CAPITAL AND DEVELOPERS’ MOBILITY IN VIDEO GAME INDUSTRY AND PROPENSITY TO UNIONIZING

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INTRODUCTION

The video game industry is a booming, prosperous multinational business (globally, annual revenues of the industry have recently exceeded 60 billion dollars, growing faster than those of both film and music), dominated by a few big console manufacturers (Microsoft, Sony, Nintendo) and a handful of large video game publishers (Electronic Arts (EA), Activision, Konami, Ubisoft, Take Two Interactive (T2I), Toy Head Quarters (THQ) that exert significant control over downstream companies, particularly game design studios. Though international, the industry is highly concentrated; 20 organisations collecting 90% of its revenues.

Some of the industry giants have their own game design studios and/or buy games developed by smaller studios. Private research consultants are all forecasting strong growth for the industry in the West (Androvich, 2008), despite latent threats of outsourcing to countries with lower labour costs (Dyer-Witheford & de Peuter, 2009; Dyer-Witheford, 2005). It is even thought that the video game industry will soon dwarf all other entertainment sectors in terms of revenue (Fahey, 2005).

The situation is the same in Canada,¹ where game studio revenues rise up to 2 billions and are exceeded only by that of the film and television industry and book publishing (Dyer-Witheford, 2005). Canada ranks sixth internationally in the video game industry, and its two main production hubs are Montreal and Vancouver. Regarding videogame developers (VGDs) workforce, the province of Quebec in itself ranks sixth internationally behind Japan, California, South Korea, United Kingdom and the State of Washington (Therrien, 2008). In Quebec, 25 of 39 studios are in Montreal and account for 81% of the jobs, which makes the city the main game development hub, with a total of 8,000 jobs now in 2011 (Dumais, 2009, p. 10).

Videogame developers (VGDs) experience different labour problems that I have documented in other publications (Legault & Ouellet, 2011; Legault & Weststar, 2011; Legault & D’Amours, 2011), notably unlimited unpaid overtime, arbitrary decisions regarding pay, firing, assignment to projects, attribution of credits for a contribution to a game and acknowledgement of intellectual property, lack of funding for required training and updating knowledge, lack of protection against risks of losing income (in case of illness, accident, birth of a child, firing or retirement).

They also face some pressure to consent to Non Disclosure and Non Compete Agreements that limit their mobility in a high velocity labour market and expose them to lawsuits. Agreements not to compete during the period of employment are common in skilled jobs and considered reasonable. On the contrary, non-compete agreements which extend beyond the employment period lower developer’s quality of life by

¹ In keeping with Dyer-Witheford (2005), cited here, we have defined the Canadian video game industry as all the studios in the sector that operate in Canada, rather than as only studios that are Canadian-owned.
reducing future employment opportunities. In practice, case law does not provide a high probability of enforcing such agreements with rank and file developers, but more often with managers. Though in practice studios do not often take proceedings against developers, still, the idea of being sued is a powerful threat. In the worst cases, employees are unable to change jobs without relocating from the area, or are even forced to leave the industry entirely (Legault & Weststar, 201*).

To face all these problems, video game developers use different means of individual and collective action, but are not unionized anywhere in the world; they are deeply divided towards unionization and not so prone to go for it. In this paper, I will sketch how the international nature of the industry is shaping organisation and regulation of work, public policies and means of collective action as well. As a result, it has a significant influence on their propensity to unionizing.

**METHOD**

To draw up a profile of the situation in Quebec, in the summer of 2008 I surveyed 53 designers working in 4 MNCs that are also major Montreal on-line or console game studios (few of them work in the wireless or pocket video game segments) — Ubisoft (28), A2M (Artificial Mind & Movement) (15), Electronic Arts (EA) (3), Gameloft - a Ubisoft’s partner (3) — and a few who are independent or work in micro studios employing just a handful of designers (4). In view of our small sample size, our presentation here deals solely with the salaried designers of major studios. Each of the big studios hire between 300 and 2,000 employees.

