

AKUPARA

✦ GAMES ✦

+

DEV//ANT

L E G A L

Present:

Publisher Red Flags



WHO IS AKUPARA GAMES?

Akupara Games is an ever-growing indie **Publisher and Developer**, focused on bringing exceptional narratives with striking worlds to our players. Based in Los Angeles, we are a collective of game industry veterans working together alongside the young rising stars of tomorrow; we temper experience with forward-thinking vision. We strive to make our games and experiences **accessible** in all meanings of the word - **playability, availability, and likability**.

INTRODUCTION

Alyssa Kollgaard

(any/all)

COO, Akupara Games

Founder, Publisher Pathfinder



Notable Titles:

- Ratchet & Clank: All 4 One
- Resistance 3
- Aliens: Fireteam Elite
- Stuntman: Ignition
- Frontlines: Fuel of War
- WARMACHINE: Tactics
- Starblood Arena
- My Pet Hooligan
- Rain World
- GRIME
- Sorry We're Closed
- Cryptmaster



AKUPARA
★ G A M E S ★

Publisher

Pathfinder



DeviantLegal's mission is to be an
industry ally & make **top quality**
legal solutions **accessible**
for everyone,

regardless of
size, budget or
background

INTRODUCTION

René Otto (he / him)

VIDEO GAME LAWYER

FOUNDER OF DEVIANT LEGAL

WORKED (AND WORKING)
WITH AROUND 250 DEVS & PUBLISHERS

SECRETARY
@ BREDAGAMECITY

ADVISORY BOARD
@ BRANCHEVERENIGING ESPORTS NEDERLAND

AMBASSADOR
@ WOMEN IN GAMES

MENTOR
@ DUTCH GAME ASSOCIATION



PUBLISHER RED FLAGS

What to Look For in Contracts and Negotiations

Signing with a Publisher can be a pivotal moment for a Developer looking for external support and financing, and even the most experienced of industry veterans don't always know or recognize the telltale signs of a *bad partnership*.

By the end of this talk, you'll be equipped to:

- Decide if a publisher is *right for you*
 - Recognize contractual pitfalls and *mitigate legal risk*
- Arm yourself with the *knowledge* to ask the right questions
- Identify the best partners for your *specific and unique needs*

CONTRACT TERMS RED FLAGS

- ✗ 100% UPFRONT RECOUP
- ✗ RECOUPS MORE THAN INVESTMENT
- ✗ TRANSFER OF IP OWNERSHIP
- ✗ OPTIONING OF FUTURE IP
- ✗ NO EXIT CLAUSE
- ✗ EXPLOITIVE PAYMENT TERMS
- ✗ NO AUDIT OR REPORTING VISIBILITY





100% UPFRONT RECOUPMENT



Red Flag

The Publisher recoups 100% of its investment before the Developer sees any revenue - often including marketing, overhead, and internal costs.

Why It Matters:

Even a moderately successful game may never generate royalties for the Developer or may not see payouts for multiple years. After all the direct development financing is expended, the Developer is left with a gap in financing. *Developers should get paid from day one!*

Watch For:

- No minimum payout floor
- Full recoupment before any profit split
- Publisher recouping all expenses - internal, direct and indirect funding

Healthy Alternatives:

- Partial recoupment or early revenue sharing after launch costs are recovered.
 - This rev-share split may swap in the Developer's favor after the Publisher recoups expenses.



RECOUP EXCEEDS INVESTMENT



Red Flag

The Publisher recoups more than it spent via multipliers, fees, or markups.

Why It Matters: This acts like hidden interest, dramatically extending recoupment timelines.
Recoupment should only be in the amount of actual expenses.

Watch For:

- 110–200% recoupment
- “Administrative” or “management” fees
- Internal costs inflated or billed above market rates

Healthy Alternatives:

- Recoupment capped at actual, documented spend, with clear definitions.



TRANSFER OF IP OWNERSHIP



Red Flag

The Publisher requires a full transfer (assignment) of IP ownership, often covering current and future works, derivatives, and improvements - even for projects the Publisher never meaningfully supports.

Why It Matters:

You permanently lose control of your work. This limits future monetization, reuse, reversion opportunities, and negotiating leverage. ***You should always retain the rights to your own creative works.***

Watch For:

- “Assigns all right, title, and interest” language
- “In perpetuity” “any format now known or later developed” language
- No reversion of rights after recoupment or term end
- Broad definitions of “IP” that include unrelated assets



OPTIONING OF FUTURE IP



Red Flag

The Publisher gets first refusal or options on future games or unrelated intellectual property.

Why It Matters: This can reduce your leverage for future deals or **lock you into bad partnerships** beyond a single title or contract term (even if the option is never exercised).

Watch For:

- “Any future works”
- Long decision windows (6–12+ months)

Healthy Alternatives:

- Options limited to open negotiations about direct sequels, short decision windows, no penalties if declined.



NO EXIT CLAUSE



Red Flag

No clear path for rights to return if the Publisher underperforms, goes out of business or breaches the contract terms.

Why It Matters:

You can be *stuck indefinitely* with a dormant, unfinished, unsupported or neglected title.

Watch For:

- No sales thresholds
- No termination for non-performance
- No reversion opportunities, even for cause

Healthy Alternatives:

- Rights revert if milestones aren't met or after a defined time.
- Exit from the contract if both parties mutually agree.
- Time-bound contract

\$ EXPLOITATIVE PAYMENT TERMS \$

Red Flag

The Publisher controls cash flow through delayed, conditional, or opaque payment schedules.

Why It Matters:

Even when your work performs well, slow or discretionary payments can starve you of income, **shift financial risk onto you**, and make long-term planning impossible.

