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Digital Distribution and Games as a Service

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SYMPOSIUM PANEL I

Panelists
Mr. Marco Mereu, uCool
Mr. Patrick Hudson, Robot Entertainment
Mr. Steve Nix, GameStop
Mr. JJ Richards, MOGA

Dean John Attanasio:

Good morning. My name is John Attanasio, and I am Dean of the SMU Dedman School of Law.[1] It is my pleasure to welcome you here this morning. The law school has a very rich intellectual life, not only in the classroom, but also outside the classroom.

On January 28-29, 2013, Justice Antonin Scalia visited SMU as a Distinguished Jurist in Residence.[2] Our own Professor Bryan Garner joined him on January 28 in presenting their book[3] to a sold-out audience.[4] This is our fifth time doing this event. It is one of my favorite events of the year, in part because it is always a very rich conference, but mostly because I am an avid gamer myself. I have played video games from when my kid—who now has kids of his own—was around seven years old. I think the original *Zelda* was our first game.[5] We have played games forever, even when it was not quite as popular as it is today. Gaming, though, caught on very quickly.

Dean John Attanasio:

Despite some challenges and setbacks this year, Forbes estimates that the video game market will grow from $67 billion to $82 billion by 2017.[6]

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1. John B. Attanasio, SMU DEDMAN SCH. L., https://www.law.smu.edu/Faculty/Full-Time-Faculty/Attanasio.aspx (last visited Mar. 4, 2013).

2. U.S. Supreme Court Justice Antonin Scalia to join co-author, Law Professor Bryan Garner for talk Jan. 28, SMU DEDMAN SCH. L. (Jan. 25, 2013) http://www.smu.edu/News/2013/reading-law-book-24jan2013.

3. *See generally* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012).

4. "Scalia's and Garner's Reading Law: The Interpretation of Legal Texts" SOLD OUT, SMU DEDMAN SCH. L., http://www.law.smu.edu/Events/Dean-Suite/-Scalia-and-Garner-s-Reading-Law—The-Interpretati.aspx (last visited Mar. 24, 2013).

5. *Zelda Universe*, LEGEND ZELDA SERIES, http://www.zelda.com/universe/ (last visited Mar. 4, 2013).

6. John Gaudiosi, *New Reports Forecast Global Video Game Industry Will Reach $82 Billion By 2017*, FORBES (July 8, 2012 11:35 AM), http://www.forbes.com/sites/johngaudiosi/2012/07/18/new-reports-forecasts-global-video-game-industry-will-reach-82-billion-by-2017/.

The business models, law, and technology we will discuss today will pave the way for this growth. Just as a point of reference, the gaming industry is still significantly bigger than the movie industry. This conference is unique because it brings together business leaders from the video game industry and legal practitioners to share their views and expertise. This exchange of ideas and insight benefits everyone. The timing of the conference allows us to not only look backward at 2012, but also look forward to upcoming developments in 2013. This year we have assembled a tremendous group of panelists. Last night we screened Indie Game: The Movie, a documentary about independent game developers.[7] Today and tomorrow we will hear from industry experts on topics such as online distribution (which is especially important today), crowd funding, game financing, and legal issues affecting video game development.

In addition to our panelists, we have two keynote speakers. Mark Long, an industry veteran and CEO of Meteor Entertainment, will deliver the keynote speech.[8] Later this evening, Michael Burns, a filmmaker and cofounder of Rooster Teeth Productions, will address attendees at the Founders dinner at the Meadows Museum on SMU's campus.[9] Finally, the conference will conclude similar to last year; with several companies pitching their games and products to a panel of industry experts.

This conference is a wonderful cooperative effort and could not have been possible without the participation of a lot of different groups. I want to thank Gary Brubaker and Doug Darby of the Guildhall.[10] SMU was very innovative in terms of being the first university that I know of to offer a degree in video game development.[11] In addition, I would like to thank Mark Smith, Allen Dunlop, and Paige Cunningham from the Center for American and International Law.[12] Additionally, thanks to our own Rebekah Bell and Lynn Dempsey for their organizational efforts. And I particularly want to thank my colleagues Professors Xuan-Thao Nguyen[13] and Keith Robinson[14]

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7. INDIE GAME: THE MOVIE, http://buy.indiegamethemovie.com (last visited Mar. 4, 2013).

8. Team, METEOR ENT., http://meteor-ent.com/team/ (last visited Mar. 4, 2013).

9. Burnie Burns - Profile, YATEDO, http://www.yatedo.com/p/Burnie+Burns/ famous/474c021fb3cdd2e2e22c6638f24323cb (last visited Mar. 4, 2013).

10. SMU Program Participants: Gary Brubaker and Doug Darby, GAME::BUSINESS::LAW 2013 INTERNATIONAL SUMMIT, http://smu.edu/gbl/ speakers.html (last visited Mar. 26, 2013).

11. *Excellence in Game Development and Game Design*, SMU GUILDHALL, http:// guildhall.smu.edu/Video-Game-Development-Master.195.0.html (last visited Mar. 4, 2013).

12. Contact Us, CENTER FOR AM. & INT'L L., http://www.cailaw.org/About-the-Center/Board-of-Trustees/index.html (last visited Mar. 4, 2013).

13. Xuan-Thao Nguyen - Profile, SMU DEDMAN SCH. L., http://www.law.smu.edu/ Faculty/ Full-Time-Faculty/Nguyen.aspx (last visited Mar. 24, 2013).

for their very coordinated efforts in planning this conference. I would also like to recognize some of our sponsors: Munger, Tolles, and Olson;[15] Haynes and Boone;[16] Latham & Watkins;[17] Munck Wilson Mandala;[18] and the Computer Law section of the Dallas Bar Association.[19] I would also like to thank the students with the SMU Science & Technology Law Review who play such an important role in this conference. Finally, I would like to thank all of you for attending. I look forward to a very interesting conference. It is now my pleasure to welcome Gary Brubaker, Executive Director of the Guildhall at SMU, who will also give some introductory remarks.[20]

Mr. Gary Brubaker:

I am the relatively new director of the Guildhall.[21] I have held that position for about nine months now since I took over for Dr. Peter Raad.[22]

I just have a few minutes, but in that time I would like to talk about a couple of core values we have at the Guildhall. First, we are fiercely interdisciplinary. When we were putting together the Guildhall, we realized that as we enter into the twenty-first century, people will need to be skilled in many areas. Traditional academia often separated people with different skills, but we thought we could bring together art, design, production, and programming in one place. We want to put students in the same classroom to see what that kind of cross-fertilization provides. This conference is just really an extension of that for us. It is a place where we can continue to mingle and make quality connections with people who have knowledge outside of our traditional skill sets.

Secondly, when I started as a game programmer, it was an interesting time because video game companies were mostly small companies. They were start-ups made up of people who were fans of playing games and thought they could make them. As time went on, many of those companies

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14. Walter Keith Robinson - Profile, SMU DEDMAN SCH. L., http://www.law.smu. edu/Faculty /Full-Time-Faculty/Robinson.aspx (last visited Mar. 24, 2013).

15. MUNGER, TOLLES, AND OLSON, http://www.mto.com/ (last visited Mar. 24, 2013).

16. HAYNES AND BOONE, http://www.haynesboone.com/ (last visited Mar. 24, 2013).

17. LATHAM & WATKINS LLP, http://www.lw.com/ (last visited Mar. 24, 2013).

18. MUNCK WILSON MANDALA, http://www.munckwilson.com/ (last visited Mar. 24, 2013).

19. Computer Law Section, DALLAS BAR ASSOCIATION, http://www.dallasbar.org/ content/ computer-law-section (last visited Mar. 24, 2013).

20. The Guildhall at SMU Staff, SMU GUILDHALL, http://guildhall.smu.edu/ Staff.13.0.html (last visited Mar. 4, 2013).

21. *Id.*

22. Peter Raad—Profile, INTO PIXEL, http://www.intothepixel.com/jurors/peter-raad.asp (last visited Mar. 4, 2013).

went away, but some of them grew and became mid-sized companies. Then some of those mid-sized companies continued to grow, bought out other mid-sized competitors, and became very large companies. It is typical for industries to consolidate as they mature and they grow. For many years—even after we started the Guildhall—people would say, "I want to go work at one of those big publishers because they are the giants that rule the earth."

But this is an interesting time; this is a time of change. Because of the hardware and software innovations and the mobile and social developments, you can do amazing things with small teams; small developers again can make games that are competitive with the largest companies and can be just as innovative in the market place. So, again, we are seeing a time of many small companies. It is interesting how quickly we have gone through this cycle.

It is so crucial to the Guildhall to be participants in the change and to track with the change. I have been with the Guildhall a little over nine years now, and I joke with some of my colleagues that our curriculum looks nothing like it did nine years ago. It would be almost completely unrecognizable. I think, "Would it be nice to be a math professor?" Vectors have not changed in the last 2000 years. You can teach them the same way today as you did 100 years ago. But I am glad to be where I am because it is great to be part of, and participate in, this change.

Professor Xuan-Thao Nguyen:

Good morning. I am a law professor here at SMU Dedman School of Law. First, I want to say thank you so much to Dean John Attanasio. With his vision and support, and together with the Center for American International Law, SMU Dedman School of Law, and the Guildhall, we formed the Game::Business::Law Conference and this annual summit. This is important because gaming touches on so many topics: financing, business law, intellectual property law, trade secrets, software law, copyright law, patent law, and trademark law. We want to bring our students to the twenty-first century and prepare them for the future.

