

The Next Frontier: Legal and Practical Issues That Surround Mobile Gaming

March 12, 2020



Steve and Nick examine the trends behind the explosive growth enjoyed by the mobile gaming industry, as well as some of the legal and practical issues that come along with it. They then interview Brian Grayson, Founder and CEO of Lionheart Games, and talk about the differences in developing and publishing for the mobile market, challenges unique to the platform, and the future of mobile

gaming.

Transcript:

Nick Brown: Hello and welcome to another episode of the LAN Party Lawyers podcast. My name is Nick Brown and I'm joined, as always, by my colleague and co-host Steve Blickensderfer. To our regular listeners, welcome back, thank you for listening. To our new listeners, this is a podcast where we tackle issues at the intersection of video games, law and business, through debate, discussion and interviews. We try to focus on legal issues in particular and we offer takeaways and our thoughts, but please always remember nothing we say here is legal advice. Today we have a great topic for you and a great show. We're going to be talking about a big deal in the industry and that's a shift and rise of mobile gaming. We're going to talk a little bit about the industry trends, we're going to talk about why they're occurring, we're going to talk a little bit about some legal issues and some practical issues that are arising in this space. And then, we're going to get to the main event, which will be a great interview we have for you today with Brian Grayson, the founder and CEO of Lionheart Games, a major mobile development studio in Atlanta, Georgia. So why don't you go ahead and get us started Steve. Let us know what's going on, why are we talking about mobile games.

Steve Blickensderfer: Thanks Nick. Well unless you've been living under a rock, mobile apps and mobile games are huge. Mobile games in particular have been kind of shaking the industry up a little bit and what do I mean by that, we're seeing a trend where some traditional PC game companies, console game companies have actually started to dedicate and create specific studios just around the mobile game ecosystem. Because it is a very unique ecosystem with its own challenges which we're going to really cover in today's episode Nick. So, you know, just to kind of give you an example, a recent example, Activision Blizzard's recent new title Call of Duty they've actually sold more units and had more downloads on their COD mobile version 150...

Nick Brown: Last I saw, yeah 150 million.

Steve Blickensderfer: ...million downloads, making it just the largest Call of Duty activation that they've had for the platform. So...

Nick Brown: Which is saying something, especially given that Call of Duty is pretty much known as one of the major gaming brands in existence, right?

Steve Blickensderfer: That's right. So, it begs the question why, why is mobile games so hot right now? And really the primary reason is the low cost to entry, the low barrier to entry: all you need is a phone, a smartphone, in order to play.

Nick Brown: That's right. So we like to introduce these issues with little vignettes and I have one for you today. Someone who may have been watching Blizzcon in November 2018 may remember the "Why do you not have phones" or "Don't you all have phones" fiasco. A little background, Blizzard is a company that has been making PC games primarily for many, many years and they're known as an icon in the industry and for a long time they just had unparalleled respect in that regard. Well in November 2018 they announced that the next entry in their immensely popular Diablo series, which had always been PC-based, was going to be a mobile-only game called Diablo Immortal. Developer Wyatt Cheng was on the stage answering fan questions live and one of the questions was essentially, "Well won't this ever come out on PC? You guys are a PC company, right?"

And he said, "No, it won't. They're planning on mobile only for this game."

And the crowd booed him immensely and he infamously responded, "Do you guys not have phones?" Which prompted great internet ridicule.

Steve Blickensderfer: *[laughs]* Yeah.

Nick Brown: Now, not because there's anything wrong with mobile games. In fact they're incredibly popular, but because this was a PC audience and everyone was expecting their marquee announcement to be for the platform that they traditionally develop for. But internet ridicule aside, Cheng had a point, a really good one, which is that everybody has smartphones now. Smartphone users, last we saw, according to estimates, surpassed 3.2 billion globally in 2019, which is no small number. We're seeing an expected 8.3% year-on-year growth in smart phones, so that number's actually going to be continuing to increase. And the estimates are that it will be near 4 billion globally by 2022. So that's, you know, that's a number that's going to be hard to ignore.

Steve Blickensderfer: Yeah, those are some big numbers.

Nick Brown: But in addition to the low barrier of entry and the popularity of smart phones, it kind of makes sense. Mobile gaming is kind of a natural platform because it allows for functionalities and mechanics that are just unavailable for what we see as traditional gaming.

So, the #1 is just the unparalleled convenience. You can play on the go anywhere, whether you're in the car, whether you're at the doctor's office, whether you're waiting at the DMV. You can whip it out and start playing a game with no real damage to the quality of your experience.

And, it's also got tech benefits over traditional gaming. First of all, your cell phone's pretty much always connected to data, so you don't need a separate internet connection or a separate internet account. They also generally have geo-location services built in, which allow for gaming experiences that don't really exist anywhere else. Pokémon Go is one that we've talked about on this podcast

before. And that's the sort of thing that you just can't do on a traditional console because there's no geo-location aspect to it.

Most phones also have gyroscopes which allow for cool things like tilting your phone to turn or to navigate your character, which doesn't exist elsewhere without that specialized equipment.

And then they also ...

Steve Blickensderfer: That does exist on the Switch when you're playing Zelda or something and you're shooting an arrow. But, I would like to think - you know, this is me speculating a little bit - but that was influenced by mobile games. So now we're seeing mobile games influence, you know, consoles, traditionally.

Nick Brown: One of the main selling points of Switch is that it is mobile...

Steve Blickensderfer: Right.

Nick Brown: ...itself. And so I, you know, I would say that goes together perfectly, Steve.

Steve Blickensderfer: There you go.