Watch For:

- Long payment timelines that favor the publisher
- No obligation to pay interest on late payments
- Broad rights to withhold, offset, or bundle payments
- Vague or undefined accounting periods

Healthy Alternatives:

- Clear, fixed payment schedules, automatic payment obligations once revenue is earned, transparent statements, and penalties or interest for late payments.



NO AUDIT OR REPORTING VISIBILITY

Red Flag

The Publisher provides vague statements (or none at all) and denies audit rights or limits them so heavily they're unusable.

Why It Matters:

Without transparent reporting and audit access, you cannot verify sales, recoupment status, or royalty calculations, making underpayment or *misreporting impossible to detect*.

Watch For:

- No contractual obligation to provide regular statements
- Reporting “at Publisher’s discretion”
- Audit only allowed if “material breach is suspected”
- Publisher-controlled data sources with no verification rights
- Limited, revoked or refused access to backend reporting tools

Healthy Alternatives:

- Regular, detailed royalty statements (at least quarterly), clear calculation methodologies, and a practical audit right allowing independent review with reasonable notice and scope.

PARTNERSHIP RED FLAGS

- ✗ CREATIVE CONTROL AND VISION
- ✗ MISALIGNMENT OF VALUES, ETHICS AND GOALS
- ✗ QUALITY AND DISTRIBUTION OF SERVICES
- ✗ OVERPROMISING AND UNDERDELIVERING
- ✗ PORTFOLIO NEGLECT
- ✗ ADVERSARIAL AND COMBATIVE
- ✗ SPEED OVER DILIGENCE





CREATIVE CONTROL & VISION



Red Flag

Publisher has “final say” on creative decisions without limits. Even if this isn’t detailed in the contract terms, look for hints that the publisher intends to *steamroll creative decisionmaking* or bypass approval or feedback rounds.

Why It Matters:

Your game can be reshaped to the point it no longer fits your creative vision (even at its own expense).

Watch For:

- “At Publisher’s sole discretion”
- Final approval over art, narrative, tone, monetization
- Pushback on creative direction, especially with regards to audience, tone, voice, brand identity and positioning

MISALIGNED VALUES, GOALS & ETHICS

Red Flag

The Publisher's incentives, behavior, or strategy conflict with the Developer's long-term goals, audience trust, or ethical standards.

Why It Matters:

Even financially sound deals can fail when values clash - leading to brand damage, audience backlash, or strategic dead ends. If there are aspects of your personal identity, company or game pillars that are in direct conflict with those of the Publisher, it creates conflict and friction when it comes to making business decisions that **impact your product and livelihood.**

Watch For:

- Aggressive monetization that harms audience trust
- Short-term revenue focus over long-term growth
- Publisher actions that conflict with your public stance or mission



QUALITY & DISTRIBUTION OF SERVICE

Red Flag

Same marketing, production, and launch plan for every game. Misalignment between services offered and services required. Unfairly balanced distribution of responsibilities. Excellent promises with poor execution or output.

Why It Matters: Your game has unique risks and audiences. *Alignment creates commitment.*

Watch For:

- Generic marketing plans
- No genre-specific insights
- Publisher does not offer services required
- Publisher has little downside if the game fails

OVERPROMISING & UNDERDELIVERING

Red Flag

Big verbal promises not reflected in the contract terms.

Why It Matters: “If it’s not written down, it doesn’t exist.”

Watch For:

- High staff turnover - your champion at the Publisher keeps changing
- “We’ll figure that out later”
- “Trust us”
- Resistance to adding specifics
- Publisher discourages seeking references or referrals

PORTFOLIO NEGLECT

Red Flag

Publisher signs many games but actively supports few. Shotgun launch approach hinders true integration into the project. No longtail support post-launch.

Why It Matters:

Publisher is not as reliant on success of a single title in the same way as the Developer is.

Watch For:

- How much effort is put into marketing current signed titles?
- How long has active support lasted post-launch?
- How many projects are team members supporting simultaneously?
- How many projects are launched annually?



ADVERSARIAL OR COMBATIVE



Red Flag

Negotiation and tone feels combative rather than collaborative.

Why It Matters: This sets the tone for years of working together. You don't want to be legally shackled to someone who doesn't see or *treat you as a partner.*

Watch For:

- Pressure tactics
- “This is non-negotiable”
- Deadline threats
- Inability or unwillingness to compromise

SPEED OVER DILIGENCE

Red Flag

They want you to sign *fast*.

Why It Matters: Good partners encourage legal review, they don't try to trap you in a deal you haven't fully vetted.

Watch For:

- Advocation of skipping crucial process steps
- Everything seems too good to be true



ADDITIONAL RESOURCES



- [Publisher Pathfinder](#): Retro-style "choose your own adventure" tool designed to match devs with suitable game publishers, investors, and funding sources from a database of 800+ orgs.
- [Developer Resources](#): Pitch deck template, MNDA, financial spreadsheet, and publishing agreement from Raw Fury.
- [Game Dev's Guide to To Publishing Agreements](#): DeviantLegal's guide designed to help devs navigate the complexities of video game publishing agreements.
- [2025 Publishing Agreement Market Report](#): Builds off a 2020 GDC presentation, is intended to democratize publishing agreement data by analyzing data from over 100 publishing agreements.
- [Five Key Publishing Contract Pitfalls](#): Attorney Kellen Voyer laid out five common problem areas for indie developers to watch out for in publishing contracts.
- [What Makes a Good Publishing Contract](#): A breakdown of Raw Fury's publishing contract by GameDiscoverCo
- [Video Game Publishing Agreements](#): What Developers Need to Know in 2025 by Zachary Strebeck, Attorney at Law.

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That's all Folks!

Any questions?