I am so delighted to introduce you to my colleague, Professor Keith Robinson.[23] Two and one-half years ago, Dean John Attanasio and our hiring committee decided to offer to bring Professor Robinson to SMU because of his intellectual property background. He graduated from Duke University with an electrical engineering degree.[24] He then worked as a software developer for several years before returning to Duke for his law degree.[25] Then he went to Washington, D.C. and worked for Foley and Garner for six years.[26] Professor Robinson has a deep understanding not only of intellectual property law but also disruptive technologies and cares deeply about our students

23.   Walter Keith Robinson, *supra* note 14.

24.   *Id.*

25.   *Id.*

26.   *Id.*

here. Last year, I invited Professor Keith Robinson to be the mastermind of this program. He has worked tirelessly over the last couple of months with an excellent group of members in the industry and legal community.

With that, I want to welcome and introduce you to my colleague, Professor Keith Robinson.

Professor Keith Robinson:

Thank you, Professor Nguyen. It is truly an honor and a pleasure to kick off this conference today. As the Dean mentioned, last night we held a screening for *Indie Game: The Movie*.[27] After the movie, we had a question and answer session with the developer, where he talked about his experiences developing the game. A lot of things that came out of that discussion will be amplified today. The developer reiterated that to make games, you must be truly passionate about developing the game and cannot fear the outcome of the game. That is what makes the gaming industry so attractive to a lot of people: it is their chance to put their heart and soul into a product. Then, they sell it to others to enjoy the effort and work that they put into it.

Additionally, the screening shed light onto the many business and legal issues that surround game development. As Dean Attanasio mentioned, the gaming industry is now larger than the film industry.[28] With that comes a lot of success and benefits. But as my law students especially know, this brings a lot of legal perils as well. So, one of the things we want to do today is talk about the business side of things. We will have a good dialogue from the business side, the legal side, and the development side.

We are all here because we love video games. Some may want to develop games, and others, like myself, enjoy playing games to relax after a long hard day. I will introduce someone that has been very instrumental in the assembly of the conference, Mark Smith from The Center for American and International Law.[29]

Mr. Mark Smith:

I would be remiss if I did not take a moment to say thank you to Dean Attanasio, whose vision helped lay the foundation for what we have here today. I would also like to thank Xuan-Thao Nguyen, Gary Brubaker, Ron Jenkins, and particularly Keith Robinson and Doug Darby for the work they did in pulling this program together.

I'm here on behalf of The Center for American and International Law, and we are proud to be one of the conveners and partners of this program.[30] At the center where I work, our piece of the puzzle is the law. Typically, in law, we look to the past to predict the future. We base much of what we do on precedent. But that does not always work in your world, and that is what

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27. INDIE GAME: THE MOVIE, *supra* note 7.

28. Gaudiosi, *supra* note 6.

29. CENTER FOR AM. & INT'L L., *supra* note 12.

30. *Id.*

makes this program so special. It is an opportunity, as Gary said, to bring together people from a variety of different disciplines. It brings together developers, business people, and lawyers to look at the world that we occupy; a world that changes rapidly. You are part of an amazingly dynamic world, and it is our responsibility to keep up with you. This conference provides an opportunity for us to work together and to look to the future together. We are delighted to be a part of it. Thank you very much for your participation.

Professor Keith Robinson:

We are going get started with our first panel. This panel is about games as a service and digital distribution. Because of the big boom in online gaming, audiences now expect periodic updates. Games have become more than a standalone product; they have also become a service. We have assembled an amazing panel to talk about the digital distribution of these games, and the games-as-a-service model. This panel is moderated by Marco Merue, the General Council and Vice President of Business Development at uCool.[31]

Mr. Marco Merue:

Thank you, Professor Robinson. I appreciate the introduction. We are excited about being here today. This is a great conference. Like Professor Robinson mentioned, I attended last year and thought we had a great turnout and shared a lot of information with the attendees.

In the past two or three years, there has been a fair amount of disruption in how we play games, the platforms we are playing games on, and most importantly, how we pay for those games and how those games are delivered to us. These changes create a number of opportunities out there for developers and attorneys.

I am going to introduce my panel. First, there is Steve Nix.[32] Mr. Nix is the Divisional Vice President and General Manager of GameStop.[33] He is in charge of digital distribution and probably knows more about digital distribution than anyone on the planet.[34] Next, there is Patrick Hudson.[35] Mr. Hudson is the President and CEO of Robot Entertainment.[36] He is a long-time game developer and has worked on a number of classic titles, including *Age of Empires*.[37] He also has two great new franchises, *Orcs Must Die* and, one of

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31. Marco Mereu—Profile, LINKEDIN, http://www.linkedin.com/in/marcomereu (last visited Mar. 4, 2013).

32. Steve Nix—Profile, LINKEDIN, http://www.linkedin.com (search for Steve Nix, go to first result) (last visited Mar. 4, 2013).

33. *Id.*

34. *Id.*

35. Studio, ROBOT ENT., http://www.robotentertainment.com/studio (last visited Mar. 4, 2013).

36. *Id.*

37. AGE OF EMPIRES, http://ageofempiresonline.com/en/ (last visited Mar. 4, 2013).

my personal mobile favorites, *Hero Academy*.[38] Last but not least, we have JJ Richards.[39] Mr. Richards is the Divisional Vice President for MOGA.[40] This new and emerging platform, commonly referred to as a micro-console, is something that you are going to be hearing more and more about.[41]

We are going to discuss digital content delivery, which is how people are buying and receiving their games. We are also going to talk about games as a service. This is a new way to deliver game content to players over a period of time rather than just selling them a boxed product and not engaging with them again.

On that note, I am going to start off asking Steve Nix the first question. Mr. Nix, as the largest game retailer in the United States, can you talk a little bit about where you see digital delivery and digital content delivery going in 2013 and beyond?[42]

Mr. Steve Nix:

Digital delivery has been really exciting for GameStop. At GameStop, we are going to continue to see the proliferation of digital gaming and content across platforms and channels.

In mobile, we have seen a real shift over the last few years—obviously, smart phones came along. People have been saying that mobile gaming was about to take off for years. It finally happened with the iPhones. Originally, the iPhone was about paid applications, and the applications cost about $5. But then the price for paid applications got driven down to $1. Now, most mobile games are free, and we expect to see the majority of games to be free in the future. This is especially true on the Android because there are huge piracy concerns. Developers learn that the best way to make money on mobile games is to make them free to play.

The PC has also been super interesting. I am a long-time PC gamer, but a few years ago, everybody was talking about the death of PC gaming. The NPD[43] data on PC gaming showed it was dead.[44] Why would anyone invest

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38. *Orcs Must Die*, ROBOT ENT., http://www.robotentertainment.com/games/orcsmustdie (last visited Mar. 4, 2013); *Hero Academy*, ROBOT ENT., http://www.robotentertainment.com/ games/heroacademy (last visited Mar. 4, 2013).

39. James Brightman, *How MOGA Unlocks the Core for Mobile*, GAMES INDUSTRY INT'L (Oct. 22, 2012, 8:04 PM), http://www.gamesindustry.biz/articles/2012-10-22-how-moga-unlocks-the-core-for-mobile.

40. *Id.*

41. *Id.*

42. About Us, GAMESTOP, http://www.gamestop.com/gs/help/About_Us.aspx (last visited Mar. 4, 2013).

43. NPD GROUP, https://www.npd.com/wps/portal/npd/us/home/ (last visited Mar. 26, 2013).

44. Kristin Kalning, NBC NEWS, *Is PC Gaming Dying? Or thriving?*, Mar. 26, 2008, http://www.nbcnews.com/id/23800152/ (last visited Mar. 24, 2013).

in a PC game? But then we started getting better data on the market about what was going on with digital distribution and PC games.[45] And if PC digital is overlaid on top of PC retail, then you realize that PC gaming was not dead.[46] In fact, it was actually growing.[47] It had just moved to digital platforms. That was exciting. People are starting to really come out with new PC games. Often the best version of a game is on the PC because there are great alternative distribution systems on the PC with digital.

Also, the console downloadable content ("DLC") growth has been fantastic. Gamers are expecting the best games to have additional add on DLC content. Today, games come out with a digital version along and a physical version. There is going to be tremendous continued growth in these platforms, but it is going to be slightly different for each platform.

Mr. Marco Merue:

Mr. Hudson, you have developed games for a long time. You have developed games on PC and mobile, and you work with Steam.[48] As a developer, can you talk about some of the pros and cons of digital delivery for both mobile and PC?

Mr. Patrick Hudson:

The biggest change for us as developers is that we have much more access to customers these days. Traditionally, if you wanted to release a game at retail, you had to go through a publisher. You were a step removed from the customer. Also, you had to go through a retailer, such as GameStop. That created another layer of separation from the customer. Now with digital distribution platforms, we are right up next to the player. We are building those relationships one-on-one between developer and player. That is a huge change for developers. The walls have really started to be torn down over the last several years; not completely yet on consoles, but that may be coming with the next generation. It is difficult for me to comment on that because I am the farthest removed from the console development these days.

45. *According to the NPD Group, in 2009, 21.3 Million PC Games were Downloaded in the U.S. versus 23.5 Million Purchased at Retail*, NPD GROUP, July 21, 2010, https://www.npd.com/wps/portal/npd/us/news/press-releases/pr_100721/!ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3g3b1NTS98QY0P3 EHNzA0-PAE9XT0MfIyMLU_1I_ShznPL-JvoF2YGKAJ__tkw!/ (last visited Mar. 24, 2013); *Revenue from In-Store Purchases Continues to Trump Digital*, NPD GROUP, Sept. 20, 2010, https://www.npd.com/wps/portal/npd/us/news/press-releases/pr_100920/!ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3g3 b1NTS98QY0P3EHNzA0-PAE9XT0MfI3cnY_1I_ShznPJBRvoF2YGKAKyjr SE!/ (last visited Mar. 24, 2013).

