

Cheating and Video Games: What repercussions on contracts?¹

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ABSTRACT

This paper explores how cheating in videogames can impact the Terms of Use agreement signed off by the gamer when he plays the videogame. Furthermore, this paper provides some recommendations concerning the way to manage dispute in this kind of contract, and how the video-game company should resolve conflicts with cheaters. Some contract baselines are analyzed, in order to define which of them can bring the most useful tools to manage disputes and conflicts from a video-game company perspective. The Guild of Project Controls Compendium and Reference (CaR) is the one to provide the best practices regarding how to manage disputes and contract violations. Consequently, video-game companies should apply the recommendations of CaR by putting in place an escalation process to manage disputes and always prioritizing direct negotiation than legal actions.

Key words: Video Games, Contract violation, Terms of Use, Cheating, Copyright Infringement

INTRODUCTION

“No treaty is ever an impediment to a cheat” as Sophocles said. In modern societies, people are required to sign a large number of contracts during their lifetime. They manifest themselves in a multitude of different occasions (subscribe to a phone service, rent a house, insure material and immaterial goods, use a computer software, etc.). In this research paper, we are going to focus particularly in the contracts that bind players to video game publishers.

Paraphrasing Sophocles, we can affirm that a contract is never a sufficient obstacle to prevent cheating. Indeed, it happens that gamers engage in cheating when they play video games. Cheating is characterized by the voluntary attitude of derogating from one or more rules to enjoy any benefits. However, gamers are increasingly required to accept a Terms of Use agreement (TOU) before playing their game. A TOU is a contractual document that aims to regulate the interactions between the provider of a service and its users. This type of contract is common on websites, but also on contemporary video games. Can cheating on video games

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be considered as a contract violation of TOU from the gamer against the publisher? To answer this question, we are going to consider the term "contract violation". Cheating practices will also be analyzed, to determine if some of them can be likened to contract violations on the player's side. In case of proven contract violation, we will see what can be the consequences on the "cheater". Specific examples will serve as illustrations to support the different points of the analysis. This paper has been designed to answer the following research questions:

- 1) What are the main obligations of the gamer regarding a Terms of Use agreement?
- 2) Can cheating in video games lead to contract violation?
- 3) What can happen to gamers if they commit a contract violation by cheating?

METHODOLOGY

Development of the feasible alternatives – Baselines and attributes

Some questions can arise concerning contract violation, disputes and legal actions. To better understand each of these aspects, it will be interesting to analyze some contract baselines, even if most of them focus and contracts between Owners and Contractors. Indeed, TOU are contracts between Users and Providers of services. However, we can transpose by analogy in the context of the TOU many knowledges, situations and behaviors we will find from contract baselines. The purpose is to find what baseline can bring most useful info about how video game company could/should manage their relationship with cheaters, using a "Multi Attribute Decision Making tool (MADM)" with the following attributes :

- Negotiation between each side of the contract
- Request for monetary compensation
- Resolution of the conflict

The Guild of Project Controls Compendium and Reference, the Construction Specifications Institute, the International Federation of Consulting Engineers, the Engineers Joint Contract Documents Committee and the American Institute of Architects will be the different alternatives.

Development of the outcomes and cash flows for each alternative – Baselines Analysis

Each baseline has its own approach to contract management.

The **Guild of Project Controls Compendium and Reference (CaR)** says that when one side of the contract (owner or contractor) does not perform the legal obligations, there is a contract violation. It can lead to damages which are "monetary compensation allowed or awarded to the injured party [...] as a result of the breach of contract". It means that the monetary compensation which can be claimed is only about the injuries caused by the breach, this is not a penalty compensation. Concerning disputes, it is always better to resolve them using negotiation than litigation. Indeed, it can cost a lot of time and money to bring the case to

court. If we transpose the info provided by CaR in the TOU context, we can suppose that it would be difficult for video games companies to sue cheaters and ask for monetary compensation because the breach will not provoke injuries on the game. Furthermore, CaR would advise a negotiation between the cheater and the video game company instead of a lawsuit.

