



2011 Independent Games Competition FAQs

Have questions about the Activision indie game competition?

Here are some frequently asked questions and their answers. Submission Form follows Q&A.

Q: Is it true that the clauses in the Activision competition agreement combine to destroy a developer's substantive claim to their own game?

A: Completely untrue. Activision takes no ownership right or claim to any developer's work through the competition.

Q: Why must the developer warrant that they own the intellectual property they are submitting if they become a finalist?

A: This is true, and is a reasonable and required provision. First, Activision is not interested in receiving, reviewing, or rewarding work that has been stolen. Second, as this is a contest and is subject to laws and regulations governing contests and sweepstakes, it is critical that the contest is fair for all participants; allowing a participant to compete and possibly win by using non-original IP would simply not be fair to the developers who are doing their own work.

Q: "The Submission cannot have been submitted previously in a promotion of any kind or exhibited or displayed publicly through any means"... Isn't this restriction meant to let Activision get the first bite at a new IP (intellectual property) and also prohibitively restrictive on developers who would want to compete?

A: We want to reward new games, and not jump onto an existing development that may have already been funded, etc.

Q: If a developer releases Activision from any claims against Activision for releasing a game that is "similar" to entrant's submission, won't Activision just make a developer's game with its own people and release it (leaving the original developer no claim, no rights, and likely no compensation)?

A: This is a mischaracterization of a non-confidentiality provision that is common in all "idea submission" scenarios for videogame publishers, movie studios, etc. Activision is simply protecting itself against



claims that the general idea or concept of a game is protected. This reflects the reality that companies are typically developing multiple concepts that are the same or similar to other pitched concepts. There are limited genres, gameplay mechanics, styles, etc. and those are not owned or controlled under intellectual property rights.

This type of clause actually reflects how copyright law works – the game developer owns the copyright in the code, art, characters, etc. (i.e., the creative output and expression), but they do not own or control “ideas” or “concepts”. Neither copyright law nor this contest offers protection to ideas or concepts, and the clause is simply making this clear.

At the end of the day, if a developer believes that the underlying idea/concept of their game is so unique that nobody else in the world has ever thought of it, then they may protect that by not entering the competition. More typically, developers are concerned about someone stealing their code, artwork, characters, storyline, etc. (i.e., things protected by copyright), and nothing in the contest rules or submission agreement would give Activision any right whatsoever to use any developer’s copyrighted materials without the permission of the developer.

Q: If a developer finishes the game that won the competition, then Activision gets a first right of refusal. Doesn't this mean that before a developer can shop their game around to any other publishers, they have to take it to Activision first? Can't Activision then offer a publishing deal, or outright refuse to publish the game, then prepare or finish their own version of the developer's title while the developer waits to have his game published elsewhere?

A: This is an overly-paranoid reading of a tiny snippet of language in the rules. The fact of the matter is that, for the first round of the competition, Activision required finalists to agree to nothing more than a simple right of first negotiation. This means they committed to speak in good faith with Activision about a potential publishing deal for 30 days. No strings. No requirement that they give any rights to Activision. No “blocking” rights. No ability for Activision to delay the developer from otherwise finishing, releasing, or selling their game. The reality is that most finalists are excited at the chance to possibly land a publishing deal with one of the largest and most successful videogame companies in the world, so this 30 day negotiation period is not really seen as a burden. But in any event, it is short, temporary, and at all times completely voluntary. Here’s the actual language from the submission agreement that finalists signed:

3. RIGHT OF FIRST NEGOTIATION

In the event that Finalist is selected as the winner of the Competition, Activision shall have a “Right of First Negotiation” to exclusively negotiate with Finalist for a period of at least thirty (30) days regarding acquiring the ownership of the Material from Finalist, and/or entering into a development, publishing, and/or distribution agreement with Finalist regarding any commercial



development and exploitation of the Material. Such period of negotiation shall begin upon written notice thereof by either party and shall continue for 30 days unless Activision notifies Finalist that it is no longer interested in continuing such negotiations. Finalist shall not negotiate or “shop” the Material to any other party prior to or during such period of exclusive negotiations. Activision shall not acquire any rights in or to the Material by virtue of this section, however Finalist agrees that all negotiation with Activision shall be on a good faith, reasonable basis.

Q: What is meant by “Each winner accepts and acknowledges that Sponsor shall not be obligated to use the Submission and that Sponsor in its sole discretion shall have the right to refrain from using the Submission.”?

A: Activision is not committing to publish any developer’s game – but of course as explained above it is not stopping any developer from doing so themselves. This is a contest to support indie developers, and this language simply states the obvious: that the competition is not offering anything other than a chance to compete for a prize.