Nick Brown: And last, it also allows for integration with other apps from your non-gaming life, right, if it's on your phone. Fitness apps will track your steps or distance so you can be playing the game even when you've got the game closed. And it's got a natural application and fit with all your contacts and your social media and whatnot, so it helps with connectivity.

Steve Blickensderfer: Right.

Nick Brown: So there are a lot of tech reasons in addition to just the popularity of smart phones.

Steve Blickensderfer: Well, you take those numbers, the popularity of smartphones, you put it together with an ecosystem that's in the business of making money. And mobile apps in general are big business. OK? We're talking - just to kind of give a little bit of context - \$188/189 billion in the US alone in 2020 is expected in terms of revenues for mobile apps. So mobile games in particular constitutes the largest segment of the global games market. \$68.5 billion in 2019, which is a year-over-year growth of 26.7%. Take a specific example...

Nick Brown: That is astounding - 26% year-on-year growth.

Steve Blickensderfer: Yeah. I'd take a quarter, you know, 25% year over year growth any day in a particular industry. Just to give you...

Nick Brown: I think I grew 25% last year but not in dollars.

Steve Blickensderfer: Yeah. In other words...

Nick Brown: I think I need to get back into the gym.

Steve Blickensderfer: Yeah, just to give you some examples, these are games that I frankly had never heard of before, but Tencent's Honor of Kings alone generated \$1.5 billion in 2019.

Nick Brown: One game.

Steve Blickensderfer: One game, right. Compare this to Nintendo's entire mobile games portfolio reportedly grossing \$1 billion in 2019. Could you guess...

Nick Brown: That's amazing.

Steve Blickensderfer: ...could you guess the most lucrative of the bunch of those games? It's not Mario Kart. I'll give you that hint. It's actually Fire Emblem Heroes. Haven't played it, never heard of it before.

Nick Brown: I've heard a lot of good things about it, but I haven't played it either. But it looks like we may be in the minority.

Steve Blickensderfer: Well, this is an indication that the games really aren't as popular here in the US as they are elsewhere. Japan and China, for example, those are increasingly - and Japan is pretty well known for being a mobile game country, but China is also growing in that respect. China alone has 623 million mobile gamers. That's a large audience of gamers. In Japan, 4 out of the top 5 highest grossing games are mobile titles. And together, they account for 20% of Japan's iOS revenue last year.

Nick Brown: Wow. Four games, 20%.

Steve Blickensderfer: Yeah, yeah.

Nick Brown: That's remarkable.

Steve Blickensderfer: So if you're looking for the growth in this industry and where it's popular it's in the Asian markets, it's in emerging countries: India, the Middle East, Latin America, southeast Asia.

To give another example, PUBG mobile is massive in India and Southeast Asia and we're seeing really competitive esports scenes surrounding PUBG mobile in those markets. And one of the top video games in esports all together last year was the Arena of Valor, a mobile MOBA. So, I don't know if you've ever played that game, Nick. I haven't.

Nick Brown: I have not. My MOBA time is spent weeping over Heroes of the Storm, as we all know.

Steve Blickensderfer: Yeah.

Nick Brown: Nonetheless, we've seen a big increase in streaming and subscription models because they dovetail with mobile gaming and make it more attractive. Everyone's heard about Stadia, Project xCloud and NVIDIA's offering, and even the Apple Arcade. So all these big companies that are in gaming are actually making their own shifts specifically to mobile now.

And the issue really is latency. Right? That has so far kept mobile-type gaming and streaming services from dominating the scene despite their great comparative convenience. But as tech improves, we're going to see that barrier of latency erode over time.

And, in fact, that brings us naturally to the issue of 5G...

Steve Blickensderfer: Right.

Nick Brown: ...which is revolutionary technology that is always-you know, I always hear it's coming next year, despite what year it is. But it's eventually, when it comes, going to result in seamless cloud gaming on mobile because it's supposed to be able to deliver through your cell-type data transfer the same type of connection that you would get on high speed internet that you're used to paying additionally for.

Steve Blickensderfer: Yeah. 5G promises to just revolutionize the market place. It's industry-wide, it's not in one particular area. Right? It obviously comes out of telecom, but it's going to impact businesses of all shapes and sizes. And it's definitely going to impact the mobile game market.

Nick Brown: Right. Now one of the biggest issues that we've seen regarding mobile gaming is with respect to intellectual property in the mobile gaming market. Because, the internet and mobile gaming is more global in nature, it's important for companies to manage their IP in other emerging markets. You don't just actually worry about your home base. And it requires building a global compliance program and so this is pretty much why. We've seen lots of examples of companies in

one country using the assets of a developer from another country and ultimately evading accountability due to jurisdictional or practical differences or problems in trying to stop and collect on that.

Forbes estimated that there's approximately \$3-4 billion lost annually, every year, by developers...

Steve Blickensderfer: Wow. That's a lot of money.

Nick Brown: ...from pirated apps.

Steve Blickensderfer: Right. That's a lot of money left on the table.

Nick Brown: Right? Which equates or breaks down into an estimated 14 billion pirated apps that are installed globally every single year.

Steve Blickensderfer: Right.

Nick Brown: And that number, if the trends we've seen continue, that number's going to increase. And the problem usually comes down to detection and enforcement. Right? Pirates will download an app from a legitimate source, whether Google store or some other store. Then they will deconstruct it and re-upload it on a global store or on other stores with their own monetization scheme embedded in it. So they kind of take the work of the developers, repurpose it, repackage it, and then slap their own bank account on it, for lack of a better word.