The **Construction Specifications Institute (CSI)** specifies that the contractor needs to “full power and authority to enter into and perform the terms of the Agreement”. This means that the owner cannot blame the contractor for not executing a contract with unrealistic agreement terms to succeed. CSI also specifies that the contractor “cannot be designated as responsible for any loss, damage, claim, liability or monetary compensation”. In that case, if we consider the contractor to be the cheater, the video game company should only punish the cheater but without any lawsuit. Indeed, no monetary compensation can be recovered by the company.

According to the **International Federation of Consulting Engineers (FIDIC)**, the contractor should not receive his payment if he does not perform his duties and requirements. However, if there are some good reasons why he cannot achieve the requirements, the engineer should be understanding. In addition, claims can relate to “Direct cost, Indirect cost, Overheads, Financing Charges, Profit and Loss of Profit”. But they cannot relate to economic loss and consequential loss. We can consider a cheater as someone who does not perform his duties and requirements concerning the TOU. The only thing the video game company can do is to punish the cheater, for example by removing him the access to the game (at least the multiplayer part).

The **Engineers Joint Contract Documents Committee (EJCDC)** indicates that if the contractor does not comply with the terms of the contract, the client can claim compensation for any “costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work”. However, the contractor needs to be paid for the work done, even if the owner decides to decrease the payment. If we consider the contractor to be the cheater and the client to be the video game company, EJCDC supposes that the video game company can ask for monetary compensation concerning the damages the cheater has done to the game by cheating and deteriorating the experience of other players. Some legal actions could be initiated against the cheater, and Copyright Infringement can be the official reason for any lawsuit from the video game company against cheaters.

The **American Institute of Architects (AIA)** postulates that a dispute can arise from participants. AIA promotes direct negotiation procedures. Indeed, disputes “should be resolved through an escalating program of direct negotiation, facilitated negotiation and then binding resolution by arbitration or litigation”. It is always better to resolve the dispute using an internal procedure. It means that it is always better to find a friendly solution before bringing the case to court. Consequently, video game companies should always choose negotiation first, to solve the problem of cheaters. If it does not succeed, they can bring the cases to court.

Selection of a criterion (criteria) - Multi Attribute Decision Making Method

Now we have sufficient information about each baseline, the MADM is quite good to compare baselines (except FIDIC which is already eliminate because of the lack of information concerning the subject of this paper). MADM tool allows us to find which ones bring the most useful info regarding the following attributes:

- Negotiation between each side of the contract (Negotiation)
- Request for monetary compensation (Monetary compensation)
- Resolution of the conflict (Conflict resolution)

TABLE1: Multiple Attribute Decision Making tool

Attributes	CaR vs CSI	CaR vs EJCDC	CaR vs AIA	CSI vs EJCDC	CSI vs AIA	EJCDC vs AIA
Negotiation	Better	Better	Equal	Better	Worse	Worse
Monetary compensation	Equal	Worse	Equal	Worse	Equal	Better
Conflict resolution	Better	Better	Equal	Better	Worse	Worse
DOMINANCE	YES	MAYBE	MAYBE	MAYBE	NO	MAYBE

FINDINGS

Analysis and comparison of the alternatives - Quantitative analysis of Feasible Options

From the MADM we can eliminate CSI, because CaR, EJCDC and AIA brings more relevant information concerning the three attributes. To choose between these three baselines, we are going to compare them regarding each attribute and make a quantitative analysis.

CaR, as all baselines, specifies that it is better for both side of the contract to respect it. In case of disputes or if one side is guilty of a contract violation, it is always recommended to start with negotiation. The procedure is well defined, and if the first negotiation does not go well, there are 4 more alternatives to solve the issue, but with an increase of cost, time and hostility. Furthermore, CaR advices prevention to avoid disputes and contract violation. EJCDC does not define a clear dispute resolution process. Even AIA highlights the importance of an escalating process for dispute resolution it is not as much as well explained because it just differentiates direct negotiation, facilitated negotiation and binding resolution.

In case of contract violation, EJCDC supposes that if no amicable solution between the owner and the contractor have been found, some legal actions can be taken and the video-game company could ask for monetary compensation. CaR indicates that sometimes monetary compensation can be claimed, but in the case of contract violation it would be difficult to ask for it. AIA does not consider monetary compensation regarding contract violation.

