THERE



STUDIO STRATEGY: WHY DO I NEED ONE?

- Basis for all later decisions
 - Short- mid-, long-term strategy (1, 2, 5 years)
 - Studio size
 - Genre, tech, platform etc.
 - One projects vs. multiple projects
 - Indie vs. Own IP vs. AAA vs. Work-for-Hire

STUDIO STRATEGY: WHY DO I NEED ONE? (CONT.)

- How do you know what to ask for in pitch & contract negotiations if you do not know where you want to be with your studio in 5 years?
- Different strategies will mean different priorities!
 - Are you willing to give up your IP in case of conflict?
 - How will you handle delays either on your or on publisher's end?
- How important is getting paid for development vs. royalties?
- Publisher and contract negotiations only make sense if you know where you are going

PITCHING

- Never rely on single project / one deal
- Always think worst case: what's Plan B?
- **Always** pitch!
- A deal can easily take ~6 – 9 months
- Your network is your next project
- It's a people business!

CONTRACT: IN DUBIO PRO REO

- Anything not clear in contract -> always to you disadvantage!
- Going to court: long & winding road (and expensive...)
- **Never** sign a contract without consulting a lawyer

CONTRACT: MOST IMPORTANT CLAUSES

- § Scope of Work/Developer's obligations
- § Payment
- § Change Request/Change Order
- § Milestones & Approvals
- § Scope of Rights/Source Code
- § IP
- § Warranty
- § Termination

CONTRACT: SCOPE OF WORK

- Exact definition of developer's obligations
- What does the developer have to deliver?
- Game Design Doc -> contract appendix
- If not ready at signature -> amendment at End of Pre-Production

CONTRACT: PAYMENT

- What budget does the developer get?
- Definition of Net-Revenues (important especially for Mobile/F2P Live service: what is Gross Revenue? What Net? Minus Marketing and User Acquisition cost or not?)
- When are payments due?
- Advance against royalties?
- What percentage?
- Who recoups when?
- What happens if publisher does not pay?

CONTRACT: CHANGE REQUEST (AKA CHANGE ORDER)

- High conflict potential if missing!
- Change requests always has impact on time & budget
- Define formal process:
 - Change Request gets in
 - Developer estimates and gives proposal
 - Publisher approves
 - Only then: Developer makes change

CONTRACT: MILESTONES & APPROVALS

- Formal process for submission & approval
- Define max. Workdays for approval (10 Workdays? More? Less?)
- Milestones linked to payments? Maybe better: Monthly payments – and Publisher can stop payment whenever a MS fails – until remedy.
- Penalties in case of delay?
- Milestone definition for F2P Mobile after Word-Wide Release? Hard to do, as features may change on weekly basis depending on user feedback

CONTRACT: SOURCE CODE

- Who owns Source Code?
- Is it licensed just for particular project by Publisher?
- Can Publisher use it afterwards for other games?
(would be more an engine licensing deal then)
- What happens in case of termination?
- Does quality of source code documentation needs to be defined?

CONTRACT: IP

- Who owns the IP / Brand?
- High chance that Publisher demands to get IP if he pays for complete development
- Is it a „shared“ IP -> 1st option/last match rights for one or both sides?

CONTRACT: WARRANTY

- What does the contract say about errors?
- A-, B-, C-Bug definitions
- What bugs/errors are allowed in Milestones?
- How long warranty after release?
- What about patents? Especially tricky with US/Patent Trolls.
Better: only patent warranties for Europe if you are a European studio.

CONTRACT: TERMINATION

- What are the termination clauses?
- When? End of Pre-Prod? Only when one party in breach? Always?
- By whom? Publisher only?
- What are periods/deadlines?
- Is there a „kill-fee“

PLANNING: YOUR SHARPEST KNIFE

- Be transparent – no hiding! Only with a transparent and clear planning you can protect yourself, especially in case of Change Request through Publisher
- Planning at end of Pre-Prod -> Needs to become contract amendment
- No fuzzy Milestones – never in advantage of Developer. Publisher will only pay if he gets what he is expecting to get.
- Always communicate what will be delivered – and what not.
- Be pro-active – think for the Publisher (Conferences, trailers, etc.)

COLLABORATION: COMMUNICATION

- Your Champion of the game at Publisher: Producer
- Try to have final word in choice of Producer (why not doing a Publisher Due Diligence?)
- Always communicate in writing
- Decisions never in Slack, Skype, Discord etc.
- If Slack cloud shuts down server -> all your communication is gone (apart from the fact, that it's hard to find any correspondence in Slack that is 5 months old).
- **Only** Email for any decision

COLLABORATION: MEETING MINUTES & REPORTS

- High relevance in case of legal measures
- Take meeting minutes of every conversation
- Send them around, so everyone has seen them
- Structure:
 - Agenda
 - Points discussed
 - Agreed decisions
 - Action Points/Next Steps
(incl. responsibilities & deadlines)
 - <http://www.gameproducersguide.com/Templates.html>



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FIRE-FIGHTING MEASURES

GENERAL RULES OF CONDUCT

- React at once in case of conflict
- Consult lawyer immediately (but do not tell your Publisher yet to not escalate situation too quickly)
- Everything needs to be in writing now more than ever
- Be constructive: Carve out root of problem (together with Publisher)
- Never get emotional
- Never show signs of weakness (even if you are with your back against the wall)

CONFLICT: CHANGE REQUEST

- Publisher (or Developer) has Change Request:
 - What's the formal CR process?
 - If there's none: CR only after budget proposal & greenlight
- Never do a CR “on-the-fly”
- CR always cost money
- Never go for: “But this is also in your interest”

CONFLICT: MILESTONE REJECTION

- Most common cause:
 - Fuzzy Milestone description (“50% Pathfinding done”)
- Publisher: “That’s not what I thought I would get”
- Precise MS-Definition & Acceptance Criteria are crucial
- Particularly tough with Agile Methods (SCRUM)
- Never be misleading! Always be exact!

CONFLICT: DEVELOPMENT SLIPPAGE

- Be transparent – never try to hide when you are slipping or only tell the very last day before deadline
- Always signal potential delays as early as possible
- Try to get out “good enough” version
 - ...you can still request improvements per Change Request
- Feature Cut
 - ...requires features classification in the 1st place
 - ...also requires Nice-To-Have-Fluff to cut out

BEST PRACTICES & GEMS

- Simple formula:
 - $X = \text{Development Time}/\text{Spent Budget}$
 - $Y = \text{Chance of getting axed}$
 - The higher X is, the lower Y will be
- The more budget a publisher has already spent the less likely it is that he will kill the game
- But there's no guarantee! A strong Publisher might still kill your game 4 weeks before Gold Master

BEST PRACTICES & GEMS (CONT.)

- Keep your reminder period (e.g. payment reminder, etc.)
- Changing Publisher is tough:
 - Even after an official legal split
 - New Publishers will react cautiously
 - It's like a complete new Pitch & Deal Period
- Ultima Ratio: Stop working! (but: easier & more effective if you have multiple projects)
- If game is live: Check with Platform holders to potentially get game out of store



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ANY QUESTIONS?

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