46. *Id.*

47. *See id.*

48. STEAM, http://store.steampowered.com/ (last visited Mar. 4, 2013).

Some of the pros are the massive installments. With smart phones, there are billions of customers.[49] On Steam—which is the biggest digital distribution for PC gaming—there are 45 or 50 million customers.[50] This is a captive audience that is waiting for the type of content that we make. We are not trying to make sure we are in the Sunday circular for Best Buy anymore. This is a huge change.

There are certainly cons as well. The low barriers to entry create massive competition. The number of games on iOS measures in the hundreds of thousands,[51] so the cost to acquire customers there can be outrageously high. It is less so on PC. You cannot buy the content or the placement on PC the way you can on iOS. This makes it a lot easier to acquire customers on PC. One of the downsides of any of the digital distribution platforms is that they take a 30% cut, but this is better than the costs of manufacturing a disc and shipping it.

Overall, digital delivery has been great way for us to reach customers we never could have reached before. We know who they are, and we can continue those relationships. Both communities on multiple platforms are going forward, and it is a virtuous cycle for us. One of the more valuable things of digital distribution today is the long tail of sales. Previously, a game like *Age of Empires*[52] would have a huge revenue pop upfront. Then, developers would hope it would get featured again by Best Buy or GameStop in some sort of circular around the holidays. After that you forget about it; it is all word of mouth.

Mr. Steve Nix:

Age of Empires, which we now carry digitally in our stores, continues to be in our Top 20 List of what customers seek.[53] That is a game we have not had on our shelves for years, but we sell tons of digital copies every single week.

Mr. Patrick Hudson:

Those opportunities to merchandise digitally, adjust your pricing, and have promotions years after a game was launched can have significant revenue pops that you never could have done before in traditional retail. It creates a library for developer content to sell on.

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49. *See Global Mobile Statistics 2013 Part A: Mobile Subscribers; Handset Market Share; Mobile Operators*, MOBITHINKING, http://mobithinking.com/mobile-marketing-tools/latest-mobile-stats/a#smartphonepenetration (last visited Mar. 24, 2013).

50. STEAM, *supra* note 48.

51. *Count of Active Applications in the App Store*, APP STORE METRICS, http://148apps.biz/app-store-metrics/?mpage=appcount (last visited Mar. 24, 2013).

52. AGE EMPIRES, *supra* note 37.

53. *Id.*

Mr. Marco Mereu:

Over the last year, and more in the last few months, a lot of developers have moved away from social networks like Facebook.[54] In my opinion, Facebook gaming has come and gone to some degree. Most people I know are not developing anything for Facebook right now. It is very difficult for a game developer to do well on Facebook without investing a huge amount of money in advertising. Developers are recognizing that it is actually easier to build their own mini social network, or their own mini gathering of individuals or players that might be interested in their game. Then when they release their game, they have an immediate installed network of users to make their game available.

A good example of this is a game that recently came out called Line Pop.[55] Line Pop is a three-match game, like the game Bejeweled.[56] It is nothing new or original. The game has probably been done 100 times before it, and probably better to some degree. But on Day One, Line Pop had over one million downloads[57] because it was marketed by an Asian messaging developer through the developer's social network.

The game was phenomenal. It was an example of a viral game. That is going to be a term that you are going to hear more often towards the end of this year. It refers to games that have massive downloads and are very profitable right out of the gate; as opposed to what we have been seeing over the past couple of years.

But I want to turn it over to JJ Richards. Mr. Richards is working in a really cool and interesting new area of gaming. If you guys were paying attention to Consumer Electronics Show ("CES") this year, micro-consoles were a big deal,[58] and Mr. Richards is working with one of the cooler ones. Mr. Richards, can you talk about what digital delivery does or enables a product like MOGA to do?[59]

54. *See* Zach Walton, *Game Developers Met with Zuckerberg to Discuss the Future of Facebook Gaming*, WebProNews (Dec. 3, 2012), http://www.webpronews.com/game-developers-met-with-zuckerberg-to-discuss-the-future-of-facebook-gaming-2012-12.

55. *Line Pop*, iTunes Preview, https://itunes.apple.com/us/app/line-pop/id57163 8033?mt=8 (last visited Mar. 24, 2013).

56. *Bejeweled*, PopCap, http://www.popcap.com/games/bejeweled/home (last visited Mar. 24, 2013).

57. Gert Jan Spriensma, *2012 Year in Review*, Distimo, 8 (2012), *available at* http://www.distimo.com/publications.

58. Kevin Shively, *CES 2013 By the Numbers: How Tech Trends Rise through Social Media*, Simply Measured (Jan. 14, 2013), http://simplymeasured.com/blog/2013/01/14/ces-2013-by-the-numbers-how-tech-trends-rise-through-social-media/.

59. *MOGA*, Powera, http://www.powera.com/MOGA (last visited on Mar. 17, 2013).

Mr. JJ Richards:

Yeah, I would be happy to talk about it. I will start by telling you a little bit about my background. I started in digital distribution working on one of the major consoles, the Xbox. I was trying to create the evil 30% Mr. Hudson referenced, and I have been trying to make up for it since.

This wave of smartphones and tablets that has come out has been interesting. There were around 14 million console sales over this last holiday quarter. Conversely, approximately 270 million smartphones and tablets combined were sold in the fourth quarter this past holiday season.[60] Developers want to make a game that can be played by as many gamers as possible; right now, that is on smart phones and tablets. What these processors and phones can do in terms of gaming graphics is fantastic. They have beautiful screens and processors, but the controls are horrible. So micro-consoles, such as MOGA, are trying to bridge the gap. They make it possible for users to do the same thing with a smartphone or tablet that they used to be able to do only with an Xbox and a TV.

I want to go back to the discoverability issue Mr. Hudson discussed. Where in the App Store do customers find a game that is created with a controller in mind? Where do the customers search in iTunes, or any other application store, such as Google Play? The answer is they do not search. So, what we have done is create a discovery application. It looks a little bit like a simple catalog, but it pinpoints everything that is on the store that is controller enabled. So, those who like controller based games can immediately get to the kinds of games that they want.

From a digital distribution standpoint, this application points to games wherever they are on the internet. MOGA is not an application store. We just sell the controller hardware. We do not have a stake in where you purchase your game. We are just trying to help people find the software.

As an example, I am going to pick a game from Gameloft,[61] a video game developer large enough to have its own store. If I look up the game *N.O.V.A.*,[62] I can find the product description and buying information from anywhere. When I go to hit "Buy" a prompt pops up that gives you two buttons to choose from. One button allows you to get the game digitally distributed from Google Play and the other allows you to it digitally distrib-

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60. Press Release: *Strong Demand for Smartphones and Heated Vendor Competition Characterize the Worldwide Mobile Phone Market at the End of 2012, IDC says,* IDC, (Jan 24, 2013), https://www.idc.com/getdoc.jsp?containerId=pr US23916413 (vendors shipped 219.4 million smartphones in the fourth quarter of 2012); Press Release: *Tablet Shipments Soar to Record Levels During Strong Holiday Quarter, According to IDC,* IDC, (Jan. 31, 2013), http://www. idc.com/getdoc.jsp?containerId=prUS23926713 (vendors shipped 52.5 million tablets in the fourth quarter of 2012).

61. GAMELOFT, http://www.gameloft.com/ (last visited Mar. 24, 2013).

62. *N.O.V.A.,* GAMELOFT STORE, http://www.gameloft.com/android-games/nova/ (last visited Mar. 24, 2013).

uted directly from the developer. Consumers get to choose who they purchase their game from. Consumers like choice, and we give it to them. Interestingly, there is a price tag that you cannot see. Google Play is selling this game for $6.99, which includes the 30% tariff.[63] But Gameloft is selling this game for $4.99.[64] So it is obvious where a consumer is going to download the game.

The consumer in a digital world is going to always be a click away from what they want at a little bit better price. They are going to find the easiest way to get that content at the best rate. The closed ecosystems and open ecosystems will start to duke it out, but the consumer is always going to win. They are going to flow to the ones that get them the best content, with the best experience, at the best price. That stays true regardless of the medium. Best price and best product win; and competition allows consumers to have more choices to get it.

Mr. Marco Mereu:

I have another question for you, Mr. Richards. From a developer's prospective, I know one thing developers are asking is, "Does it make sense for me to develop a game for this platform? Is this platform going to have an audience?" Developers do not want to make a game for a platform that has a small install base. They have to know if their maximum amount of sales is going to be significantly lower than it would be if they released the game as a browser based game or on the App Store. What are you doing to ensure that MOGA is going to have a big audience?

Mr. JJ Richards:

For a product like MOGA, it is important that we follow standards. You want to be a standardized controller so that developers want to develop games for your product. Developers know that there is nothing unique about our controller. They have worked with this type of controller before with every other console. Standards are very important, and we follow standards wherever they exist.

Price is also important; it costs developers nothing to work with us, which is a lower barrier to entry for them. In terms of installed base, I don't really care so much about the installed base of MOGA or the brand of the controller. I care more about controllers in general. We are partnered up with all of the phone stores because every time a consumer buys a smart phone or tablet, we want them to buy an accessory or controller that turns that device into a mobile console. We believe that is good for the consumer. In summation, in order to ensure that MOGA is going to have a big audience, we are

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63. *N.O.V.A. 3*, GOOGLE PLAY STORE, https://play.google.com/store/apps/details?id =com.gameloft.android.ANMP.GloftN3HM&feature=search_result#?t=W251b GwsMSwyLDEsImNvbS5nYW1lbG9mdC5hbmRyb2lkLkFOTVAuR2xvZnR OM0hNIl0 (last visited on Mar. 4, 2013).

64. *N.O.V.A. 3*, GAMELOFT STORE, http://www.gameloft.com/mobile-games/nova-3/ (last visited on Mar. 4, 2013).

focusing on our installed base, zero-cost to developer and controller industry standards.

