

# WHAT'S YOUR GAME?

*So you think you have an idea for a good game which you believe will make you zillions, but there are many you don't trust. What do you do next?*

*By George Melas*

On the floors of casinos everywhere there are numerous people with great ideas for new games and or gaming devices; if asked however most would reply that "I have not worked out the details yet", or "its all in my mind but I am not sure what to do next".

Let us assume that your idea relates to a casino game or a device of some sort. You don't really know what to do next, but are aware that the following are your options:

Get help;  
Do it yourself;

If you are an employee (e.g. a dealer, or a pit boss), your employer might take the view that he owns the Intellectual Property Rights (IPR) of your invention. You don't want to fall out with your employer, but you don't want to give away what might rightfully be yours. If in doubt, consult a legal person for an opinion. IPRs created outside the course of employment will not automatically be vested in the employer; provisions expressly provide for the ownership of IPRs to vest in the employer in respect of work related to the employment including, for example, specially assigned duties and work carried out at home.

If you are an independent contractor under a contract for services, or a consultant, you may find that some IPRs, such as for designs which are created in the course of your engagement, will vest in the client, but others will not.

#### Getting help

Allowing a reputable casino equipment supplier to market your device may pay dividends. The supplier will have used their experience to assess the chances of your game succeeding. Following on from this assessment, they can then be prepared to see your device through to production, and also to market it to thousands of their loyal customers – the casino operators - worldwide.

Choosing instead to approach a casino operator for direct marketing purposes brings with it its own set of challenges, as the marketing opportunities of a casino operator are far fewer than those afforded by a global casino equipment supplier. Opting for this alternative will also suffer from the casino operator's comparative lack of expertise in promoting devices in the international marketplace.

Clearly the size of the potential market share for your game is important – whether the game is sold or leased; leasing



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allows for recurrent revenue. Whichever option is chosen, the following criteria are crucial and will make the difference between success and failure.

Simple; as a rule of thumb, if your grandmother finds your game easy, interesting and fun to play, it is likely that it will prove to be a winner;

Original; your game must not infringe IPRs which exist in another game;

Exclusive; you must own, have applied for or have been assigned the IPR of your game – otherwise, what have you got to offer;

Fair to the players; your game or gaming device will have to be licensed and the regulatory authorities will need to know the detailed statistical evaluation of the theoretical percentages (e.g. house advantage, method of deciding the losers and payout table);

Short game cycle; more 'coups' per hour corresponds to increased revenue for the house; and after all, it is the house that decides on whether the game will operate on the gaming floor or not.

Low Cost; the maintenance, support and dealer training costs should be kept as low as possible (e.g. avoid special parts and lengthy dealer re-training programs);



fig.1

Although following the above guidelines may be regarded as essential, it is not in itself sufficient to ensure the successful launch of a new game or gaming device. Irrespective of whether it is to be you or a chosen casino supplier who will market the product, exclusivity – given through the legal protection of IPR's – is required to prevent competitors from copying your game and thus threatening your – and your supplier's – investment.

#### Legal Protection

Before producing and marketing your game, you should ensure that all those to whom you disclose details of the principles of your device first enter into a Confidentiality or Non-Disclosure Agreement (NDA). Although confidentiality obligations may arise due to the circumstances of your relationship with the other party, it is preferred, and much safer, that written, contractual obligations are imposed wherever possible. Such an agreement should set out the extent of the information to be disclosed, and impose an obligation of confidentiality on the other party – requiring the other party to extend the obligation to any of its employees who receive details of your device; the NDA should also define the extent to which such information, once disclosed, may be used. Failure to keep to the terms of the NDA (if, for example, the underlying ideas are used to produce another version of your device) will give rise to a court action for damages for breach of contract.

#### Copyright

Copyright will subsist in your proposed game or device in several forms. It subsists in the written set of rules of the game as a literary work, and in the game layout as an artistic work – and also possibly in the drawings of your device. The Copyright Designs and Patents Act 1988 ("the Act") provides that copyright will arise automatically in "original literary .. or artistic works". Literary and artistic works are defined in the Act – and will include any written or graphic work.