So when people use these, the pirate ends up getting the money, not the original developers who designed the game and created the assets. And this is really difficult to detect without monitoring all the competing app stores, right, because somebody can just go and do this on their own. And even once detected, like I mentioned earlier, there are financial or jurisdictional barriers that are going to prevent relief a lot of the time. So this is really an area that companies should watch for because it's popular now and it's going to get only more difficult as time goes on.

Steve Blickensderfer: We actually saw a very famous example of this a couple years ago where Riot saw its only real game at the time, League of Legends, pretty much copped into a mobile game called Mobile Legends: Bang Bang. It was released in Asia and the US.

Nick Brown: That's catchy!

Steve Blickensderfer: Yeah, totally catchy. Well, Riot wasn't too happy to see such striking similarities between its game, League of Legends, and Mobile Legends: Bang Bang. So it sued for copyright infringement in the US in federal court in California. You know, to bring in the legal stuff to

this podcast, it was actually, this lawsuit was dismissed under a doctrine called *forum non conveniens*, which basically says there's a better jurisdiction where you could sue and so we're going to actually take this case out of the courts and we're going to trust that you're going to bring it elsewhere. And so, think about it. Riot, its parent company is Tencent, a Chinese company, and it's suing a Chinese company in federal court in California. So, under the circumstances of this particular case, that forced Tencent to have to sue this company in China. And so, legal pundits were following this case. And what ended up happening was a judgment against this company. I think the company's name was Moonton. It resulted in a judgement...

Nick Brown: Not quite as catchy as Bang Bang.

Steve Blickensderfer: No, I like Bang Bang better. It resulted in a judgment of, like, \$2.9 million. So, justice was served in the end, but it took a while. It took a lot of effort. Right? Had to go to a different jurisdiction, couldn't bring a lawsuit here. So a lot of different legal considerations to make with respect to protecting assets internationally.

Nick Brown: Yeah, there's actually a lot to talk about in that regard and because of that we've got an upcoming episode of this podcast that's going to tackle that in more detail. So, stay tuned.

Steve Blickensderfer: So, other things to consider with respect to mobile games that's a little different than the traditional PC and console markets is distribution considerations. You have to release it through Google Play or the Apple store or other, as you mentioned, Nick, local regional app distribution centers. And so each one of those, as you can imagine, comes with its own terms and conditions as to, you know, the games have to be, X, Y, and Z. You know, they have to comply by these rules. And if they don't, if they violate them, game goes down and you lose the opportunity to distribute your game on the, you know, the handsets and the devices of the various players in the jurisdiction.

Nick Brown: Sometimes even if the rules change after you've submitted your app.

Steve Blickensderfer: Right. That's right. The rules aren't necessarily static. These are - we've covered this in past podcasts - electronic contracts that, according to their terms, change from time to time. And so it's just like shifting sands in a way. And so it's a little different. It's a challenging thing that, you know, companies just need to be aware of and they struggle with or that they work through.

And so to switch gears to another aspect of kind of the same thing, because of the unique nature in which mobile games are developed and how they work, they tend to be free-to-play, so you can try it and see if you like it. And in order to monetize that...

Nick Brown: To keep that barrier to entry really low.

Steve Blickensderfer: Right. Exactly. You also get micro-transaction components to them. And that's how you can have games like Fire Emblem Heroes become such big money generators and to be so popular because it allows other players, many, many players to play the game and enjoy it.

Nick Brown: And, the flip side of that is we're seeing a lot of esports develop in this area as well. And Steve mentioned this earlier, but just to flesh it out a little bit, we were at DreamHack Atlanta in November of last year, which is a wonderful international esports tournament. And it's in this giant convention center and we're walking around from stage to stage where every stage is full of these giant, beautiful rigs that are custom-built and loaded with RGB. Very high quality, lots of components. And we keep walking by and eventually we get to this stage where you've got same production quality, same lighting, same steam, same announcing, but everyone is sitting up on stage holding a phone and playing a game on their phone.

Steve Blickensderfer: It was trippy to see that. It was fun.

Nick Brown: It was very, I did a double-take.

Steve Blickensderfer: *[laughs]*

Nick Brown: And then you look at it a little closer, they're playing PUBG and they're doing things on their phones that I don't know that I could pull off with my full mouse and keyboard setup.

Steve Blickensderfer: Right.

Nick Brown: So, it was very impressive. And expect to see more of that. You know, I was surprised to see that but it was very natural there and people were really enjoying it. So, expect to see that a lot. Expect to see issues arise on the administrative side because, you know, it's one thing to have a minimum set of specs for a computer game and just say everyone who plays the game, either you have to play on the same type of machine for the tournament or you have to play at a certain level of specs. But, you know, that gets a little more difficult with phones, right, because new phones are out all the time. They come from different makers and they don't necessarily jive apple to apple. And so that'll be interesting to watch the tech and the administrative side of the esports develop as well.

Steve Blickensderfer: Right. And dare I say we're going to even see, and we're already seeing, streamers play mobile games. Since you're literally watching a streamer play a mobile game on his phone. Pretty cool stuff to watch.

But I think, Nick, we've covered enough. Let's actually talk to someone who is in the industry and doing this and working through all the stuff that we discussed, Brian Grayson. We're going to shift gears to the interview now. As you mentioned, Nick, the founder and CEO of Lionheart Games, a

former VP of Hi-Rez Studios in Atlanta for their legal and business development team, and also a reformed big law lawyer, so he gets us, Nick. I think he gets us and understands the plights of big law. Brian, welcome to the show. It's a pleasure to have you.

Brian Grayson: Yeah, thanks for having me on. I'm excited to be here.

Steve Blickensderfer: Well, Brian, I wanted to start with the first question and if you could tell our listeners how you got involved in the video game industry.