Mr. Marco Mereu:

Okay, thank you. Mr. Nix, could you talk a little bit about GameStop's approach to product delivery, especially when it comes to the different new and emerging technologies? For instance, in the old days there were just the two or three major consoles. Now, GameStop sells browser-based games, mobile games, free-to-play games, micro-transaction based games, downloadable content, micro-consoles, and PC games. Can you discuss how GameStop approaches each of these different, new and emerging platforms and how it handles digital delivery for them?

Mr. Steve Nix:

GameStop is the world's largest retailer of games. We operate over 6600 stores worldwide.[65] But it is important that we serve and interact with our digital customers because, as a whole, gamers are increasingly becoming more interested in that market. GameStop is really good at helping customers discover the content that interests them. Both Mr. Hudson and Mr. Richards have mentioned how difficult it is for consumers to discover digital applications. We have a number of digital offerings in our stores already, and we are growing our digital receipts. We expect our digital receipts to have grown from 30%-40% this year, to a range of $595-$630 million for 2012.[66] Digital is a big business for us because we are able to replicate what we have done in a physical model really well and apply it to the digital model.

We have had to be really innovative. We have made a number of acquisitions. For instance, we acquired Impulse, which is now our PC download business.[67] We purchased Kongregate, which is one of the largest Flash based social gaming sites out there.[68] So a consumer can buy Kongregate credit in our stores or go to the Kongregate site online.[69]

We have figured out how to serve customers with cash options, allow them to use their GameStop gift cards, and help them discover games in this digital mess. So last year we entered into an innovative agreement with Steam to become the first retailer to allow consumers to walk into our stores

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65.   FAQ, GAMESTOP, http://phx.corporate-ir.net/phoenix.zhtml?c=130125&p=irol-faq#9321 (last visited Mar. 4, 2013).

66.   *Toy and Game Sector: Event Brief of Third Q-2012 GameStop Corp. Profits Conference Call- Final*, REPORTLINKER, (Nov. 29, 2012), http://www.report linker-news.com/n055346950/Event-Brief-of-Q3-2012-Gamestop-Corp-Earn ings-Conference-Call-Final.html?utm_source=Emailvision&utm_medium=e mail&utm_campaign=fcfnews&track=94b9326a161d8eb2b995551171d6e445.

67.   *Impulse*, GAMESTOP, http://www.impulsedriven.com/ (last visited Mar. 24, 2013).

68.   Company History, GAMESTOP, http://news.gamestop.com/about_us/company_ history (last visited on Mar. 4, 2013).

69.   KONGREGATE, http://www.kongregate.com/ (last visited Mar. 24, 2013).

and load up their Steam Wallet.[70] That has been tremendously successful for us and Steam. Steam's parent company, Valve,[71] allows customers to take their old PlayStation 2 games into a GameStop and get trade credit for them that they can turn into Steam credit.[72] This has been really fantastic. We also have a similar relationship with Blizzard, one of the world's largest online distributors of games and content.[73]

You can buy a lot of content at GameStop digitally that you cannot get at any other retailer. We want to continue doing what we are really good at and see where the market goes. We want to be smart about our acquisitions and capital allocation but continue to serve our customers as they move to a more digital model.

Mr. Marco Mereu:

Mr. Hudson, as a developer, can you talk about how digital delivery affects your development cycle if at all, in terms of when you are making games for Steam versus making games for mobile? Since you come from a more traditional game development background and have made a very successful career where a lot of people have struggled, I am interested to hear your thoughts. Can you also talk about how digital content delivery works for those two models?

The other question that I have is a follow up digital delivery question. It is obvious that when you are dealing with digital delivery, you're dealing with security rights management, like digital rights management ("DRM"). What do you think works, and what does not work? What do you think might end up being the choice in the future? Presently, a lot of people are unhappy.

Mr. Patrick Hudson:

First, let us tackle the question regarding how digital delivery has changed development. The previous big date that you would look forward to and build into your schedule was the release to manufacturing ("RTM") date. The RTM date was important because you had somebody, most likely a publisher, involved that approved the date. You are not going to miss that date because that is when everything starts happening. For instance, the publisher starts printing disks, getting the trucks lined up, and rolling your game out to stores.

There has been a huge fundamental shift. The RTM date as a phrase, and as a milestone, has disappeared completely. It no longer exists in our lexicon. We can go live and release to the player whenever we are ready. It is

70.   Casey Johnston, *GameStop to Sell Steam Wallet Card In-Store*, ARS TECHNICA (May 14, 2012), http://arstechnica.com/gaming/2012/05/gamestop-to-sell-steam-wallet-cards-in-store/.

71.   VALVE, http://www.valvesoftware.com/ (last visited Mar. 24, 2013).

72.   *Id.*

73.   Brian Crecente, *GameStop Signs Deal with Blizzard, Looks to Digital Sales for its Future*, POLYGON (Mar. 22, 2012), http://www.polygon.com/gaming/2012/3/22/2893912/gamestop-blizzard-digital-sales.

different on PC than on mobile. The PC uses with Steam, Impulse, and similar develop friendly platforms. The software development kits are simple to integrate. You line up your release date and you go.

Additionally, developers previously had to finalize their game with a high degree of quality. It had to be as close to bug free as possible because it was going to be printed on a million discs and shipped globally. Now, with digital distributing, though you still want your game as bug free as possible, if you miss something, you can patch it very quickly. Also, it is easy to do on PC as well. Overall, it allows you to push content sooner and those last bits of development are a little simpler than they used to be.

Apple has certain challenges with digital distribution. They require all new content be approved before it is released.[74] So, even if you have a fairly minor update for your game, it goes into Apple's labyrinth and a fairy somewhere approves it at some random time. They cannot tell you when that time will be. It might be three days, or it might be three weeks. If you are a developer or publisher and you are trying to market your game, it is hard to communicate release dates and times with your customers—that is frustrating.

As far as piracy, I do not know if it is any worse than it ever has been. It was bad back in the retail days, too. A good example would be the *Age of Empires* franchise. The last one we did as part of Ensemble was *Age of Empires III*, and that came out in 2005.[75] The game released globally and it was a big success. The first day we released an online patch, it was downloaded 800,000 times overnight in China. But we did not even have 800,000 people buy the game there. If you walk through any market in Beijing or Shanghai, there are *Age of Empires* discs sitting on the ground, and hundreds of them are for sale for a couple dollars a copy.[76]

That has not really changed today. Our franchise *Orcs Must Die* is quite popular in Korea, but my sales charts would indicate otherwise, unfortunately. Apparently it has been cracked, burned to discs, and is actually sold on the streets of Seoul for a price that is higher than we sell it for online digitally. Those guys are doing well with our franchise.

This is a significant problem and difficult to combat. You can ratchet up your DRM in an effort to lock things down, but all you are doing is punishing your honest customers and making it inconvenient for them. The other option is changing the model completely to a free-to-play model. A lot of the traditional gamers bemoan the free-to-play business model, but the reason

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74. *See* App Review, APPLE DEVELOPER, https://developer.apple.com/appstore/ guidelines.html (last visited Mar. 4, 2013).

75. AGE OF EMPIRES III, http://www.ageofempires3.com/age3/ (last visited Mar. 24, 2012).

76. *See* Kenneth Rapoza, *In China, Why Piracy is Here to Stay*, FORBES (July 22, 2012), http://www.forbes.com/sites/kenrapoza/2012/07/22/in-china-why-piracy-is-here-to-stay/ (last visited Mar. 24, 2013).

that it is done is because of the piracy in Asia. If you look at sales like *Orcs Must Die* these days, 90% of our sales are in North America and Western Europe. We would love to be selling that game in Asia, and I know there are hundreds of thousands—maybe millions—of people who would buy it. But I am not going to sell it to them for $15. They are simply not going to pay for the game.

Today, games that have the longest running success, such as *League of Legends*[77] and *World of Tanks*,[78] have free-to-play business models. Their content is always being updated and allows people to pay what they want to pay. Those who do not want to pay can enjoy it in a different way and maybe grind a little longer. The push towards the free-to-play business model is happening to take advantage of the global market. Customers in different parts of the world are not willing to pay the same as customers in the United States.

Mr. Marco Mereu:

I am going to add to what Mr. Hudson said. First, the development environment submission process, for example iOS, which is a good one, is different for different platforms. Google Play does not have one. Developers post what they want, when they want.[79] Amazon has one, but it is small because it is essentially based on Google Play.[80]

A lot of developers that we are working with require a sign-in that allows developers to authenticate their users. User authentication can be frustrating to a consumer who wanted to play the game in a pure offline environment but could not because the game required a connection and login to play. Unfortunately, developers are requiring some type of sign-on with many games before the player can begin playing.

My third point deals with digital distribution and how things are changing. In the buying process, the feedback from the customer is immediate. Previously, if someone in China bought your game from a street market, as the developer, you never heard from them.

In the digital stores, you get immediate feedback about your game through the feedback button and the rating present at the point of transmission. Whether it is a good or bad rating, it is right there. This is going to be a neat area to watch over the coming years as that feedback area is abused by competition. Your competitor knows that they want to get their scores up and

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77. LEAGUE OF LEGENDS, http://na.leagueoflegends.com/ (last visited Mar. 24, 2013).

78. WORLD OF TANKS, http://worldoftanks.com/ (last visited Mar. 24, 2013).

79. Daniel Ionescu, *Google Play Grows Up: New Developer Policies Will Clean up Google's App Store*, PCWORLD (Aug. 1, 2012), http://www.pcworld.com/article/260216/google_play_grows_up_new_developer_policies_will_clean_up_googles_app_store.html.