As Montreal has 81% of the whole 8 000 jobs in videogame developing in Quebec, it makes it a fairly good starting point to survey developers’ opinions about collective action.

I recruited my respondents by word of mouth, to begin with, and then by using the snowball method (asking respondents to refer other potential respondents to us), as well as by posting notices on the International Game Developers Association (IGDA) website and by soliciting respondents during IGDA social activities.

My sample consists of equal numbers of men and women, despite the low proportion of female workers in the industry. I make no claims about statistical representativity, as my aim in establishing the sample was to understand the low numbers of women in the sector.

The developers in my sample are well educated: 98% of them have completed some form of post-secondary education, whether a diploma from a junior college or specialized private institute, a university certificate, or a bachelor’s degree or master’s degree. The breakdown of respondents by level of education (highest level attained) is shown in Table 1.

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Breakdown of respondents by level of education</th>
</tr>
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<tbody>
<tr>
<td>Level of education</td>
<td>Number of respondents</td>
</tr>
<tr>
<td>Secondary</td>
<td>1</td>
</tr>
<tr>
<td>Junior college, specialized private</td>
<td>27</td>
</tr>
</tbody>
</table>
Their income level is also high when compared with the Quebec population in general: 62% of the respondents have an annual salary of over $50,000, even though over half of them (53%) have a level of education below a university bachelor's degree.

They are a distinctly young group, with an average age of 31.5 and 73% of them aged between 24 and 35. (Among IGDA members, the proportion of designers in the same age bracket is estimated to be 81.6% (IGDA, 2004, p. 15). They are generally much better paid than the average worker in their age group with their level of education, as Table 2 shows.

<table>
<thead>
<tr>
<th>Highest level of education attained</th>
<th>Junior college diploma</th>
<th>University degree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average employment income – respondents</td>
<td>$54,583</td>
<td>$64,483</td>
</tr>
<tr>
<td>Average employment income – overall Canadian population age 25-34*</td>
<td>$29,627</td>
<td>$42,882</td>
</tr>
</tbody>
</table>


In my sample, respondents are producers (project managers) or associate producers, game or level designers, programmers, sound designers, 2D or 3D artists, modellers or animators; some were ‘leads’ (team leaders) or support employees for designers in each of these areas. I excluded senior managers and managerial staff who are not subject to the provisions regarding payment of overtime hours [Quebec Act respecting labour standards, sec. 54(3)].

I also found an important source of information in surveying several international blogs where VGDs discuss and exchange views, in a way that's intimately linked to this work environment (see the web references, below).

Lastly, I quoted data from the 2009 Quality of Life survey created and administered by the International Game Developers Association (IGDA) Quality of Life Committee. The total sample size is 3,362 and includes game developers in all sub-specialties, in a variety of employment relationships all over the world.

**PROPENSITY TO UNIONIZING: THE FIGURES**

Videogame developers (VGDs) are not reluctant to collective action; in fact, they do much of it, but not under the unionized mode well known in North America. One could argue that developers are not unionizing
because they are caught up in the field’s excitement, are largely satisfied with their conditions, feeling that their payoff structure acceptably reflects their inputs. Until recently, the press was replete with stories of the high salaries, lucrative stock options, attractive benefits, and promises of speedy mobility to ever more interesting work. But the question of whether and if so, when they will organize, perhaps through unions, has always been interesting but may be more relevant now that the capital market bubble has burst in the high-tech sector (Milton, 2003:32-3).

Though quite moderate, a higher than expected proportion of developers say they would join a union in the recent IGDA survey held in 2009, as shows the following table.