2011 Independent Games Competition

Submission Cover Sheet

Name of Entrant (Legal name of individual or company. If submitting as a team, a single team member must complete the submission and act as the main submission contact):

Mailing address:

Phone:

Email:

Names of other team members or contributors who have contributed to this submission, if any:

Please check box to indicate that all contributors listed above have given express consent to the entrant named above to enter the Activision Independent Games Competition on their behalf.

Please check box to indicate that you have read and agree to the Official Rules of the Activision Independent Games Competition, located at the following URL:
<http://www.activision.com/IndependentGamesCompetition>.

Please check box to indicate that, as further described in the Official Rules, you agree that in order to be judged as a finalist, you will be required to execute certain additional legal releases and agreements provided by Activision.

Entrant Signature: _____

Date: _____



**ACTIVISION INDEPENDENT GAMES COMPETITION
OFFICIAL RULES**

NO PURCHASE NECESSARY. A PURCHASE OR PAYMENT OF ANY KIND WILL NOT INCREASE YOUR CHANCES OF WINNING.

- 1. Eligibility:** Activision Independent Games Competition (the "Contest") is open only to legal residents of the fifty (50) United States and the District of Columbia who are at least eighteen (18) years old at the time of entry and to legal business entities (such as corporations) organized and existing under the laws of any jurisdiction within the fifty (50) United States and the District of Columbia (each an "entrant"). Groups of eligible entrants, including legal business entities, may also submit a single entry, however must designate the individual within the group who will act as the official entrant on the group's behalf. If a business entity, the official entrant must be someone with the legal authority to bind the entity. Each entrant must be someone who did not purchase any equipment for the purposes of entering this Contest. Employees of Sponsor, ePrize, LLC, and any of their parent and affiliate companies as well as the immediate family (spouse, parents, siblings and children) and household members of each such employee are not eligible. Subject to all applicable federal, state, and local laws and regulations. Void where prohibited.
- 2. Sponsor:** Activision Publishing, Inc., 3100 Ocean Park Boulevard, Santa Monica, CA 90405.
Administrator: ePrize, LLC, One ePrize Drive, Pleasant Ridge, MI 48069.
- 3. Agreement to Official Rules:** Participation in this Contest constitutes entrant's full and unconditional agreement to these Official Rules and Sponsor's and Administrator's decisions, which are final and binding in all matters related to this Contest. Winning a prize is contingent upon fulfilling all requirements set forth herein.
- 4. Timing:** The Contest begins on October 3, 2011 and ends on December 31, 2011 (the "Contest Period").
- 5. How to Enter:** During the Contest Period, visit <http://www.activision.com/IndependentGamesCompetition> and print the cover sheet for registration. Game proposal materials include: 1) the game concept or design (maximum of ten (10) pages); 2) may include a video or game play demo (must come with extensive instructions on installations and use or it will not be considered); 3) must include an expected schedule, budget, team make up for development of the game, and execution plan. All of the game proposal materials and the completed printed cover sheet must be sent by USPS to: ePrize, LLC, PO BOX 5046, Dept. # 578559, Kalamazoo, MI 49003-5046 (the "Submission") in order to receive one (1) Contest entry. The Submission must contain a confirmation email address. The Submission must be postmarked during the Contest Period. If not exclusively entrant's own work, entrant needs to have permission from every individual who contributed to the Submission and may need to present proof of such permission to Sponsor, if requested. By sending the Submission, entrant agrees that it conforms to the Submission Guidelines and Content Restrictions as defined below (collectively, the "Guidelines and Restrictions") and that Sponsor, may disqualify entrant from the Contest if it believes, in its sole discretion, that the Submission fails to conform to the Guidelines and Restrictions.



Submission Guidelines:

- All of the Submission materials together must not exceed twenty (20) standard 8.5 x 11 pages and no more than one hundred (100) megabytes of digital material on CD;
- The Submission must be in English; and
- The Submission cannot have been submitted previously in a promotion of any kind or exhibited or displayed publicly through any means.

Content Restrictions:

- The Submission must not contain material that violates or infringes another's rights, including but not limited to privacy, publicity or intellectual property rights, or that constitutes copyright infringement;
- The Submission must not feature brand names or trademarks;
- The Submission must not contain material not created by entrant;
- The Submission must not contain material that is illegal, obscene, or tortious;
- The Submission must not contain material that is unlawful, in violation of or contrary to the laws or regulations in any jurisdiction where Submission is created.