80. Eddie Kim, *The Amazon App Store*, HYPERINK (Nov. 30, 2011), http://www.hyperink.com/The-Amazon-App-Store-b94a85.

get your scores down. Often as soon as you get an application out, there are a lot of evil comments that point to other games. It makes you wonder if the user that gave you a one star rating was a real user or a competitor. That is a new area that we are all discovering.

Mr. Patrick Hudson:

I have one more thing to say about the lengths that people are willing to go to pirate a game. It is not simply buying a cracked version of a game. Earlier, I mentioned the *Orcs Must Die* experience in Korea.[81] We never even translated the game to Korean. The pirates not only cracked the game, burned it to a disc, packaged it, and put box art on it, but they also translated it to Korean. You can look at that in one of two ways. One way is to think that it really sucks and that you are losing a lot of money. However, you can also look at it as a fantastic opportunity because those people are willing to go that far because they like the game that much. You have to wonder how to do a better job of delivering it in a way that pirates will actually pay for it.

Mr. Mark Methenitis:

Mr. Hudson, I want to follow up on something you mentioned earlier about dealing with Apple and developing games or applications for the App Store. Last week we launched a new social sharing network on the iPhone. We had a huge marketing push, sent out press releases, and enforced embargos on coverage for the application. You cannot tell anybody exactly what day it is going to come out because Apple determines the release date. The flip side of dealing with the App Store is that the people reviewing these applications are severely overworked, similar to someone reading 100 term papers in one night and trying to review everything. These employees work long hours reviewing multiple applications. When they decide to pull an application, they typically do not alert the developer in advance. This is a common problem that developers run into when they are on someone else's platform, like in iOS.

There was a story within the last few days of a photograph sharing application called X500.[82] It was in the App Store for a long period of time. It was eventually pulled from the App Store because Apple determined that the application made it too easy to find nude photographs or explicit content that they did not want people to view. Even though there were no changes to the application from its original content, someone at Apple finally looked at it and decided its content was not appropriate and it was not rated correctly. Although the developer offered to update the application to make it more difficult to view explicit content, Apple nonetheless decided to pull it. It is a very difficult position for a developer to be in when you have a new or existing product out on the market and all of a sudden the project gets pulled from the App Store. In fact, it can be almost insurmountable to overcome.

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81. *Orcs Must Die, supra* note 38.

82. 500px, http://500px.com (last visited Feb. 28, 2013).

Developers must be cautious when creating and rating their applications. When a developer makes a game on someone else's platform for discovery, he or she is at their whim. Google gives a little more free rein. When a developer makes a game for Apple or Facebook, or anyone else's platform, it is important to spend a lot of time making sure that the application is rated correctly and there is nothing Apple could find to be an issue down the road. Generally, platforms like Apple are not going to ask the developer before they pull an application; they are just going to pull it.

Mr. JJ Richards:

Given the audience bias in the room here in Dallas, Texas, a great AT&T network city, I wanted to ask if you know, what is the best-selling installed base phone on the planet?

The Galaxy S3 is the top selling phone on the planet, including Korea, China, and Europe.[83] It is not the iPhone. The Apple iPhone is the bestselling phone in the United States and definitely on the AT&T network right now.[84] My point is to show the bias of opportunity; between a no barrier system and a barrier system, I know which one wins on a global basis.

Mr. Mark Methenitis:

On that note, I want to shift to games-as-services to give a brief understanding of what I mentioned earlier. Five to ten years ago, when we were buying games for the consoles, we would walk into a GameStop and pay probably $49.99 (now we are paying $59.99) to buy the game. We would bring it home, play it until we did not want to play it anymore, and that would basically be the end of it. As Mr. Hudson mentioned earlier, there has certainly been a shift in the process of buying and playing games for many reasons from a developer's perspective.

There are two main reasons for this recent shift. Obviously, piracy is one reason. Monetization is another reason. Developers have found that players are willing to spend large amounts of money on a game. Gaming has become a very popular recreational activity. Some people spend more time playing games than they spend watching television or doing other things, and they are willing to spend more money than the initial purchase price to play. Developers understand that they need to monetize their games to continue to get their players to come back. The result is that games are now being delivered as a service. This means that customers either buy a game or download a game that is free to play, and then have the option of purchasing new content that is continuously added to that game. The added content is either vertical or horizontal. Vertical content involves adding new levels to a game, ex-

83.   Brad Chacos, *Samsung Dethrones Apple, Galaxy S III Best-Selling Phone in Q3*, Laptop Magazine (Nov. 8, 2012), *available at* http://blog.laptopmag.com/samsung-dethrones-apple-galaxy-s-iii-best-selling-phone-in-q3.

84.   Matthew Lucas, *5 Best Selling Phones in USA: iPhone 5 is No. 1*, Gizmorati (Feb. 2, 2013, 11:05 AM), http://gizmorati.com/2013/02/5-best-selling-phones-in-united-states-iphone-5-is-no-1/.

tending the level cap on a game, or moving the finish line or goal farther so people will continue to play it. I personally prefer developing horizontal content, which involves adding activities to the game and gives players more things to do.

It is no longer good enough to release a game and never make changes or add to the game. The market demands that developers continue to add new features and new content frequently after they release a game. Massively multiplayer online games ("MMOs") like *Guild Wars 2* are doing this.[85] Mobile games, games on Steam, and any game that uses a digital delivery are doing this as well.[86] This is because it is much easier to add new content to games on a digital delivery than it is to add content to standard console games.

This is an important topic, especially for developers, so I would like to start off asking Mr. Hudson about content for the two big games that you are currently working on: *Orcs Must Die* and *Hero Academy*.[87] Mr. Hudson, you are able to deliver content to players periodically, long after the game's initial release. I would like you to discuss how this changes your approach in development. I am specifically interested in when you start to look at monetization. Is it very early on in the developmental process, as you go along, or toward the end? What are the differences in monetization between PC Steam and mobile?

Mr. Patrick Hudson:

Previously the release date was thought of as the finish line; now the release date is thought of as the starting line. We really think about the growth and scope of the game. For example, we think about what the game will look like on the first day we release it, a month, six months, a year, and two years after we release it. This is a pretty fundamental shift from when we thought the release date as the finish line. From the beginning with the first version, we think about what is significant enough and has enough great content that players are going to want to stick around and enjoy it. Accordingly, this is a big shift because monetization is now considered at the very beginning of the process.

This shift has dramatically changed the revenue graph. In digital delivery—especially with a free-to-play business model—the revenue graph has almost been completely flipped upside down. Previously, when you released a big retail game, all of the revenue would be right at the beginning. Then it would start declining, with a possible spike at holidays, followed by steady decline until developers introduced an expansion pack a year later, which would cause another revenue spike. With a game that is constantly being updated that might have a free-to-play business model, the revenue curve grows over time. It might start lower. The game gains popularity when

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85. GUILD WARS 2, https://www.guildwars2.com/en/ (last visited Feb. 28, 2013).

86. STEAM, *supra* note 48.

87. *Hero Academy, supra* note 38.

friends tell each other about the game and it becomes viral. Developers are also adding more great content and more things for people to potentially buy—if they decide the content is good enough. That is a big shift as well.

As previously mentioned, recently we have not started developing a game before thinking about what the game will look like on Day One, Day Thirty, and Day Sixty. The challenge is avoiding that really expensive content treadmill you can get on by continuously making content. Keeping a live team on a game post-launch is expensive. You have to think about your development cost not just from Day One to the release date, but also from Day One to years after that. It costs money to update a game and that cost must be part of the determination of whether the game will likely be profitable.

It is enjoyable to build content for a game that customers see as a hobby. It is nice to keep building it and adding to the world. When we launched *Hero Academy* in January 2012, it was probably 20% of the size it is today. We spent a year adding more content to the game after its release. New content retains people, keeps them sticking around, and builds a community that you can then leverage for future games. Today, developers live in a richer environment, but this rich environment comes with challenges. Game development has never been easy and it will never be. It is just as hard as it was before, but today it is better for the developer.

Mr. Mark Methenitis:

What type of content do people want to buy and play? I ask this because I think the days of people paying for energy to click through a game a couple more times are pretty much over; nobody wants to play those games anymore. This is pretty clear considering the number of users on Facebook and those types of games. It is a great time to be a gamer right now because, in my opinion, gamers are getting more value for their dollars than ever before. There are great games, like *League of Legends*, which are free to play.[88] You can play these games as much as you want without ever having to spend a dollar. If you want to enrich your experience, then you can pay for additional content. These free-to-play games generally have high-level content in terms of characters and other elements. *Guild Wars 2* is an example of a triple MMO that was recently released with no subscription model but continues to add new content to players monthly.[89] I think this has changed the game for that genre.

At the same time, if a developer releases a free-to-play game and then decides to charge a subscription, it is going to be in a lot of trouble. It will have a lot of explaining to do to the players as to why they should have to pay the new subscription fee. Thus, this brings me back to my original question, as to what type of content you are seeing players want to spend money on? In other words, what is doing well for you?

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88.   LEAGUE OF LEGENDS, *supra* note 77.

89.   GUILD WARS 2, *supra* note 85.

Mr. Patrick Hudson:

I do not know if I agree that the energy model is going away. The number one game on iOS, *Clash of Clans*, is bringing in $750,000 a day in revenue, but has a lot of arbitrary walls that prevent gamers from progressing unless they pay money.[90] The additional content is really just time based and speeds up the activity. You can argue that it does not necessarily feedback in a logical way into the game play loop, but it is working well for that game.

We can see that people are paying for games and new content, but it is coming from a small percentage of players. Top customers on some of the biggest games on iOS right now, like *Kingdoms of Camelot*[91] and *Clash of Clans*[92], are spending $50,000 a year in those games. It is amazing that somebody could be so invested in a game that they will spend $50,000.

Mr. Steve Nix:

Ten years ago, they would have sold that game for $50. Now they have people paying $50,000 for it.