Brian Grayson: So, I thought I was going to be an FBI agent back in college.

Nick Brown: *[laughs]*

Steve Blickensderfer: That would have been cool.

Brian Grayson: Yeah! I thought so! Video games weren't even on the radar. You know, growing up I was like, I'm going to go into law enforcement and I'm going to join the FBI. And, you know, interestingly you can't join the FBI until you're 23. And I'm graduating college. I'm obviously not 23. I went through in 4 years. And I thought, OK. There's all these tracks into the FBI and I'm not a scientist. I don't know anything about physics. You know, I'm not going in on that route. I'm not intelligent enough. But, maybe I can do this law thing. And I really liked the law class I'd taken in undergrad. They're docket, they're small. And so I decided I'd go to law school, and I did well and Foley & Lardner hired me as a lawyer. And I thought, wow. Lawyers, you know, they make a lot of money. *[laughs]* Those billable rates?

Steve Blickensderfer: Some. Not all of them. *[laughs]*

Brian Grayson: *[laughs]* Yeah, that's true. So, I started practicing law at Foley and I was in the insurance group which dealt with regulatory compliance on a 50-state level as well as the insurance side of M&A deals. And, interestingly when I got my job at Foley, because I was going to school in Wisconsin, you actually don't have to take the bar as long as you practice in Wisconsin, and Foley's headquarters was in Milwaukee.

Nick Brown: Well, that's convenient.

Brian Grayson: Yeah! So I didn't have to take the bar. I got to opt out.

Steve Blickensderfer: *[laughs]*

Brian Grayson: And I got, you know, six months of my life back. So all these people, you know, Foley's big law as you guys noted, and so they hired everybody at the same time, so I had all this time off. So I thought, well, you know, instead of doing something useful with my time, I'll just play video games.

Nick Brown: *[laughs]*

Brian Grayson: And...

Nick Brown: I know something about that.

Brian Grayson: Exactly. Twitch was on the rise. And at that point Twitch was still small. So, like, now everybody goes, they're used to it, they're familiar with streaming platforms. But at the time, the big streamers on Twitch, they had maybe a couple thousand viewers. And my friends were telling me you could make money just playing video games. People would watch us. I was like, great. Built a PC. Started streaming. And started doing esports commentary casually over a game that was in Alpha called Smite.

And I got a message probably three months into that from the founder and CEO of that company, Erez Goren, basically responding to a message I had sent around, you know, here's your game, here's why, it's gone in a circle in the last six months, and here's how you break the circle and grow the game. And he wrote me back and he said, "Hey, do you want to work here? You seem pretty knowledgeable."

Nick Brown: *[laughs]* Wow. So it all came through criticism.

Brian Grayson: Well, yeah, but I said no! *[laughs]* I was like, "I'm a lawyer, man! Why would I go work in a video game company? I'm in big law. I'm the real deal. You know, I'm not going to go do that."

Nick Brown: *[laughs]*

Steve Blickensderfer: *[laughs]*

Brian Grayson: So, but here's what I told him. I said, "Look, I'll do commentary for your game because it's fun and I enjoy it and I'll help you make the game better. I'll consult with you on design because if you make a better game it's good for me because I'm playing your game and streaming it so we all benefit."

Nick Brown: Right. Win-win.

Brian Grayson: Exactly. And so I'm a lawyer by day, and then on nights and weekends I'm doing commentary and I'm sending emails about game design. And I'm traveling to PAX, I'm going to all these events with Hi-Rez doing these things. And then the moment of doom happens. A partner walks into my office, and someone had just left our team, and he drops the Affordable Care Act on my desk. That's thousands of pages. Right?

Steve Blickensderfer: *[laughs]*

Brian Grayson: It's a giant binder.

Nick Brown: It fits on your desk?

Brian Grayson: It fits, I mean, it makes a thud. Right? It's like dropping a brick. I can't believe my desk didn't break.

Steve Blickensderfer: *[laughs]*

Brian Grayson: And he looks me in the eyes and he goes, "Brian, you're the new Affordable Care Act expert."

I said, "What? I don't know anything about the Affordable Care Act. What do you mean?"

He said, "I know. But, you're going to learn." And he walks out because that's how they do in big law. Right? They don't give you that much. They throw you in the deep end and then you learn and you're better for it.

And so I'm looking at this thing. I'm like, I don't know what I'm reading here. COPPA? COBRA? What am I reading? Like, I don't even know what I'm reading. And I say to Erez, I said, "This is it. The dream is done. You know, I've had a lot of fun helping you make the game grow and doing commentary, but this is going to consume my whole life and I'm done."

And he said, "No, you're not. How about I hire you to do business development and legal and you could come do that?"

And I said, "Yes."

Steve Blickensderfer: Wow.

Brian Grayson: And I...

Nick Brown: So what you're saying is Obamacare created jobs.

Brian Grayson: [*laughs*] In some ways Obamacare directly led to my leaving big law and becoming a game developer.

Steve Blickensderfer: That's fascinating.

Nick Brown: That's amazing. So, you worked at Hi-Rez games on PC games, and that is something that we spend a lot of time talking about. But, can you tell us a little bit about, like, the biggest difference between developing PC games and mobile only, because I've got to imagine they're pretty different.

Brian Grayson: They are! There are some similarities and there are some differences. I think the biggest difference in development is that in mobile, gameplay is not always the selling point for players. I think when you think about PC or console you are really looking for what has that new compelling game play...

Nick Brown: Right.

