IGDA HELSINKI HUB

ONLINE MEETUP

Game Makers of Finland & We in Games

More from [here]

Questions from the audience answered by lawyer Maria Jauhiainen, Insinööriliitto.

Q: Can an employer intervene in an employee's leisure activities, for example, if a person wants to stream their play? Or make their own game with own computer and or programs?

A: In principle not (the employer cannot intervene, that is), but there can be some limitations. Person cannot engage in anything that would compete with the employer´s activities or with the way the company makes money or harm the company in any way. Anything else is in principle – like said – allowed, but for that you cannot use the company´s devices, ideas you sort of get from the company, your working time or company´s programmes for this unless you get a permission from the company.

For anything more precise, please, contact our Customer Service, asiakaspalvelu@ilry.fi.

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Q: What are the employee's rights to his/her own idea or artistic work (like graphic artists)? What is a fair agreement for all parties on the use and rights of this work?

A: This is quite a complex question, but in principle the work that you do in order to fulfil your working duties, the result of your work – all the results of your work – will belong to your employer. The rights that will remain with the employee are the so-called fatherhood right (to have your name mentioned in connection with the work) and the right that the work is not changed without your permission. The right to use the work for commercial purposes and to disseminate it, belong to the employer.

If the work has been done without an actual connection to one´s working duties and if you have not gotten "inspiration" for it from fulfilling your working duties, then the chances of it belonging wholly to you, are greater.

For anything more precise, please, contact our Customer Service, asiakaspalvelu@ilry.fi .

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Non-competition agreements –

Q 1: Are they even legal in Finland for non-executive positions?

A 1: Unfortunately, yes. They usually rule out only shop-floor level/blue collar workers and if you do something a little bit "brainy" work where you are involved in the company´s core work and that you get to hear company´s trade and business secrets, it´s very likely to be legal in your case.

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Q 2: If you are on an unpaid leave (lomautettu) for over 6 months can you disregard your 6-month non-competition agreement and start at another company immediately?

A 2: After the 200 days of furlough (laid-off) and if you are let go by the company or if you resign yourself, that is true: the non-competition agreement doesn´t apply to you anymore.

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Q: If I have a fixed term contract first (6months) after which I get an open-ended contract immediately, do I still need to go through the probation period?

A: No, once is enough for one employment and for the same tasks.

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Q: Quite many game companies in Finland are co-founded by bunch of friends, how does union serve entrepreneurs - and does it at all? Or what is your suggestion for the entrepreneurs where they should get the support if/when needed?

A: Yes, we do serve entrepreneurs! Just send your questions to our Customer Service asiakaspalvelu@ilry.fi and we will try and find you all the answers you need.

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Q: What if due to lack of resources I am asked to take up other responsibilities in addition? Do I really need to have an addendum to my contract? What if initially asked temporary, but they become a more permanent part of my working day? Can you be let go off if refusing to take up responsibilities initially not mentioned in your contract?

A: My advice would be to make a temporary agreement about the new duties and yes, write them all down. And temporary so that it will start and end, especially if the employer just tells you “to fill in for a little while” without extra payment. And make it clear to the employer that if the extra tasks become a permanent part of your working duty, they also have to pay you more. In that case you can also call our Customer Service and ask them to connect you to our salary advisors as to how much more you would deserve extra money for the new tasks.

But if you start doing the new tasks without anything written about above and you have been doing the work for a longer while and then refuse to do them anymore, then yes, you can end up in trouble with the employer. Since refusing to do your work can be seen as a big neglect on employee´s part in the eyes of the law.

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Q: I live in the northern parts of Finland, if I have to move to Helsinki because of my work, do I have a right for better salary because of the increased cost of living or am I meant to just suck it up?

A: Unfortunately, there is no direct right, but it can be used as a powerful negotiation tool, because where you live or have to live will have a big effect on your living costs. The best way is to call our Customer Service first and ask them to connect you to our salary advisors so you can come up with a precise sum what to ask for when negotiating about the move with the employer.

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Q: How well all of these Finnish laws transfer to other EU/non-EU countries?

A: Sadly, mainly only to the other Nordic Countries, not elsewhere. The employment laws are at their best in the North of Europe.

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Q: When you say, the collective agreements usually give better benefits for employees, could you make sure you also mention that most game studios give much better benefits than any collective agreement to their employees?

A: I will remember to do that :).