<table>
<thead>
<tr>
<th>Question</th>
<th>Answers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some developers believe the only way to improve the quality of life in the industry is to unionize. If a vote were held today, how would you vote?</td>
<td>For=803 28.2%</td>
</tr>
<tr>
<td>[universe=all employed as Full Time /Part Time and as freelancers/contract/self-employed and those formerly employed]</td>
<td>Against=744 26%</td>
</tr>
<tr>
<td></td>
<td>No opinion/prefer not to say=815 28.6%</td>
</tr>
<tr>
<td></td>
<td>Skip=1000-510=490 17.1%</td>
</tr>
<tr>
<td></td>
<td>N=2852</td>
</tr>
<tr>
<td>How do you think people in your company would vote?</td>
<td>More than ½ For=319 14.8%</td>
</tr>
<tr>
<td>[universe: all those currently employed PT or FT]</td>
<td>More than ½ Against=422 19.6%</td>
</tr>
<tr>
<td></td>
<td>50/50=264 12.2%</td>
</tr>
<tr>
<td></td>
<td>No opinion/prefer not to say=602 27.9%</td>
</tr>
<tr>
<td></td>
<td>Skip=1755-510-486-213=546 25.3%</td>
</tr>
<tr>
<td></td>
<td>N=2153</td>
</tr>
<tr>
<td>If a group of employees tried to start a union at your company, how would you react?</td>
<td>Welcome the union=549 25.5%</td>
</tr>
<tr>
<td>[universe: all those currently employed PT or FT]</td>
<td>Oppose the union with information=390 18.1%</td>
</tr>
<tr>
<td></td>
<td>Don’t care/prefer not to say=668 31%</td>
</tr>
<tr>
<td></td>
<td>Skip=1755-510-486-213=546 25.3%</td>
</tr>
<tr>
<td></td>
<td>N=2153</td>
</tr>
<tr>
<td>If a group of employees tried to start a union at your company, how would management react?</td>
<td>Welcome the union=104 4.8%</td>
</tr>
<tr>
<td>[universe: all those currently employed PT or FT]</td>
<td>Oppose the union with information=581 27.0%</td>
</tr>
<tr>
<td></td>
<td>Don’t care/prefer not to say=249 11.5%</td>
</tr>
<tr>
<td></td>
<td>Skip=1755-510-486-213=546 25.3%</td>
</tr>
<tr>
<td></td>
<td>N=2153</td>
</tr>
<tr>
<td>Do you feel the labour laws offer sufficient protection should a grievance arise between an employer and an employee?</td>
<td>Yes=874 30.6%</td>
</tr>
<tr>
<td>[universe=all employed as FT/PT and as freelancers/contract/self-employed and those formerly employed]</td>
<td>No=514 18%</td>
</tr>
<tr>
<td></td>
<td>Do not Know=974 34.1%</td>
</tr>
<tr>
<td></td>
<td>Skip=1000-510=490 17.1%</td>
</tr>
<tr>
<td></td>
<td>N=2852</td>
</tr>
</tbody>
</table>

Source: IGDA 2009 Survey data processed by Johanna Weststar (Legault & Weststar, 201*).

Is there such thing as a representation gap among the videogame developers? In the current meaning, we cannot draw such a conclusion, because workers who desire union representation would have access to it,
working in a sector covered by Canadian provinces’ unionization regimes (Heery, 2009:324).

However, analysis of interviews and social web content and literature review sheds light on these “moderate” results, among which quasi-equal proportions of pros and cons and the high proportion of “no answer” surveyed respondents is striking.

**PORTER’S VALUE CHAIN MODEL**

According to Porter (1985, 1996), value chain analysis evaluates which value each particular activity adds to the organizations’ products or services. The value-chain concept has been extended beyond individual firms and can apply to whole supply chains and distribution networks. The delivery of a mix of products and services to the end customer will mobilize different economic factors, each managing its own value chain. The industry wide synchronized interactions of those local value chains create an extended value chain, sometimes global in extent. This so-called value system includes the value chains of a firm's supplier (and their suppliers all the way back), the firm itself, the firm distribution channels, and the firm's buyers (and presumably extended to the buyers of their products, and so on). Porter argues that the ability to perform particular activities and to manage the linkages between these activities is a source of competitive advantage.

Capturing the value generated along the chain is the new approach taken by many management strategists. For example, a manufacturer might require its parts suppliers to be located nearby its assembly plant to minimize the cost of transportation. By exploiting the upstream and downstream information flowing along the value chain, the firms may try to bypass the intermediaries creating new business models, or in other ways create improvements in its value system.