Consider all aspects above from CaR, EJCDC and AIA, we can certify that CaR brings the best practices for a conflict resolution between two sides of a contract. AIA provides good practices but not as much as complete than CaR and some conflicts could require a more detailed procedure. EJCDC provide some relevant information but which are not sufficient to reach a win-win agreement for both side in case of disputes.

TABLE2: Relative Weighting

Attributes	CaR	EJCDC	AIA
Negotiation	Excellent	Poor	Good
Monetary compensation	Fair	Excellent	Poor
Conflict resolution	Excellent	Fair	Good

Score	
Excellent	1
Good	0.67
Fair	0.33
Poor	0

Attributes	CaR	EJCDC	AIA
Negotiation	1	0	0.67
Monetary compensation	0.33	1	0
Conflict resolution	1	0.33	0.67
TOTALS	2.33	1.33	1.34

TABLE3: Additive Weighting Technique

Attribute	Step 1	Step 2			CaR		EJCDC		AIA	
	Relative Rank	Normalized Weight (A)			(B)	(A) x (B)	(C)	(A) x (C)	(D)	(A) x (D)
Negotiation	2	2 / 6	=	0.33	1	0.33	0	0	0.67	0.22
Monetary compensation	1	1/6	=	0.17	0.33	0.06	1	0.17	0	0
Conflict resolution	3	3/6	=	0.50	1	0.50	0.33	0.17	0.67	0.36
SUM	6		SUM	1.00	SUM	0.89	SUM	0.34	SUM	0.58

Selection of the preferred alternative

Using the additive weighting technique, we can conclude that CaR is better than AIA and EJCDC, but AIA is better than EJCDC. When we consider only CaR and AIA, CaR is a better choice

by 175%. When we only consider CaR and EJCDC, CaR is a better choice by 174%. The recommendation is to use CaR.

CaR and AIA	$2.33/1.33 = 1.75 \times 100 = 175\%$
CaR and EJCDC	$2.33/1.34 = 1.74 \times 100 = 174\%$

Performance monitoring and post-evaluation results

As a video-game company, you should write or update your Terms of Use agreement considering what CaR said concerning “negotiation”, “monetary compensation for breach of the contract” and “conflict resolution”. The recommendations of CaR will help video-game companies to manage dispute and find solutions to contract violations as cheating. The cheater is almost protected against any monetary penalties but CaR advocates anyway negotiation for each side of the contract. The video-game company must always prefer negotiation if possible to resolve dispute resolution, concerning cheating or other conflicts.

CONCLUSIONS

In this paper, we wanted to analyse some contract baselines in order to find the best ways to manage dispute resolution concerning cheaters in videogames. We have seen that CaR is the best baseline to use because it provides great information we can apply to Terms of Use agreement. Concerning conflict resolution, an escalating process will permit to manage relationships with cheaters and find the best solutions. A gamer, when he plays a videogame, needs to respect the fixed rules. These rules are formalized in the Terms of Use agreement, and govern the way to play fairly the videogame. There is not always a Terms of Use agreement in each video-game, because it only concerns multiplayer games. It means, if the player cheats on a multiplayer video-game, he will be guilty of a contract violation. In other words, cheating in video games leads to contract violations if the videogame has a multiplayer component and a Terms of Use agreement. There are not too many financial risks for a cheater, because the video-game company should engage negotiation first through an escalating process. But if no solution can be found between the two sides of the contract, the case can be brought to court and it will cost money for each side.

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Augustin de Rosny is a French 23 years-old Project Management Student, who is from Skema Business School. He studied one year in the United States two years ago, and made a gap year as a Project Manager in a French start-up last academic year. As a student, he chooses the “Project and Program Management & Business Development” master of science to specialize himself in Project Management. He is interested in the video-game industry since he played Age of Empire and Halo when he was young. He is involved since 20124 in Halo.fr, a French structure which provide news, a forum and much more for all Halo French fans, as an administrator. His missions are to manage the moderators, the forum community and projects to improve the forum.

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