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Q: There are many creative artists working in the games industry. Part of an employment contract should mention Intellectual property. However, many people are uncertain of their rights in this area. This is especially relevant as the EU Digital Single Market Copyright Directive comes to force.

Can you confirm that it is actually the employee who is first owner of copyright in an employment relationship and there is no regulation in the copyright act that compels an employee to give up complete ownership of their copyrights (exceptions to software).

A: Unfortunately, I cannot. See my summary on the subject below.

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Q: In Finland it is common for firms to exploit loopholes in the law and hire professionals under “työharjoittelu” agreements (work-based training). This is where they can exploit professionals who are job seekers trying to get a 'foot in the door.'

Can you confirm that it is illegal to commercially exploit creative work made by an “intern” who is actually receiving benefits from Kela rather than wages or other remuneration.

A: This is a little bit tricky, since the companies can get people who fulfil the requirements for työharjoittelu or työkokeilu and it´s legal unless otherwise proven. We are aware of some exploitation happening there, but since it´s Kela and the employer involved in this equation, the real exploitation cases seldom reach our ears. My best advice is to contact Kela in this case, if it´s obvious that the employer is just making improper use of the system without any real intention of hiring these people afterwards. What I know Kela will put them on a “blacklist” and they will not get the subsidised trainees anymore.

And if you are referring to some work done in työharjoittelu that has something to do with copyrights, some good news here: the presumptions I refer to below only apply when the work has been accomplished in a working relationship when the employer actually pays the employee money: since the money is coming from Kela in this case, all the (copy)rights will remain with the maker.

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K: Kysymys liittyen työsopimuslain rikkomiseen:

Olen työssä pelialan yrityksessä ja työsopimukseni on kokoaikainen ja määräaikainen.

Työnantaja osa-aikaistaa työni jo ennen määräaikaisuuden päättymistä, vedoten tuotannollisiin ja taloudellisiin syihin. Samaan aikaan työnantaja on palkannut muita työntekijöitä, kokoaikaiseksi sekä osa-aikaiseksi, myös samoihin/samankaltaisiin tehtäviin, mitä minä teen.

Työnantaja korostaa, että kyseessä ei ole lomautus vaan pysyvä osa-aikaistaminen, eikä muita työntekijöitä osa-aikaisteta eikä lomauteta. Työnantaja on myös korostanut, että minulle EI ole tarjottu eikä tarjota muita työtehtäviä ja muuta työtä ole tarjolla, kuin osa-aikaista (taloudellisiin syihin vedoten).

Työaikani siis vähenee kokoaikaisesta osa-aikaiseksi, mikä vaikuttaa toimeentulooni merkittävästi, vaikka työnantaja samaan aikaan palkkaa muita työntekijöitä. Koska työsopimus on määräaikainen, olen ollut koko ajan siinä käsityksessä, että työnantajan on tarjottava työtä koko määräaikaisuuden loppuun asti ja määräaikaisille ensisijaisesti ennen muiden palkkaamista.

Onko työnantaja rikkonut työsopimuslakia ja tietoalan tes:iä ja mitä seuraamuksia tästä seuraa? Kuinka tällaisia rikkomuksia yleisestikin valvotaan? Esim. Game Makersin toimesta? Mitä oikeuksia minulla on työntekijänä?

V: Työsuhteen olennaisia ehtoja ei saa muuttaa kuin irtisanomisperusteen ollessa voimassa ja siis irtisanomisen sijasta ja vaihtoehtona. Olennainen muutos tarkoittaa etenkin muutoksia työajassa ja palkassa, jotka molemmat sinulla tässä toteutuvat. Määräaikaista työsopimusta ei saa irtisanoa laisinkaan, ellei asiasta ole sovittu erikseen työsopimuksessa; tähän toki riittää pelkkä maininta irtisanomisajasta, jota työnantajan tulee lisäksi muutoksen kohdalla noudattaa ennen kuin muutos tulee voimaan. Ja lain mukaan irtisanomisperustetta ei ole, jos työhön on palkattu tai palkataan irtisanomistoimenpiteen jälkeen uusi henkilö töihin, joita henkilö voisi tehdä. Lisäksi työnantajan tulee tarjota lain mukaan osa-aikaista työtä tekevälle henkilölle hänen niin tahtoessaan lisää töitä, jos niitä ilmaantuu. Eli aika lailla tuntuisi asiassa olevan nyt työnantajan kanssa selvitettävää.