Brian Grayson: ...but in mobile you might be interested in just repeating game play you already know, but having a different progression or a different art theme associated with it. So, Gachapon is a common genre of games, right, where folks collect characters and improve those characters. And, you know, they'll play to a limit and then I think they'll look for the next game that's just like that but maybe does things slightly different. So, on the development side I think it's definitely that.

On the publishing side, it's your relationship with the audience. PC gamers are very engaged online here in the US and easy to reach. Mobile gamers, for the US, not for other areas, they're very hard to reach. They are not as engaged. There's not a ton of periodical websites covering the news. There's not all these different forums or locations you can go. You really have to dive into, like, a subreddit for the specific game or a discord. And it's much more challenging to have a conversation with your audience. You will see mobile game companies and their following is, like, maybe a tenth of what the PC game companies have, even though they have much larger player accounts.

Steve Blickensderfer: Well, I mean, this market as you're kind of discussing it, is super, super different in many ways from the traditional PC console market. Can you - I mean, to give an example, like - I think the fact that you have games in one region that carry a different name in another - I think I had mentioned before that Arena of Valor and Honor of Kings were different games. They are actually one and the same. Right? I may have misstated that before but, that's just an example of how kind of just nuanced this particular - the mobile game industry is. Is that why we are seeing

spinoffs or just separate companies being created from traditional game companies as opposed to maybe just the division within a game company?

Brian Grayson: Part of the challenge I think, when you say, "Hey, I've got a successful PC console business and I want to be in mobile," is the opportunity cost for entering mobile can be very high, especially if you don't know anything about it. Right? So, if you're at a large company - like let's say Activision Blizzard is actually a great example - and even Blizzard, by the way, plays a little bit of mobile with Hearthstone. But if you say, "Hey, I'm at Activision and Blizzard and I want to be part of this whole world of mobile gaming," well, I can take 100 developers or 200 developers and put them on a mobile project. But if that project fails, not only do I miss out on what that project could have done but that team probably could have produced a pretty successful PC console game that could have generated quite a lot of revenue. And so, it just becomes very hard to justify. And what you end up seeing then is either spinoff companies or in the case of Activision Blizzard and, you know, Call of Duty Mobile you guys were talking about earlier, that's developed by a partner in China, right, and it's the IP and the publishing label, but that game came from Tencent games. They were the ones who created Call of Duty Mobile. And then it's just put out here under the Activision label.

And I think that, you know, as time continues what you might see is there are studios that focus on mobile. They understand it very well and that's what they do and that's what my studios is. And then you will have other studios like Activision Blizzard where they may say, "Hey, you know, mobile could just be another platform that we go on for our core experiences." Right? Fortnite plays very well on mobile, PC, and console. What other games can do that? And I think there's quite a lot.

Nick Brown: Because they've got their core development and so they ported it over to mobile so they're adding on a mobile component to an already well-oiled machine rather than trying to go out and reinvent the wheel on a new platform that has more different hardware combinations than we've ever seen on traditional.

Steve Blickensderfer: Well, if I also understand it correctly, it's also - sometimes it can be luck of the draw. The game that you developed on a certain platform, PC or what have you, it ends up being a great mobile experience but that doesn't necessarily - it's not necessarily true for all game. Right? So if you had your blockbuster title that just doesn't do well on mobile, you're missing out. Whereas, if you create, if you have a studio that's just focused solely on mobile, you can create a great mobile user experience.

And so that kind of leads me to my next question. Do you develop games - because we're seeing this very jurisdictional or regional-specific, like, interest in mobile games. They're hot in certain areas that aren't necessarily in the US. Do you, as a result of that, think about developing a game for a particular region, or do you just develop a great mobile experience and you just, regardless of wherever it's going to be later in terms of the regions?

Brian Grayson: I think you have to consider where your audience is. Mobile has some challenges around getting players into the game that are a little different than PC console. Definitely there's some sharing between the two markets, but I think on average in mobile it can be more costly. And so you really have to consider who's my audience for the game I'm making? And I think you should also consider what you know best. So, you know, for us here developing in Atlanta, we have a pretty good idea of the sensibilities for players, you know, in North America: what they like, what they're used to, what they know. And so we can create a game that is close to those behaviors, so it's not too difficult to pick up and play, but maybe pushes a few things forward in interesting ways. You know, players always say they want something really new and unique and original, but in my experience they want something that's just a little different than what they already know. And if you go too far out there, it can be very risky really fast.

Nick Brown: Familiarity with a new spice.

Brian Grayson: Correct. Yeah, that's a perfect way to describe it. And, you know, an easy example would be, like, menus. Right? Just user experience and UI. What players like in North America is very different than what players in China like.

Nick Brown: Right.

Brian Grayson: And that's also different than what players, like, in other Asian regions.

Nick Brown: You can, without knowing anything about the game, you can almost tell where it was developed sometimes just by the UI, right?

Brian Grayson: Right, exactly. And so you can get away with some things in one market that you can't in another. And if you try to go everywhere all at once, I think you're going to need a lot of money and other resources to do it. So when we make a game we focus on North America, but we also keep in mind, hey, could this game do well everywhere else? Right? We want to make sure that the world and the core game play and the progression are something that we think everyone could enjoy. But then when we get into some more detailed areas like how are we building our menus and who are we going to go after first, we definitely pick one location. And for us, it's North America because we're closest to those players.

Nick Brown: That makes a lot of sense. Now, on the topic of user expectations and user preferences, I want to raise a little bit of a sensitive subject, which is I'm sure you've dealt with the stigma that we've seen out on the internet and in the world sometimes that mobile gaming is a lesser form of gaming, a casual form as compared to PC or even console.

Steve Blickensderfer: Some have even said the words "hot garbage." You know, it's...