Limit: Each entrant may enter the Contest one (1) time during the Contest Period. Eligible entrants are not permitted to contribute to more than one (1) Submission. Submissions received from any person in excess of the stated limit will be void. Submissions generated by script, macro or other automated means are void. Entrant must have permission from all individuals contributing to the Submission in any way; if requested, entrant must provide such permissions in a form acceptable to Sponsor. Sending in a Submission constitutes entrant's consent to give Sponsor a royalty-free, irrevocable, perpetual, non-exclusive license to use, reproduce, modify, publish, create derivative works from, and display such Submission in whole or in part, on a worldwide basis solely for purposes related to the Contest (including judging, advertising, and publicity related thereto). If requested, entrant will sign any documentation required for Sponsor or its designees to make use of the non-exclusive rights entrant is granting to use the Submission. In order to be a Finalist, entrant must sign certain Submission documentation provided by Sponsor, which may include some or all of the following: release of claims against Sponsor; acknowledgement of Sponsor's development of game concepts that may be similar to entrant's Submission; first right of refusal to Sponsor for any development or publishing of Submission; agreement to provide Sponsor with splash/title/credits and logo credit similar to "funded in part by the Activision Independent Games Competition Prize 2011"; grant of name and likeness publicity rights to Sponsor; and full representations and warranties regarding the IP ownership of the Submission. Each Finalist must verify eligibility upon request by Sponsor. Entrant must not be bound by an employment relationship or agreement that would prohibit participation in this Contest or acceptance of a prize. Sponsor may decide, in its sole discretion, to interview entrant as a part of the winner determination process. The Released Parties (as defined in Section 9, below) are not responsible for lost, late, postage-due, returned, stolen, damaged, incomplete, invalid, un-intelligible, garbled, delayed or misdirected Submissions, all of which will be void.

- 6. Winner Determination:** After the conclusion of the Contest Period, a panel of qualified third-party independent judges determined by Sponsor in its sole discretion, will select the 5-10 potential winners (the "Finalists") from among all eligible



Submissions received, based on an application of the following criteria (“Judging Criteria”):

- General Idea (40%);
- Design/Gameplay/Artistic Innovation (40%);
- Execution Plan (10%); and
- Presentation (10%).

In the event of a tie between two (2) or more Submissions for the tenth Finalist (if applicable), the entrant whose Submission received the highest score for the General Idea criterion, as determined by the qualified judges in their sole discretion, will be deemed the Finalist. Sponsor, in its sole discretion, will determine the potential Grand Prize and First Prize winners of the Contest from among the Finalists, using the judging process above. Sponsor reserves the right to select fewer than the stated number of Finalists or winners, if, in its sole discretion, it does not receive a sufficient number of eligible and qualified Submissions.

- 7. Winner Requirements:** Potential winners will be notified by email, mail or phone on or around February 15, 2011. Each potential winner (parent/legal guardian if winner is a minor in his/her state of residence) will be required to sign and return an Affidavit of Eligibility, Liability & Publicity Release, and other Submission documentation requested by Sponsor (collectively, the “Documentation”), which must be received within five (5) days of the date notice or attempted notice is sent, in order to claim the prize. If a potential winner cannot be contacted, fails to execute and return the Documentation within the required time period, does not comply with these Official Rules, or prize is returned as undeliverable, potential winner forfeits the prize. If a potential winner is disqualified for any reason, the prize may be awarded to a runner-up determined in Sponsor’s sole discretion. Only three (3) alternate winners may be determined, after which the applicable prize will remain un-awarded. Acceptance of any prize shall constitute and signify winner’s agreement and consent that Sponsor and its designees may use the winner’s name, city, state, likeness, Submission and/or prize information in connection with the Contest for promotional, advertising or other purposes, worldwide, in any and all media now known or hereafter devised, including the Internet, without limitation and without further payment, notification, permission or other consideration, except where prohibited by law. Each winner accepts and acknowledges that Sponsor shall not be obligated to use the Submission and that Sponsor in its sole discretion shall have the right to refrain from using the Submission. Sponsor shall not incur any liability whatsoever to the extent Sponsor chooses to refrain from any exploitation of its rights hereunder. Sponsor may require that the winners participate in interviews or attend events as determined by Sponsor in its sole discretion. Each winner will indemnify the Released Parties (as defined in Section 9, below) against all claims, damages, liabilities, and expenses (including reasonable counsel fees and legal expenses) arising out of any breach of these terms. Prizes will be fulfilled 8 – 10 weeks after conclusion of the Contest.
- 8. Prizes:** ONE (1) GRAND PRIZE: \$175,000 check. ONE (1) FIRST PRIZE: \$75,000 check. Prizes will be awarded directly to the official entrant; if entrant is entering on behalf of a group, prize division and/or distribution will be the sole responsibility of entrant, and entrant shall and hereby does indemnify the Released Parties against all claims, damages, liabilities, and expenses (including reasonable counsel fees and legal expenses) arising out of any claims related to the division of any prize awarded hereunder. Prizes are non-transferable. Should the designated prize become unavailable for any reason, Sponsor reserves the right to substitute a prize (or portion thereof) with one of equal or greater value. The official entrant (including legal entity, if applicable) is responsible for all federal, state and local taxes and any other costs, expenses or fees associated with prize acceptance and/or use not specified herein as being provided. Limit: One (1) prize per entrant.