1.4.2020 tuli voimaan määräaikaisesti joitakin lakimuutoksia ja niiden mukaan koeajalla voidaan työsuhde nyt myös purkaa tuotannollisella ja taloudellisella perusteella (normaalisti tätä ei voi tehdä), jos sellainen on todellisuudessa olemassa. Näin ollen työnantaja ei voi kohdallasi suoraan vedota tähänkään, koska töitä on sitten kuitenkin ollut olemassa ja ilmeisesti on yhä.

Ota ihmeessä yhteyttä asiakaspalveluumme (asiakaspalvelu@ilry.fi) tai suoraan minuun (maria.jauhiainen@ilry.fi), niin selvitetään asiaa lisää ja otetaan tarvittaessa myös työnantajaan yhteyttä.

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K: Mitkä ovat työntekijän oikeudet omaan ideaansa/taiteelliseen työhönsä (esim. graafikot)? Millainen on kaikille osapuolille reilu sopimus näiden töiden käytöstä ja oikeuksista?

V: Näissä tapauksissa sopimusmahdollisuudet ovat aika rajatut, vaikka jotakin sopimusmahdollisuuksia toki on. Jos kyse on tietokoneohjelmasta ja/tai tietokannasta, niin sopimusmahdollisuuksia ei oikeastaan ole ja muissakin tapauksissa työsuhteessa tehtyä teosta koskevat kaupalliset oikeudet (l. oikeus tehdä tuotteesta kopioida ja saattaa ne markkinoille ja myytäväksi) kuuluvat aina työnantajalle, mutta periaatteessa muuntelu- ja edelleen luovutusta koskien voidaan – jälleen muiden kuin tietokoneohjelmien kohdalla - erikseen sopia. Moraaliset oikeudet eli isyys- ja respektio-oikeudet jäävät aina työntekijälle.

Katso alapuolelta tarkemmin (englanniksi) aiheesta ja sitten kannattaa ottaa tosiaan meihin yhteyttä mahdollisen sopimuksen tiimoilta myös.

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Briefly on IPRs

The IPRs always belong to a person who has done the work and the IPRs can be classified as rights of prohibition towards other actors. In Finland, the law recognizes only working relationship inventions, not

working relationship copyrights: all the legal praxis is based on legal presumptions, case law and agreements. The main presumption is that all the rights that have not been explicitly transferred to another actor, remain with the maker, but there are some exceptions when it comes to a work that has been accomplished in a working relationship.

When an employer hires a person to do a specific work, it is clear, that the presumption is that the employer means to benefit from the work that the employee is hired to do. So, the main starting point when some work is done in a working relationship is that the employer will receive the copyrights to the outcome(s) of the employee´s fulfilment(s) of his/her working duties. In this case the copyrights/IPRs are limited to enabling the employer to use the work in the scope of its normal ways of doing business or industry. This applies to all work, be it software or any other work that the employee has done when fulfilling his/her duties as an employee and under the supervision and guidance of the employer.

The prerequisites for this are that the work has been done namely in a working relationship (with a employment contract), using employer´s facilities, in return for salary or other form of remuneration and under the supervision and guidance of the employer. Any other forms of doing work does not entail the same presumptions.

Like said above, the rights that will be transferred to the employer directly in these cases are the rights that entitle the employer to make use of the work in a commercial sense and within the usual scope of its business and/or industry whilst all the other rights remain with the employee. These so-called economic (copy)rights include the right to make copies of the work/product and make the work/product available for the public.

The other rights include the right to alter the work and the right to hand over the (copy)rights to a third party without the maker´s consent. If the employer wants to have these rights, there usually has to be an agreement about that in place. (The one exemption though being the *transfer of business*, when all IPRs are legally transferred to the buyer even without a specific agreement in place).

The only exceptions here are software or any other forms of computer programmes regarding which the employer will receive all of the rights mentioned above. With software or other forms of computer programming the only rights that remain with the maker are the moral copyrights that I write more about below.

The only rights that *will always remain* with the maker are the right to be mentioned in connection with the work (if that is usually done, that is) , the so-called parenthood right, and that the work cannot be altered in a way that reflects bad manners or that will exhibit the work in a bad light; that right is called the right of respect. These can also be called the *moral copyrights*.

All in all, it´s very advisable to make an agreement on these rights and on what remains with the maker and what are transferred to the employer. One important thing here is to agree on what rights the employer will use and what rights of usage will remain with the maker.

When making this kind of an agreement it´s again best to contact our Customer Service, asiakaspalvelu@ilry.fi for further and more specific advice.