Nick Brown: *[laughs]* I haven't heard anybody say that, but I don't travel in all the same circles as Steven. But, you know, that's probably what was underlying some of the concern with the Diablo Immortal announcement and people's reaction to that. So, has Lionheart Games encountered that stigma and how do you deal with it? Do you fight it? Do you embrace it? What are your thoughts on that?

Steve Blickensderfer: And just a quick footnote: I do not subscribe to that view, but that's just *[inaudible]*.

Nick Brown: *[laughs]*

Brian Grayson: So, yeah. It's a good question. We have encountered it, you know, interestingly more in recruiting than for our players. And I think, when you think about it, it makes sense. Right? Our players seek us out because they're interested in a mobile a game experience or for our studio we actually focus on anime games. And so folks who are fans of anime, they also seek us out and tend to be a little bit more forgiving in that respect. But in recruiting we've definitely encountered it. And I think, you know, it's a very limited audience that feels that way. I think it's a very vocal view, to be honest with you. You know, as you guys talked about mobile gaming is quite large in eastern regions and everywhere else in the world. So I think it's a very Western view that mobile gaming is lesser gaming.

Nick Brown: Yeah.

Brian Grayson: And the way we approach it is we just, we educate people. We try to focus on what our goals are as a studio, again in the recruiting sense, and what the opportunities are. And I walk people through it. You know, how the market is different from other game markets; why we're going into mobile when we could go truly anywhere, any game market; and where some of the, you know, good crossover opportunities are. And on the Blizzard piece - you know, and I never wish ill on anybody - but I think that particular example is a little bit of the wrapping. Right? There's this idea that if you make a mobile game, it has to be a mobile game, but your finger and your input on mobile, it can be very similar to a mouse or a controller. So if you make an experience on mobile that could do well on PC or console, I think you need to consider that and consider how you wrap that to your players. If that's something they want and you have the resources for it, maybe you should do it.

Steve Blickensderfer: And I think that view, even in the West, is going to change as the technology gets better, right, which brings us back to 5G. So thinking about, you guys have obviously thought about 5G, but could you give us a little bit, without revealing the secret sauce, what are you guys doing to kind of prepare for, like, the next level of technology that's going to make the experience on a mobile device much, I guess reduce the latency and just make it a more pleasurable experience? Has that influenced basically your strategy maybe in, you know, the five-year model?

Brian Grayson: It has, Steve. It has. We are thinking about how we should build our games so that we can use what we've built moving forward. So a good example of that is we really pushed the limits on our performance for art. We only go two years back and we actually go two years back from when we think our target release date is because usually that date's either where we've set it or later.

Nick Brown: *[laughs]* Never heard about that in game development.

Brian Grayson: *[laughs]* Just the nature of software.

Steve Blickensderfer: It's like building a house. Yeah.

Brian Grayson: Exactly. So, we're really pushing the limits of our art to make sure, you know, I think a lot of times somebody will make a game and then they'll go to the next game project and say, "Hey, we need to make all new art." And I think that's really wasteful financially. Smite I think is quite a successful game at Hi-Rez, but I still meet people who have never heard of Smite even though that game has tens of millions of players. So I think that, you know, you can use art for a very long time and people are OK with it and you can really build a strong IP.

And also we chose to develop our mobile games in Unreal Engine 4, which is still, I think, a little unusual. Most people are using Unity or their own proprietary engine. And the reason we went with Unreal 4 is because we feel like it has the most future-proofing towards really pushing the limits. You know, if technology jumps forward a lot with cloud-based gaming or something like that and opens up the world to, you know, graphics, unlimited graphics, so to speak, we want to make sure that we're in a good position to do that.

Steve Blickensderfer: Well, you had mentioned - well, I guess with the expanse of the IP, right, and with the success of, say, a game, and you mentioned that you guys focus on anime games. Let's say in the West it does well, but it does even better in the East, right, because that's just where it all started. And with the advancement of 5G making the product more enjoyable elsewhere, how does a game company address the protection of its IP in other places that it's not physically located? Could you maybe give us a sense of your approach and thought to IP protection on a worldwide scale?

Brian Grayson: Yeah, it's a real challenge. I think if I had to break it down to one message it would be choosing your battles is key. When I was at Hi-Rez and that company was scaling and I came on board, there were maybe just under 50 people and when I left in September of 2019 the company had grown to over 450 people.

Steve Blickensderfer: Wow.

Brian Grayson: Yeah. And offices all over the world with players all over the world. One of the largest challenges is that you cannot always get an adequate remedy and you have limited time. Right? I have the same hours in the day as everybody else. Right? Even Bill Gates who's some kind of superstar. Right? We have the same number of hours in the day. And so you really need to focus your time on things that are going to matter for your business and don't pick battles that you can't win. So even the example you guys gave earlier, right, with Mobile Legends Bang Bang, you know, Riot takes them to court, you know, and gets almost \$3 million or Tencent does it. But, you know, Mobile Legends has made hundreds of millions of dollars. And Arena of Valor, which, you know, is doing \$1.5 billion in China isn't doing much here because Mobile Legends came out here first. And that had a real impact on their business. \$3 million is I don't think an adequate remedy for that.

Steve Blickensderfer: Mm-hmm.

Brian Grayson: So, I think the best solution for IP enforcement definitely, you know, there are some things that are so egregious you need a lawyer to go after them for. But for other things it's business planning and talking to lawyers up front and saying, "Hey, this is a real risk for our business. What should we be doing? What should we be thinking about to protect ourselves so that we don't have to go to court?" So we can think about this on the front end. And I'll give you a good example.

Nick Brown: We like that approach, by the way.