A graphic work is defined in the Act as including "any painting, drawing, diagram, map, chart or plan" – irrespective of its artistic quality. In addition to copyright, the law, as it currently stands in the UK and EU also provides a so-called unregistered design right (e.g. the European Community Design Regulations, effective from March 2002). These rights are provided automatically, there is no need to register them. But to enforce your rights you must show that the infringer has copied. (The UK National Unregistered Design Right lasts 15 years from the date of creation or 10 years from the date of marketing but does not cover two dimensional works such as a layout. The

EU unregistered design right does cover two dimensional works, but lasts only three years.)

The position on copyright with regard to possible drawings of your game or device is far from clear, though. The Act makes specific provision for copyright in "design documents" i.e. "any record of a design whether in the form of drawing ... or otherwise". However, Section 51 of the Act provides that, in certain circumstances, it is not an infringement of copyright in a design document to make an article to the design, or to copy an article made to that design.

Copyright protection, where it does arise, gives the owner of the copyright the exclusive right to reproduce the work. As with the unregistered design right, it does not confer a monopoly right, and cannot protect the underlying idea. Hence if a person independently arrives at the same design or concept for your game or device, they will not be in infringement of copyright. Direct copying of the rules or the layout – and possibly also the drawings – will amount to an infringement of copyright, giving rise to an action for damages and an injunction to prevent further copying - as is exemplified by the case of the 'X-leg' (see fig.1) infringement action against a competitor in the High Court of Justice, London.

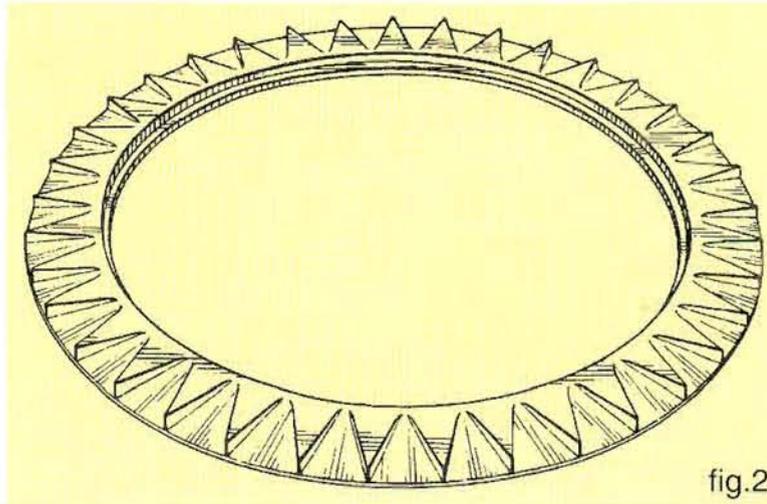


fig.2

Currently, no formalities are required

in the UK in order to claim copyright or unregistered design right – but it is advisable to mark all copyright works with the appropriate notice:

© Copyright [name of copyright owner] [year of first publication]

For example "© Copyright Your Name 2003"; All rights reserved. This draws attention to the fact that copyright is claimed and will be protected if necessary.

#### Design Right

An additional means of protecting the design of your game or device is to apply to register the design at the Patent Office in the UK, or the 'Office for Harmonization' of the Internal Market in Alicante, Spain. In this context, 'design' means the appearance of the whole or a part of a product (your game or device) resulting from such features as the product's lines, contours, materials, colours, texture, ornamentation and shape.

For a design to be registerable, it has to be new. This does not mean that the design itself must be novel or inventive, but rather that the feature claimed to be new has never before been the subject of a previous application for





fig.3

registration, or previously published or known in the EU. Even if the article had not been made freely available to the public, but was merely on public view (e.g. at an exhibition) or accessible from a public source within the EU, it will not be possible to register the design.

Once the design has been registered, the rights which the registration confers may be infringed – even in cases where there is no direct copying involved. If anyone produces an article like your game or gaming device which is covered by the registration through being substantially similar to the registered design, this will

amount to an infringement. The owner of a registered design (e.g. the separator ring of the Starburst roulette wheel of fig. 2) has the exclusive right to make or to import articles to which the design refers, for the purposes of selling, hiring or using for the purposes of any trade or business.

Registered design rights do not arise automatically; they can only be claimed once an application to register has been successful. The effective registration will then date back to the date on which the application was made. Protection of a registered design lasts for up to 25 years.