Mr. Patrick Hudson:

I do not know if I can answer the question about what players spend their money on. It depends on the game. If I knew the answer to your question, I would have all of the top grossing games in the App Store. Adding new teams to the same playing field is what worked for *Hero Academy*, a turn-based strategy game; but that was also expensive content to deliver. For a game like *Clash of Clans*, you can make a couple of tweaks on a weekly basis and see it monetize; but we might have to spend roughly four to six weeks making a new team for *Hero Academy*.

The challenge becomes determining how much money you spend updating the game versus the return. Developers are adding new content faster than before. For example, previously, developers might have spent a year working on an expansion pack for a franchise like *Age of Empires*.[93] Now, developers would probably spend four weeks working on it.

There is so much great content out there and the barriers to entry are so low that players shift from game to game very quickly. Therefore, developers must entice players with great content on a much more frequent basis than before.

Mr. Mark Methenitis:

I can guess if you actually knew the person that was spending $50,000 on your game, you would make sure that he gets whatever he wanted. You are set if you can identify that player and what he or she wants.

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90.   *Clash of Clans*, SUPERCELL, http://www.supercell.net/games/view/clash-of-clans (last visited Feb. 28, 2013).

91.   *Kingdoms of Camelot*, KABAM, https://www.kabam.com/games/kingdoms-of-camelot (last visited Feb. 28, 2013).

92.   SUPERCELL, *supra* note 90.

93.   AGE OF EMPIRES, *supra* note 37.

Developers are really going to care about the role of analytics in games. This will lead to great creativity, great game play, and great design. Developers are also going to watch their user base like hawks. They will begin trying to distinguish who the $50,000 person is from the person who will never give the game a penny in his life. Then, they will try to determine what each of them wants. Ultimately, they will ignore the person who is never going to pay a penny and bend over backwards for the $50,000 person.

Mr. Patrick Hudson:

This is true. In fact, the biggest players of *Kingdoms of Camelot* have the cell phone number to the CEO of Kabam.[94] They call him at all hours of the day and night to complain about games.

Mr. Mark Methenitis:

However, there can be problems with big spenders as well. We developed *Evony* in 2009 and *Evony Age II* in 2010.[95] They are very popular browser-based games with over thirty million accounts created. We have our share of big fish, too. I have not seen a $50,000 player, but I have certainly seen some players in the $20,000 range.

The biggest spenders are often the people pushing the limits of your terms of service the most. When someone is spending $20,000 a year to play your game, they take your game seriously. Sometimes the big spending players do things they are not supposed to do like buy virtual goods, play the system, or use bots to do whatever they can do to get ahead in the game that they take so seriously. Frankly, I do not treat any player differently whether it is a $20,000 spending player or free-to-play player. It is important to maintain a balance for all your players in the game. The big spending players are generally the ones who cause you to get a call from their $700 an hour attorney in New York, complaining that you banned the player from the game. As you can see, the amount of money that some people will spend is pretty phenomenal for these types of games. It has certainly created a new type of revenue stream for developers.

There are a lot of legal complications and intricacies involved that people probably never imagined, and the lawyers will like this. For example, some of these free-to-play games have become money laundering vehicles for the Russian mob.

Mr. Patrick Hudson:

Nothing against Russia, but we do not do business there. This is because a huge percentage of the way people pay for games in Russia is basically through vending machines. Gamers buy a vending card to play the games, but the mob owns most of the vending machines. Therefore, unless you want to do a deal with the mob, you generally do not do this type of business in Russia.

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94.   KABAM, https://www.kabam.com (last visited Feb. 28, 2013).

95.   EVONY, http://www.evony.com (last visited Feb. 28, 2013).

Mr. Mark Methenitis:

Next, I want to ask Mr. Nix how the delivery of games to the end user will change as developers create new content past the initial launch of a game. GameStop works with hundreds, if not thousands, of game developers and publishers. How do you think the method of delivery is changing with the recent development of developers creating new channels to deliver additional content after a game's initial launch? This includes console games with DLC, Kongregate, and Impulse.[96]

Mr. Steve Nix:

Downloadable content ("DLC") is a big business for us, and we have been really aggressive in building that business. We have found that when a major title comes out that has DLC for a game, most of our customers are not aware of the DLC that is available for that title, based on the questions we ask when they come in the store. In fact, we work with our publishers and tell them the best practices we see for the DLC so they can maximize their sales. Even if the DLC is not available on the release date of a game, developers should still have a plan for the DLC so they can try to sell customers three pieces of the DLC, along with the game, in a bundle as a season pass. If we can educate customers about the availability of DLC and what it offers when they come into stores to buy the original game, we will see a gigantic attach rate. In fact, it is quite frequent that we will outsell Microsoft and Sony on DLC sales for a physical title because we are so much better at driving discovery.

There are so many customers who are not aware of the option of DLC. This brings the possibility of incremental revenue for the developers and publishers that create this content. One advantage of DLC is that we are now able to sell PC users game titles that came out twelve years ago when I was a young game developer working on them. The gamers do not have to wait eight or nine years to find the game in physical form. Being able to do this is really exciting and what I love about what the digital distribution has done for PC.

Kongregate is another platform that has changed the way developers deliver content. We are being very aggressive in both Flash-based games on the web and, now, in downloadable games. Kongregate has a strong expertise in free-to-play analytics and tools. It helps developers in discovery by moving gamers around in this channel. We are trying to make sure that it is not the fire-and-forget model that we had ten years ago.

Mr. JJ Richards:

Something I am wrestling with relates to when Mr. Hudson said that there is no more RTM. I think retail has always been RTM centric. It allows stores to determine what they are going to put on the shelf this week and the weeks after. In a world where the content goes away from RTM, how do you

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96. GameStop PC Downloads, http://www.impulsedriven.com (last visited Feb. 28, 2013); Kongregate, *supra* note 69.

educate the consumer in terms of scheduling? You have to tell customers something each day. How do you pick what information to release if it is no longer date-driven?

Mr. Steve Nix:

Even though releases are not completely date-driven, a lot of times we are still aggressive if there is a new release of some digital content. We have binders in our stores with materials about new releases. Since we want the consumer to have a physical box, we have mockup fake boxes for our consumers to use in the store. It gives consumers something to hold in their hands that they can turn over, read about the game, and then take to the cash register to buy the game. The cash registers are all connected to the Internet and our internal pages have additional information about the game.

We also spend a great amount of time training our associates about what is coming up. We have a PC download certification program that our store associates and get credit for taking. This course educates our employees about what new digital content is available. Through materials and employee training, we educate our consumers about new content and when to expect it. This is a huge adjustment, and we are constantly thinking about what the future will look like with digital displays in stores. A couple of years ago, we only carried fifty PC stock-keeping units in our stores. Now we have thousands available in our stores. We have been successful in creating and driving discovery by hiring the best associates in the world who are passionate gamers and know the content.

Mr. JJ Richards:

My favorite part about walking into a game store when I was a young gamer was the "New Release" board or the "Coming Soon" board. Now, with digital content, there is an abundance of information when you think about all of the new titles coming out and the new content coming out for old games. Therefore, I agree that it is very valuable for an expert gamer to be able to talk to other gamers about what to buy.

Mr. Mark Methenitis:

Mr. Richards, I would like to follow up with an additional question for you. Do you plan to continue allowing developers to release updates and content with MOGA and micro-consoles?[97] As we know, MOGA and micro-consoles are a really big, new segment of the market that exploded this month because people saw the quality of games you can play on it. This growth reminds me of what happened a couple years ago with the stigma between free-to-play games and subscription based games. Free-to-play games were generally thought to be much lower quality than subscription based games. Gamers thought they were not getting much value for their dollars, so they paid more for a better game. Now, there is almost no differ-

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97. *MOGA*, Power A Designs, http://www.powera.com/moga (last visited Feb. 28, 2013).

ence in quality between some free-to-play games and games that cost $60 in a store.

In the current age, games on micro-consoles and mobiles are almost equal quality to games on consoles. The quality of games that we saw at CES is much closer to the quality we see on consoles at home. Now, the gamer can play a game wherever they want, and the game looks almost identical to what they are playing at home. This brings me back to the question of allowing developers to release updates and content. You spoke earlier about how you make updates available to players through the Google Play Store or directly from a developer. Many of the game systems that do not allow developers to directly update a user's game use Steam. One issue developers have with Steam is that it charges 30% on every bundle, pack, or downloadable content you sell. Is that something that you see happening with MOGA? Or are customers going to still be able to purchase content, such as DLC, directly from a developer?

Mr. JJ Richards:

I first want to reiterate that we are not a store, so we are not in competition with GameStop.

We are seeing a lot of free-to-play games from the developers lately. One developer you should check out is Madfinger.[98] They have high quality games, even though they are mobile titles. The quality is so great that you will not think of it as a mobile title. Their games have different types of currency to buy the next gun, which is what gamers really want in the games. Gamers can earn the necessary money by progressing through the game, watching ads, or paying money to buy things in the games. For example, I am looking forward to playing with the Brain-Mill because it features a thirty kilowatt outboard motor. It sounds awesome to kill zombies with that, and I will pay whatever I have to pay.

The different thing about games like this is that once I am in the game, I am in the game's ecosystem. I am no longer in the App Store or retail store ecosystem. This has shrunk the number of steps between the developer and the consumer. While the CEO does not give out his phone number in the main menu of the games, there is a prompt that reads, "[d]o you want to send an email to Madfinger games? Please no spam, no empty e-mails."[99] The game gives me a direct line to talk to Madfinger and ask them to make my Brain-Mill a sixty-kilowatt outboard motor rather a thirty kilowatt outboard motor. From this, we can see where developers and games are going. When the user starts to see this content, they go for the best content, at the best price, with the best value, every time.