Brian Grayson: Oh, yeah. *[laughs]*

Nick Brown: You might not be surprised to learn.

Brian Grayson: *[laughs]* I'll give you a good example. So for Mobile Legends, right, that whole fiasco gets avoided if Tencent releases Arena of Valor in the US and other Western markets at the same time as in China.

Steve Blickensderfer: Mm-hmm.

Brian Grayson: And if your release strategy creates opportunities for other people to infringe on your IP, you better believe they're going to do it. And you just need to be willing to pay the price.

Nick Brown: Right. Well, on the notion of, you know, trying to work with different platforms and in different places, one of the things we wanted to hear from you is, as a mobile company you're working probably more with Apple and Google as the gatekeepers of their platforms, whereas for traditional gaming we're used to seeing Sony, Microsoft, Valve, and some of the others. Does that impact you? You know, what is it like working with the mobile platforms rather than some of the

other ones that we see for traditional gaming? And does that impact what you can publish or your timelines or the cost of developing? Can you tell us a little bit about that?

Brian Grayson: Sure, Nick. So, first certification is way better with Apple and Google than it is with consoles...

Nick Brown: In what way?

Brian Grayson: Yeah, so you submit your app and it's cleared in 24 hours most times.

Nick Brown: Oh, wow!

Brian Grayson: And I think, you know, with Nintendo there's a lockstep process. It can take a week. And if you have a mistake, it's another week. And unfortunately, certification at console companies, it's quite unpredictable. You can get somebody and their view of the process can be arbitrarily different from the last person you got. You don't have, like, one contact who does your certification. So you go into this black box and cross your fingers and hope it comes out correct, and if it doesn't, you know, it can create huge delays for your players. And so...

Steve Blickensderfer: I was going to ask, does that result in a faster, things move quicker in the mobile distribution system? Maybe you get a notice that says "This game needs to come down because it violated X." And it's gone.

Brian Grayson: Yeah.

Steve Blickensderfer: Would that happen faster in mobile than it would in the traditional console platform?

Brian Grayson: Kind of. So I don't think games get taken down as much in mobile so much as it is you can get an update pushed through quickly. But the cost is different. Right? When you get a game update on PC or console, you kind of just put up with it. It is what it is. You know, maybe you go get a snack and come back and it's over. On mobile, if there's an update, there's a good chance you could just get your app deleted. Right? Especially if it's a big update that requires a Wi-Fi connection. Hopefully 5G could help with that. So you have to be very careful. It's an easier process, but it's a more dangerous process, I think, to do those kind of updates.

Here's the downside, though. Apple and Google - and I love the people I know at both of these companies - but Apple and Google, they don't give you the same promotional opportunities that you can get working with the console providers and the PC providers.

Nick Brown: Really? You mean, like, ads on the platform that are native or in what way?

Brian Grayson: Not so much paid ads. That's still, I still think that opportunity actually is lighter. But more around organic promotions. So, you know, if you're working with Valve, famously you may have heard of the token system where you can spend tokens and get your game featured and, you know, they do all kinds of cool things around Steam sales and update promotions. And Nintendo, you know, they've got a newsletter and Xbox has lots of inventory inside the store where they can place your game and you can work with different promotions like Games with Gold. And all those kinds of things, they're much lighter or totally absent on mobile.

And so discoverability - and you'll hear a lot about this if you talk to anyone who works in mobile - it can become a big problem. How do I get players to see that my game even exists?

Steve Blickensderfer: Speaking of your gamers and just the technology that you're using to connect with them, we've covered in a past episode the data, the immense amount of data that games collect. And from what we understand with mobile technology, you have access to new and unique data which makes for some more exciting games at times. Thinking of Pokémon Go as a classic example with your connection to your local environment. What is today's mobile game company doing? I guess we can really only fairly ask, what is your mobile game company doing to I guess prepare and also anticipate the onslaught of data that you're going to be receiving from your gamers? Is there a specific or have you changed your approach at all from the traditional game company's view of data to a mobile game company's view of data that it receives on its players?

Brian Grayson: So it's actually interesting. You would think - and Pokémon Go, by the way, is such a great example. What a great game.

Steve Blickensderfer: Nick loves it.

Brian Grayson: Truly. Everybody gives it props for augmented reality, but I actually think the magic of that game is the geolocation-based game play...

Nick Brown: Yeah.

Brian Grayson: ...which brings people together. I think that's really what made that game special. And the augmented reality is cool. It's a little gimmicky. But I think the geolocation-based piece was just phenomenal.

So for us for data collection, here's the interesting thing. I actually know less about my players on mobile than I did when I was making PC games.

Steve Blickensderfer: Hmm.

Brian Grayson: And console is comparable. And here's the reason why: when you make a mobile game account, you can do it anonymously and I may never know who you are other than your user ID, you know 6544 or whatever, because you don't need to make an account with us. Right? So if you think about your new user flow with Blizzard you make a battle net account and you put in an email address and you agree to whatever your privacy preferences are and communication preferences and then you go in and play the game. And everything you do is tied back to that email, and with that you can find out a lot about a particular player.

For us, you come into our game, you make an account, and if you come in as a guest (which people frequently do), you have a unique ID that ties to our database. But other than what you do inside our game, we don't know anything about you. And particularly if you're an Apple player, right, you're playing on iOS, it's even more closed off. Apple doesn't reveal really anything about their customers - and that can create some problems, but the way - where Google Play is a little bit more sharing, but more sharing in a console sense, right, where they still own the customer and they don't want to give you too much information about them. So a lot of the data we gather ends up being anonymous. We can aggregate it, we can run interesting queries around what our players are doing or what are certain habits of players who are high-value, but we can't actually find out who those players are. And if they leave our game, they could be gone forever.

