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Find the Loot! Funding Sources for Video Game Startups

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Today's speakers



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Gaming & Interactive Media

We work closely with gaming and interactive media companies of all sizes to help them successfully and efficiently achieve their goals. We counsel clients in all aspects of the industry, including but not limited to studios, publishers, esports organizations, social platforms, hardware and software developers, new ventures and investors.

We have extensive experience representing gaming and interactive media companies in their most important transactions. Over the last 5 years we have had 250+ partners represent gaming industry companies in 300+ venture financings, 125+ mergers and acquisitions, and 10+ IPOs.

Agenda

- Crowdfunding
- Project Financing
- Publisher Financing
- Venture Capital Financing

Crowdfunding

“Pre-Sale” Crowdfunding	“Equity” Crowdfunding
Sell “stuff”	Sell stock to the public

“Pre-Sale” Crowdfunding

- DLC
- Alpha/Beta Access
- Merch
- Example: Cloud Imperium Star Citizen (\$800M+)

KICKSTARTER

INDIEGOGO

 **patreon**

Equity Crowdfunding

- Regulation CF (Title III of the JOBS Act)
 - Must take place online through an SEC-registered intermediary, either a broker-dealer or a funding portal
 - Raise a maximum aggregate amount of \$5 million through crowdfunding offerings in a 12-month period
 - Limits the amount individual non-accredited investors can invest across all crowdfunding offerings in a 12-month period
 - Requires disclosure of material information in filings with the SEC and to investors and the intermediary facilitating the offering

Equity Crowdfunding - Disadvantages

- The “crowd” on the cap table
 - Admin hassle; less experienced investors
- Cost
- Public disclosures
- May turn off institutional investors
- Heightened negative publicity risk



Project Financing

- Who: VCs and publishers
- What: Cash for revenue share
- When: Pre- or Post-Launch



Project Financing - Revenue Share

- Before Repayment: Higher revenue share (20 – 30%)
- After Repayment: Lower revenue share (10 – 20%)
- Monthly Payments
- Gross vs. Net Revenue
 - What is accounted for in Net? tax; third party costs; refunds; currency exchange fees; publisher fees; engine fees

Project Financing - Other Rights

- Information/Audit Rights
 - Rights to access financial information; rights to audit revenue determination upon which the revenue share is based
- Right of First Refusal on Subsequent Funding
- Secured vs. Unsecured
 - Is the revenue share obligation secured by the Company's assets (like a secured loan)
- Tax considerations for investors
 - Depending on the number of loan features, can be treated as a loan for tax purposes

Publisher Financing

- Presentation To Come!
- Right to publish and market the game
- Can include cash advance or no cash advance



Publisher Financing - Key Terms

- Advance / Minimum guarantee – Upfront payment for right to publish. Sometimes a “pre-paid royalty” amount (recoupable against monthly royalty).
- Royalty – Monthly/quarterly royalty paid publisher → company. Lower advance often means higher royalty to company.
- Cost Sharing – Division of operational costs associated with commercialization of the game.



Publisher Financing - Key Terms

- Territory – Exclusive territory applicable to publishing rights. Global? Regional only?
- IP Ownership – Company continued ownership of the game. Ownership of derivative works created by the publisher.
- Sequels – Do publishing rights apply to expansions, spinoffs, prequels, sequels of the game? Or just the original game?
- Term/Duration – Typically multi-year arrangements.

Publisher Financing - Key Terms

- Marketing – Is publisher or company responsible for marketing? Determine marketing budget.
- Hosting – Publisher hosting support in the territory.
- Technical Support – Level of technical support for operations.
- Esports; Broadcast; Other Activities – Inclusion of activities other than just publishing and marketing the game.



Venture Capital Financing

- Types of Investors
 - Friends & Family (pre-seed/seed)
 - Angel Investors (pre-seed/seed/series a)
 - VCs (all stages)
 - Strategics (publishers; studios)
- Types of Structures
 - Convertible Note
 - SAFE
 - Preferred Equity Financing



Venture Capital – SAFEs and Convertible Notes

- Pre-Seed or Bridge
- Convertible Note – Loan that converts into equity in the future (e.g., next priced equity round)
 - Maturity Date
 - Interest Rate
 - Discount
 - Valuation Cap
- SAFE – Contract that converts into equity in the future (e.g., next priced equity round)
 - Same as a convertible note, but not debt—no interest or maturity

Venture Capital – Equity Financing

- What is Preferred Stock? (Series Seed; Series A; Series B; etc.)
 - Different rights and valuation than Common Stock
 - Economics - Liq. Pref., Dividends, Anti-dilution
 - Governance - Board Composition; Protective Provisions
- Typical venture model terms (NVCA model documents at nvca.org)
- Negotiated transaction led by investor – much more involved (time/cost) relative to convertible debt/SAFEs
- Benefit: Bigger checks; sophisticated investors

Venture Capital – Key Terms

- Founder and Investor Competing Interests
 - *Founders*: Control; Valuation (Dilution)
 - *Investors*: Control; ROI; Liquidity (Exit)
- Key Terms
 - *Valuation* – $\$ \text{ Invested} / \$ \text{ Post-Money Valuation} = \text{Dilution (\%)}$
 - *Liquidation Preference* – Downside protection for investment
 - *Board Structure* – Likely 1 board seat given per financing
 - *Protective Provisions* – Investor approval rights
 - *Information Rights* – Financials; board materials; budgets
 - *Anti-Dilution* – Protection from dilutive equity

Venture Capital – Special Considerations with Gaming Strategics

- Think through Protective Provisions and Control Rights
 - Transactions with licenses (could block publishing deals)
 - Sale of the company
 - Future financing
 - Operating budget
- Board seats
 - Visibility to highly confidential information; balanced by fiduciary duties

Venture Capital – Special Considerations with Gaming Strategies (con't)

- Rights Related to Publishing and Other Material Transactions
 - ROFN; ROLO
 - When do they start?
 - Revival?
 - Termination upon a sale?
 - First look upon a sale