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98. MADFINGER GAMES, http://www.madfingergames.com (last visited Feb. 28, 2013).

99. *See id.*

Mr. Marco Mereu:

I want to ask a question to the whole panel. Digital delivery is becoming probably the premier way that people get games on their mobile devices and hopefully on their PC, and to some degree, console. THQ had their auction yesterday; I assume none of you picked anything up.[100] I saw *Homeworld* was still available.[101] *Homeworld* is an old-school franchise I would like to see someone buy. It is an old space, real-time strategy—a legacy intellectual property that will supposedly be sold at a later date. A lot of intellectual properties were picked up and sold to different publishers. Many of the bigger publishers over the last several years have fallen or had to change. Where do you see the role of publisher going forward, in 2013 and beyond?

Mr. Patrick Hudson:

We do not see much role for publishers anymore in our market. Big console games like *Call of Duty* that need to be boxed up and distributed globally need a publisher.[102] The term "Publisher" is almost a catchall phrase. Today there are many different types of publishers.

I think Mark Long will talk about HAWKEN.[103] They have a publishing platform built around digital distribution of free-to-play games. He will talk about what a developer might be signing up for with those types of games.[104] Their value is that they have a server technology infrastructure to leverage. They have a payment system. They have figured out payments being made in Turkey, for example, and I do not have to worry about it. Though I would not call these people publishers anymore, they definitely fill a role.

Robot Entertainment, for instance, is a fifty-person company in Plano.[105] If it wanted to capture a Korean gamer that likes *Orcs Must Die*, it cannot keep doing business the same way.[106] It needs to determine how to approach customers in Korea on their terms and may want to work with somebody in Korea to make that happen.

A lot of people in China downloaded *Hero Academy* on iOS, but we did not make any money from it.[107] So we partnered with a Chinese company called Yoda 1, and they repositioned the game for us. They built some new

100. *Corporate Restructuring: Active Cases: THQ, Inc.*, KCC, http://www.kccllc. net/thq (last visited Mar. 4, 2013).

101. *Homeworld*, RELIC, http://www.relic.com/games/homeworld/ (last visited Mar. 4, 2013).

102. CALL OF DUTY, http://www.callofduty.com/ (last visited Mar. 4, 2013).

103. METEOR ENTERTAINMENT SERVICES, http://meteor-ent.com/services/ (last visited Mar. 4, 2013).

104. *Id.*

105. ROBOT ENTERTAINMENT, http://www.robotentertainment.com/ (last visited Mar. 24, 2013).

106. *Orcs Must Die, supra* note 38.

107. *Hero Academy, supra* note 38.

Chinese-themed content and changed up the modernization model. They also built their own server farms so people in China could make moves much quicker than through our servers in Grapevine, Texas. They are kind of a publisher, but not what we think of as a traditional publisher. Companies that can help developers reach customers in many different ways have a lot of value. The traditional publisher that pays you upfront, giving you a milestone advance that you have to hit to earn again, is a dinosaur model for us.

Mr. JJ Richards:

It is the terminology versus the role. A publisher is an aggregation of developers. They provide a function in a co-op of developers that is useful. In the past, publishing was taking games as a sales representative to stores like GameStop or Wal-Mart. Each independent game developer did not have to have their own sales representative; they had one joint sales representative. That role is largely irrelevant now, but there are other roles that are necessary. Developers are focused every day on making a game, and they need some things done to make the game successful that they do not want to do in-house. Developers will begin to develop aggregations or partnerships where there are some shared roles.

One of my favorite examples of this is analytics. This is a very different skill than building a game, but it is critical to every game. Every single developer team either has to hire an analytics person or there must be an analytics service that all the teams take advantage of. There will be certain shared functions which some developer or aggregator—who you might call a publisher—performs on behalf of the developers. Otherwise they have to do everything internally, which is tough on the life of an average developer.

Mr. Steve Nix:

It depends on the market and the channel. Mr. Hudson mentioned things that traditional publishers do: provide capital for development, put the marketing plan together, determine the go-to-market strategy for the game, decide on the business model, and decide whether it will be subscription based or a stand-alone game with the expansion packs. Publishers still provide those things; obviously, there is the traditional model. The games selling well in the physical model are selling more than ever. Big titles are getting even bigger there. Players like Activision,[108] Electronic Arts,[109] and Ubisoft[110] have great businesses that are growing.

In the mobile model, my developer friends are telling me that independent developers are really having a hard time getting discovery in iTunes and Google Play. They are getting frustrated with it and are considering exiting the mobile business. You will either start to see a lot of consolidation in mobile over the next year, or you will see those developers start working

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108. ACTIVISION, http://www.activision.com/atvihub/home.do (last visited Mar. 24, 2013).

109. ELECTRONIC ARTS, http://www.ea.com/ (last visited Mar. 24, 2013).

110. UBISOFT, http://www.ubi.com/US/ (last visited Mar. 24, 2013).

with entities that look a lot like traditional publishers. Publishers will use their network of games, or use their marketing capabilities, to drive discovery of those mobile applications. I think you will see more traditional publishers popping up in mobile.

In free-to-play in general, both on mobile and PC, a lot of developers working on traditional games are trying to move to free-to-play. To monetize a great free-to-play game, you really have to build your game as free-to-play from Day One. There are several companies that do that really well at GameStop: Kabam,[111] Zynga,[112] and Kongregate.[113] This is not a generic skill that you can just find on the street when starting your team. There are companies that provide these free-to-play monetization analytics and can figure out what worked, what did not work, and how to tweak your offers. There will be more of these types of companies emerging to fill this role for the developers that do not have that skillset in their studios.

Mr. Marco Mereu:

I agree. There is one thing I want to mention before we open it up for questions. A lot of people think free-to-play is the only way to go now. I certainly do not think that is the case. The success that the *Walking Dead* games had on mobile and Steam are a great example of that.[114] If you create a high-quality product, you can do episodic content. People will pay up to $20-25 over the life of that game if you deliver a really compelling product that works really well on its platform. Though it is obviously not free-to-play, there is definitely more than one way to monetize a game. If you are developing a game, you should look at all of your options and consider what is best going to fit the type of game you want to make.

I want to open it up to the audience for questions to the panel.

Audience Member 1:

You talked about some free-to-play games where users pay $20,000 to $50,000 per year. What do the averages look like? What is the average revenue per user on a free-to-play game?

Mr. Patrick Hudson:

It depends on the platform. In mobile, it is referenced two different ways: the average revenue per paying user and the average revenue per user across all users. The metric tracked is how many of those players convert from non-paying to paying customers. Zynga's popular games on Facebook like Farmville[115] might have only converted 1% - 2% of their players. Then

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111. KABAM, *supra* note 97.

112. ZYNGA, http://zynga.com/ (last visited Mar. 24, 2013).

113. KONGREGATE, *supra* note 69.

114. THE WALKING DEAD SURVIVAL INSTINCT, http://www.thewalkingdeadsurvival instinct.com/ (last visited Mar. 4, 2013).

115. *Farmville 2*, ZYNGA, http://zynga.com/#/game/farmville-two (last visited Mar. 24, 2013).

developers must consider how much they are getting from that 1% - 2%. *Rage of Bahamut* is an example of a game that is doing really well on mobile today.[116] It is kind of a card trading and battle game—in the Pokémon kind of genre—but more mature than that.[117] Across all their users, they are seeing probably around $2 per user. That is not just the paying users; that is across all users. As result, developers are trying to get more users because these small dollar amounts make it a volume-based business that relies on the massive install base of iPhone and Android devices.

Audience Member 2:

I have a question for Mr. Hudson regarding games-as-service models. I am curious: how do you know when a game is complete enough to enter the market? As you are developing the game, do you purposely hold features back to roll out as new content? How does that process take place?

Mr. Patrick Hudson:

We do get accused of that a lot. Customers say, "How dare you ship a pack of downloadable content five weeks after you have released the game!" But, honestly, we develop the next bit of content very quickly.

As to the question: how do you decide what you are going to ship? It is more art than science. You try to determine a core feature set that you can add on to later. We have that discussion very early in development where we try to decide what the game will be. Then we start trying to determine when we can get it delivered. We sign up for that very early.

The harder question to ask regarding service model games—we probably learned this on *Hero Academy*—is when do you let it go? When do you stop making content? That is not clear-cut actually. You can end up spending more time than you should have, but you do not necessarily know that in advance. Your data may be pointing to all these people who will stick with it and keep buying content packs at the same rate. But at some point, there will be some attrition, and they will find the next great game. In the service model, leaving the game is harder than figuring out when to start it.

Mr. JJ Richards:

When you consider the smaller indie mobile developer, their answer is to ship it when you are out of money, when you are hungry, or when rent is about to be due. The most important thing is to get something onto the market so you can start testing, learning, and developing. Developers pick a date that is more driven by funding and timing than it is by the original conceptual plan, so people actually race faster than what they want.

Mr. Marco Mereu:

It also depends on the platform you are developing for and the size of the developer and publisher. We have games, for example, that are three or four years old and we are still adding new features. We still run promotions

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116. *Rage of Bahamut*, iTunes, https://itunes.apple.com/us/app/rage-of-bahamut/
id506944493?mt=8 (last visited Mar. 4, 2013).

117. *Id.*

for them, and they still have a lot of players. On free-to-play games, one of the issues is that people have spent a lot of their money building up their accounting, game, or city, depending on the game, over the course of three or four years. They are not going to be very receptive to you saying, "I am shutting the servers down right now." As long as those games are profitable, we will continue to run them. As the game ages, there are less issues and bugs. This allows developers to scale down the support and costs of running the game. *The Sims Online* was netting over $1 million per year when the developers decided that amount of money was not worth the damage to the franchise. They felt it was not worthwhile to run the game anymore, even if it was still making $1 million per year. It depends on the platform, the developer, and who is involved.