If a design is not registered, it stands unprotected against being copied by competitors – as is exemplified by the case of the first low profile (Huxley Mk.3) roulette wheel (see fig.4) designed by the author in 1981. The introduction of this product rendered its predecessor, the predictable high profile roulette wheel (fig.3) obsolete.

Ignorance of the registration of a design by an infringer could result in lower damages being awarded should legal action result, so it is advisable to indicate a successful registration by marking each article with a notice to this effect, such as "Registered Design number [ ]".

#### Patents

Patents give the broadest protection and are much used in the USA where some patents for progressive games, for example, are acknowledged to be extremely valuable (see Fig.5). Patents, like registered designs, must be applied for and do not arise automatically. A patent is concerned with the embodiment of your idea (its function and operation) or of an article (e.g. your game or gaming device), and usually operate to protect the apparatus which makes the article work. In the US, in addition to the embodiment of your idea, other aspects of your invention (e.g. method) can be included.

However, obtaining a patent is a lengthy and relatively expensive process, and full details would need to be supplied to your patent agent before an indication of the chances of success could be given.

You must file your patent application before your idea is disclosed outside of an NDA

#### Licensing

Having established that IPR's are yours, and that your device is commercially viable and does not infringe someone else's game, you are ready to have it marketed. However, before any actual promotion of the device can take place, certain jurisdictions require that you have your game licensed.

Licensing requirements vary from one country to the next; however, if you can satisfy the stringent requirements of both the Nevada Gaming Commission and the State Gaming Control Board, you will stand a good chance of success. Once the appropriate criteria governing both themes and approval procedures for games and gaming devices are met (Regulations 14.025 and 14.030 respectively), your licensed manufacturer may apply for approval.

The application forms are detailed and require the name and address of the "person developing the new game" (Regulation 14.320). The description of the new game, including the rules of play and the proposed schedule of payouts, will be required for this – as will a statistical evaluation of the theoretical percentages of the game. The Control Board does not sign confidentiality agreements for any documents submitted with the application, hence patent applications should be filed prior to filling in the Control Board's application forms.

Assuming that all has gone well thus far and the appropriate fees have been paid you are now ready to proceed to the stage of assessing the commercial aspects of your game or device. This will require a field or beta test (Regulation 12.240) at a licensed gaming establishment (or a certain size) for not more than 180 days.

The outcome of the combined endeavours of yourself, your licensed supplier and the casino operator will rest with the players themselves – they will have the final say, as it is entirely up to them whether your game becomes a success or not. If you have a good idea and need advice, drop me a line.

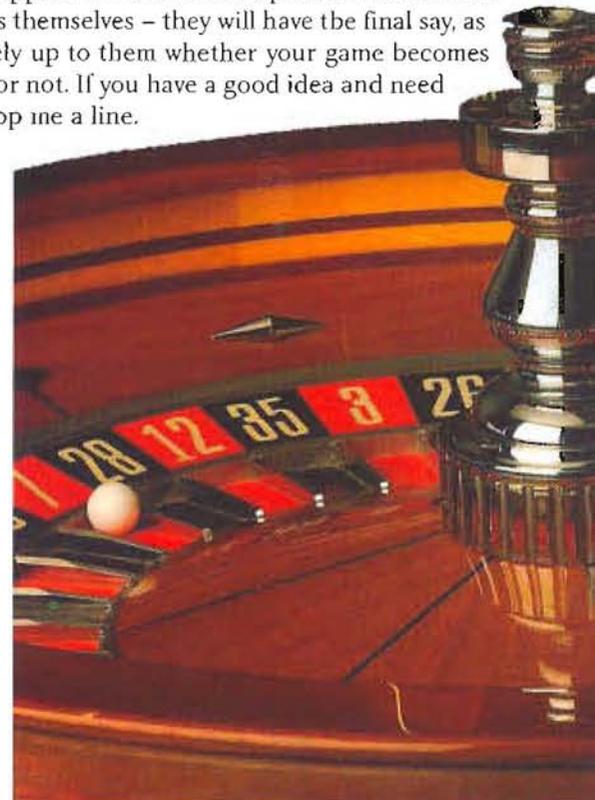


fig.4