- 9. Release:** By receipt of any prize, winner agrees to release and hold harmless the Sponsor, Administrator, and their respective subsidiaries, affiliates, suppliers, distributors, advertising/promotion agencies, and prize suppliers, and each of their respective parent companies and each such company's officers, directors, employees and agents (collectively, the "Released Parties") from and against any claim or cause of action, including, but not limited to, personal injury, death, or damage to or loss of property, arising out of participation in the Contest or receipt or use or misuse of any prize.
- 10. General Conditions:** Sponsor reserves the right to cancel, suspend and/or modify the Contest, or any part of it, if any fraud, technical failures or any other factor impairs the integrity or proper functioning of the Contest, as determined by Sponsor in its sole discretion. If terminated, Sponsor may, in its sole discretion, determine the winners from among all non-suspect, eligible Submissions received up to time of such action using the judging procedure outlined above. Sponsor, in its sole discretion, reserves the right to disqualify any individual it finds to be tampering with the Submission process or the operation of the Contest or to be acting in violation of these Official Rules or any other promotion or in an unsportsmanlike or disruptive manner and void all associated Submissions. Any attempt by any person to deliberately undermine the legitimate operation of the Contest may be a violation of criminal and civil law, and, should such an attempt be made, Sponsor reserves the right to seek damages and other remedies (including attorneys' fees) from any such person to the fullest extent permitted by law. Sponsor's failure to enforce any term of these Official Rules shall not constitute a waiver of that provision.
- 11. Limitations of Liability:** Released Parties are not responsible for: (1) any incorrect or inaccurate information, whether caused by entrant, printing, typographical or other errors or by any of the equipment or programming associated with or utilized in the Contest; (2) technical failures of any kind, including, but not limited to malfunctions, interruptions, or disconnections in phone lines or network hardware or software; (3) unauthorized human intervention in any part of the Submission process or the Contest; (4) printing, typographical, technical, computer, network or human error which may occur in the administration of the Contest, the processing or judging of Submissions, the announcement of the prizes or in any Contest-related materials; (5) late, lost, undeliverable, postage-due, damaged or stolen mail; or (6) any injury or damage to persons or property which may be caused, directly or indirectly, in whole or in part, from entrant's participation in the Contest or receipt or use or misuse of any prize (including any travel/activity related thereto). Released Parties are not responsible for misdirected or undeliverable Submissions or for any technical problems, malfunctions of computer systems, servers, providers, hardware/software, lost or unavailable network connections or failed, incomplete, garbled or delayed computer transmission or any combination thereof. Released Parties are not responsible for any unauthorized third-party use of any Submission.
- 12. Disputes:** Except where prohibited, entrant agrees that: (1) any and all disputes, claims and causes of action arising out of or connected with this Contest or any prize awarded shall be resolved individually, without resort to any form of class action, and exclusively by the United States District Court for the Eastern District of Michigan (Southern Division) or the appropriate Michigan State Court located in Oakland County, Michigan; (2) any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred, including costs associated with entering this Contest, but in no event attorneys' fees; and (3) under no circumstances will entrant be permitted to obtain awards for, and entrant hereby waives all rights to claim, indirect, punitive, incidental and consequential damages and any other damages, other than for actual out-of-pocket expenses, and any and all rights to have damages multiplied or otherwise increased. All issues and questions concerning the construction, validity, interpretation and enforceability of these Official Rules, or the rights and obligations of the entrant and Sponsor in connection with the Contest, shall be governed by, and construed in accordance with, the laws of the State of



Michigan without giving effect to any choice of law or conflict of law rules (whether of the State of Michigan or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of Michigan.

13. Entrant's Personal Information: Information collected from entrant is subject to ePrize, LLC's Privacy Policy <http://www.eprize.com/privacy-policy> and Sponsor's Privacy Policy http://www.activision.com/index.html#privacy|en_US|type:privacy.

14. Winner List: For a winner list, visit <http://bit.ly/pZiV9g>. The winner list will be posted after winner confirmation is complete.

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