Audience Member 3:

You mentioned that several of your games are pirated in China. Do you think that United States and European developers will start making games for Western markets and then transition and market directly to Eastern areas and make games specific for that culture?

Mr. Patrick Hudson:

I am not sure about that manner exactly, but more or less, yes. That is exactly what we try to do in China. We knew that people were playing it, but we also knew it was a western fantasy-themed game. Those themes do not always play globally. Nobody in China cares about Merlin the Wizard, but they have way cooler zombies in China than in the United States, so we can go to those people and partner in specific markets.

The markets have to be big enough; like Russia, China, and Korea. I am not going to go to Albania and do the same thing I did in China. We think about how to do our content a little bit differently and localize it relevantly. We do not want to just translate. We want to have content that means something to that market, but we do not know the markets well enough to do this. That is why we find partners to help us figure these things out. The first part is looking at the traction and realizing there is some potential. Next is finding the right person who can help you access that potential. This is a difficult thing to do.

Mr. Marco Mereu:

Also, if you are developing a game these days, it is very difficult to think regionally anymore. You always have to think globally in terms of how your game is going to play out, how it will be received, and who is going to be using it. Tencent,[118] for example, is a huge publisher overseas and now here. They own a big chunk of Riot games, and they have a very significant interest in Epic.[119] These are more traditional United States based developers

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118. TENCENT, http://www.tencent.com/en-us/index.shtml (last visited Mar. 26, 2013).

119. Tyler Wilde, *Chinese Internet Company Tencent Owns 40 Percent of Epic Games*, PC GAMER, *available at* http://www.pcgamer.com/2013/03/21/chinese-

that are trying to figure out how to transition. Eastern publishers are coming over here helping the transition. Even though Tencent put in $400 million or $500 million into the Tencent-Riot deal, it was probably a win-win deal.[120] Obviously it is great for Riot because they are getting a huge investment, but Tencent is going to make their money back tenfold on that with distributing *League of Legends*[121] over in the East.

Mr. Patrick Hudson:

A couple of the biggest Japanese mobile publishers, including a couple billion dollar public companies Gree[122] and DeNA,[123] have come to the United States and acquired different mobile studios and mobile publishers for hundreds of millions of dollars. They have tried to bring their model that is working so well in Japan to the United States, but have not had nearly the same success they have had in Japan. The templates do not apply globally, unfortunately.

Audience Member 4:

You said one of the biggest differences between digital and retail sales is that digital sales tend to have a longer tail. What do you see as some of the reasons for that? Do you think it comes down to Steam sales that come out? Or is it the allure of constant updates?

Mr. Patrick Hudson:

More than anything else, it is the merchandising and the Steam sales. If you are a retail game and had a sales pop during the holiday, Best Buy does not necessarily care about you the year after. But Steam has their cycle, and they have their summer and holiday sales. A developer has just as good of an opportunity of getting promoted on there as they do with a deep discount on your game. When we take 75% off the list price of our games, the revenue will shoot up 15,000% from the day before. That was not possible before, so a lot of it is the merchandising and the prominent Steam sales. It has become engrained in the culture of the Steam gamer. Also, one additional thing is the ability to patch and update more easily than before.

Mr. Steve Nix:

It is just inherent in the nature of physical retail to calculate per square foot the productivity of what is in that space. A GameStop store typically has 1500 square feet. Unfortunately, with that limited footprint, we can only hold so many games. We might have thousands of titles in our store, but we can-

internet-company-tencent-owns-40-percent-of-epic-games/ (last visited Mar. 24, 2013).

120. Kenneth Rapoza, *China's Tencent Buys U.S. Epic Games*, FORBES MAGAZINE, (June 20, 2012) *available at* http://www.forbes.com/sites/kenrapoza/2012/06/20/chinas-tencent-buys-stake-in-u-s-epic-games/.

121. LEAGUE OF LEGENDS, *supra* note 77.

122. GREE, http://gree-corp.com/ (last visited Mar. 24, 2013).

123. DeNA, http://dena.com/intl/ (last visited Mar. 24, 2013).

not have the 50,000 titles that you can have freely available on the PC download services or the hundreds of thousands of titles that are available in the App Store. We would love to have all of them, but it is the nature of the physical space.

Mr. JJ Richards:

As a consumer, when was the last time you walked into a Best Buy? When was the last time you walked into a Toys R Us? Think about what time of year that was. That is the limitation on physical retail. But for digital, when was the last time you played a game? When was the last time you wanted to play another game? That is the difference in the consumer.

Mr. Steve Nix:

That is the nature of why we are so aggressive on digital in our stores. You can walk in a GameStop and buy those thousands of games. You can pay cash, get GameStop power up rewards. We are trying to expand our online and physical show room.

Mr. Patrick Hudson:

The other thing I want to mention on that, especially on Steam, is the virility and the network effects that come from it. If you pick up *Orcs Must Die* in a Steam 75% off sale, you might invite a friend to play with you, but your friend might not have the game. If the sale is over and the game is $15 again, he might pay that just so he can play with you. This is why we see a tail after the sale is over from people pulling in their friends. You know what your friends are playing because it is right there front-and-center. It is merchandising really. Steam has done an amazing job with connecting players together.

Mr. Steve Nix:

You also see a really odd collection behavior going with PC digital. Some research shows that half the games people buy for PC downloads will never be opened, so we are very aggressive on our sales for PC downloads. Gamers buy a game saying, "Oh, I would love to get back and play that game again." Then, half the players do not even open that game once. For the developer, that is a player you do not have to support. You do not have to fire up a server or anything. They put the game in their collection, and it stays there forever.

Mr. JJ Richards:

Steam always has one day a week when they have sales. I just avoid Steam on that day because they already have your credit card information, and it is as easy as clicking to purchase. There are great games, three to four years old, that are only $2.99. I probably do have at least one or two games that I have not even played. I bought them because they were so cheap, and I just wanted to try them out.

Audience Member 5:

So, are you limited to certain types of games in the Asian market?

Mr. Patrick Hudson:

I don't think so, but not everything translates as well. For example, the Korean gamer is not as excited about *Call of Duty*.[124] They do not care for the realistic art style. They like cartoony, more whimsical, brighter looks that do not translate as well here. I do not know if it is gameplay styles, but content, look, feel, and pacing certainly matter. In Korea and China, they play *Sudden Attack*, a first-person shooter game.[125] They released it here and nobody cared. You can point to plenty of games that that work there but do not work here and vice versa. There are also plenty that work globally. *World of Warcraft* works globally.[126] *League of Legends* is a big success in China, just like it is here.[127] We can point to some mobile games the same way. I do not know the recipe. If we are thinking about going global, then we certainly think about our look and feel. We probably think about those aesthetic qualities more than about game mechanics and features.

Mr. JJ Richards:

Remember the two huge opportunities related to digital. First, if you have a great game, it can get to every person on the planet. There are some games that do that. Second, digital does not have the cost of physical retail and distribution. You can reach a very small subset of people who enjoy whatever content you have.

We have not hit that age yet. We are still doing the one book. We are all reading the same one book on digital because the store-front is showing the Top Ten List. In the next digital evolution, there will be audiences for your games. You will find 30,000 people on a global basis who are very into your specific art style. Finding these micro-markets will be the next big wave on digital.

Audience Member 6:

Mr. Hudson, you mentioned that HAWKEN has their own online e-commerce and can avoid Steam's 30% cuts. Is it possible to do Steam and something like that simultaneously?

Mr. Patrick Hudson:

Yes. For example, we can sell *Orcs Must Die* and the Steam codes directly from our website and not share the 30% revenue with Valve. They do not have a problem with that. They would rather us not sell it for a third less. When Mr. Richards showed something being sold differently on Google Play than in the developer's store, they would not be terribly thrilled with that. That is the tradeoff. If you can build your own e-commerce site and your

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124. CALL OF DUTY, *supra* note 102.

125. *Sudden Attack*, GIANT BOMB, http://www.giantbomb.com/sudden-attack/3030-32288 (last visited Mar. 4, 2013).

126. *World of Warcraft*, BATTLE, http://us.battle.net/wow/en/ (last visited Mar. 4, 2013).

127. LEAGUE OF LEGENDS, *supra* note 77.

own store, and if you can attract audience to your own store, then that is the preferable thing to do. But it is very expensive to build up that kind of base.

Audience Member 6:

So you are saying that if you can sell Steam codes through your own website, you do not have to worry about the 30%?

Mr. Patrick Hudson:

That is correct; we do that. We sell them from our site. We do not sell a lot, but it is another way for us to acquire customers. Somebody willing to buy it from us, rather than go directly to Steam, really likes and supports us, and that is obviously great for us long term.

Audience Member 7:

Mr. Richards, you mentioned analytics and finding micro-markets and so forth. Could you explain a little bit more from the business perspective, and how are you gathering that data?

Mr. JJ Richards:

It is the magic of software that registers every key click. Every action and reaction behavior gets mapped, logged, and connected to a user profile. You must have all the right privacy and user agreements so every bit of consumer data is there. In the offline world, I do not know if you are looking at the TV when the game is on, and I do not know if you are listening to the radio when the game is playing. In a digital game, I know exactly what you did. I know exactly how many zombies you killed. I know exactly what your precision hit rate was. I know which weapon you were using. I know the last time you bought a weapon. In a digital game, I have the ability to know all of that.

Mr. Marco Mereu:

If you have that back and forth, you also have the ability to see the problems players are having in a game. For example, if a player is playing a space game, and they keep getting blown up a certain way, you can actually feed that player, in real time, an in-game offer to buy an item on sale that will solve that particular problem right there and then. This is a great way to monetize.

We are out of time guys. Thank you, everyone, for listening and showing up today. There are a lot of great panels, and thank you to our esteemed panelists.