Steve Blickensderfer: And that's a good point because, you know, it's not personal information if you can't reasonably identify someone with the particular data set or - and this is often where I find, you know, it's the trick question where if you take a bunch of data sets that individually they wouldn't say anything. User123 doesn't tell you who that is. But, if you take User123 plus you can triangulate their area because in order for your particular mobile game to work it needs to connect to their location and you could see a history of their location, which I guess is the one piece of personal data that I had in mind that if it's being collected at all, it's kind of scary. But if it's not or if it's been anonymized or aggregated and you cannot take the data, collectively or individually, and identify someone, then it isn't personal. And that triggers a whole set of laws that do not apply if it's not personal. Right?

Brian Grayson: Right.

Steve Blickensderfer: I also wanted to ask a related question as it relates to COPPA and the increased scrutiny that we're seeing on children's data. I guess as an offshoot of the same question, you're basically in the same position whereas you put the requisite consent gates in place. Right? Because you have to have consent in order to collect data belonging to children of a certain age. Do you find that to be difficult to do for mobile or easier?

Brian Grayson: I think it's, well, so it's interesting. For us I think it's easier. You know, if you're working on Roblox you probably have quite a challenge because it's a much younger audience consuming that game. Right?

Steve Blickensderfer: Right.

Brian Grayson: For us, you know, there are many different options but I think that none of them create friction for our players. So famously I think Hi-Rez's method of operation was pretty simple. It was to say, "Hey, if you're not of a certain age, don't play our game. You're not allowed to play our game." And then they still take extra precautions, right, because you need to because people can lie. And I think for us, you know, players are so kind of numb to - I don't know if this is a good thing - but they're so kind of numb to, like, seeing different agreements that they just want to get into the game.

Steve Blickensderfer: Yeah.

Brian Grayson: They're so excited for the game. Right? So they're kind of like, "Oh, yeah, this is just a necessary evil for me to play the game, so I'm OK with these processes and anything you put in place." Yeah, I probably could put 30 screens in front of a user that were all purely serving a legal function and I think, you know, they'd still get through if they're excited enough about the game.

Steve Blickensderfer: And we'll see how that stands the test of time because that's being criticized, right, the contracts that you just, are they realistically being read? Because we have these archaic legal doctrines that say, well if it was presented to you and you had notice of it, you're deemed to have read it. Right? We're not going to give you a pass for having skipped over some contract in effect.

I did want to shift gears and ask just one more question as it relates to the use of microtransactions in mobile games. Are you concerned with the level of regulation that you're seeing, the increased scrutiny of micro transaction use in games? I mean, I'm sure, I don't know if you're using any loot box mechanics in your games or not, but just generally the microtransaction model in mobile games. Have you had to maybe look at it more closely than you would have before because of what we're seeing in the marketplace?

Brian Grayson: We're definitely paying attention. You know, here's the thing. I think in the US we're just catching up to the rest of the world. Right? China already regulates loot boxes and game play, by the way because of gaming addiction, to some degrees. And so do other countries across the Eastern world. So, I think we're really just catching up. And there are definitely some proposals that in my opinion maybe go too far. I don't know that those will ever pass. I think there's a lot of people, bigger than I and my company in the industry, who stand to lose a lot more and maybe can afford to have a voice in these meetings where I'm not going to have one. But, you know, I think if what ends

up happening out of all of this is we catch up to the rest of the world. That's a positive thing and I'm OK with that. And disclosing the rates on loot box and letting people know up front what are your chances and, you know, I think that's the healthy thing to do.

Is that a complete solution? No. Do I want regulators to determine the complete solution? Absolutely not. I think if you give the game industry enough time, it will self-regulate and it will figure out the correct way to do it and I think that's already happening. You have people very publicly speaking out about, you know, not doing loot boxes or changing how they're done. You know, I think Phil Spencer made a comment about it the other day. Tim Sweeney is very vocal from Epic. And so I think that, you know, we will get to a place where, you know, players are very passionate about what they like and what they're willing to tolerate. And, you know, it just takes a couple big companies to say, "Hey, this is the correct way to do things and it's more favorable to players," and everybody else will shift over. And I think that's a healthier way to do it than to put laws in place which can be very hard to shift and frequently are written by people who, you know, are excellent lawyers or excellent legislators but maybe don't understand our business and what goes into it and what's correct for us.

Steve Blickensderfer: From your lips to God's ears. Well, I think that's all the time we have for today. Be sure to check out our other episodes from season 1 and 2 of the LAN Party Lawyers podcast. You can connect with us on Instagram, Twitter, or our webpage lanpartylawyers.com. Brian, how can users find your games? If they aren't out yet or if they are, where can they download them?

Brian Grayson: So, probably the easiest way is to follow us on social media Lionheart Games. The shortcut varies because it can be hard to get good shortcuts these days...

Nick Brown: Yeah.

Brian Grayson: ...but you can find all of those links at Lionheartgames.com. We do have that primary domain. And I think, you know, just keep an eye on what we're doing. And a lot of our games are being kept hush-hush for the moment, but I think it should be a good end of year for us and there will be lots of exciting announcements to come then.

Steve Blickensderfer: We wait with bated breath. I know I speak for Nick when we say we love to hear your comments about today's show and opinions about the topics we cover, so if you have any, please reach out. And, until next time, Nick?

Nick Brown: Game on!

Steve Blickensderfer: Game on.

Related Practices

[Esports and Electronic Gaming](#)

[Media, Entertainment, Music & Sports](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.