The whole chain of activities that allows a product, be it a good or a service, to be sold to customers can be roughly divided in four steps:
- defining a product, mostly by research and development activities in an innovation process, is the first step that brings in much of the added value;
- making the product is the second step; while mass production and manufacturing do not add much value and is more and more outsourced by developed countries, custom-making can still take place among them;
- finishing and distribution is the third step;
- marketing comes last, including branding, intellectual property, economic and financial strategy, and so forth, all of these coming down to an end result: creating an urge to own such a product among the largest pool of consumers.

Along with standardisation of manufacturing processes, the second and third steps have lost weight in the value chain while first and last steps, upstream and downstream to manufacturing, have gained importance. Western developed countries concentrate on those - that represent fundamental stakes in economical activity and prosperity. But location strategies are constantly changing, as is competitive advantage of each
country in various economical sectors.

As transportation and transaction costs are scaled back with the reduction of international trade, language and legal barriers, industries tend to progressively spread production systems internationally, taking advantage of the best suited environment at each step. However, SMEs are not the ones to take advantage of such a strategy, as MNCs are. Not only can they realise important economies of scale, but they can put in the huge resources required to locate the best suited actors at any given time and to coordinate worldwide production flows. As an end result, they have growing returns.

INTERNATIONAL STRUCTURE OF VIDEO GAME INDUSTRY

Videogame industry offer an interesting prospect of analysis in the internationalized value chain framework, as its second and third production steps offer disputable propensities to outsourcing.

According to Flew & Humphreys (2008: 133), the game industry value chain is made up of six connected and distinctive layers:
- Capital and publishing layer: involved in paying for development of new titles and seeking returns through licensing of the titles, a very concentrated group;
- Product and talent layer: includes developers, designers and artists, who may be working under individual contracts or as part of in-house development teams, the largest and most diffuse group of all except consumers;
- Production and tools layer: generates content production tools, game development middleware, customizable game engines, and production management tools, that represent a move towards some standardization within the industry;
- Distribution layer, or the "publishing" industry, involved in generating and marketing catalogs of games for retail and online distribution;
- Hardware (or Virtual Machine or Software Platform) layer, or the providers of the underlying platform, which may be console-based, accessed through online media, or accessed through mobile devices such as the iPhone. This layer now includes non-hardware platforms such as virtual machines (e.g. Java or Flash), or software platforms such as browsers or even further Facebook, etc; this is the most concentrated of all groups in the chain;
- End-users layer, or the users/players of the games.

We’ll focus here on the second layer of the overall industry, that’s to say the VGDs, but we’ll analyze the influence of the whole value chain over the organisation and regulation of work, public policies and means of collective action as well.

In so doing, we will leave aside a very interesting, important and particular feature of this industry: the fact that more and more, end-users/players are developers by the virtue of massive multiplayer online games (MMOGs) in which:

The players are increasingly the creators of the game’s content and form themselves into online virtual communities, brigs to the fore a series of debates about participatory media culture and user-
led innovation, as users increasingly become the creators, and not simply the consumers, of their own media (Flew & Humphreys, 2008:127).

This emergence of games-in-progress, ever-modified with player-created content, in virtual communities of modders (gamers who modify games) is now placing the games industry at the centre of the shift from mass media models-based on producer-defined content where users constitute consumers of the already defined product, to the possibility of an endlessly recursive loop between producers and consumers. These games are designed under open source models, and players are prompted to contribute and improve the game under very lively crowdsourcing practices organized in virtual communities of gamers. These unpaid co-creators nevertheless keep the global interactive games industry moving. We can estimate as many as 600 000 established online game community developers could be generated by 2012. For the industry value chain, this foretells the rise of an entirely new component to the gaming industry and of key issues like control over the game itself and intellectual property of the co-created content. End-User Licensing Agreements (EULAs) create a kind of associate ownership, shared by game publisher and fan-based media such as websites, blogs, and other forms of online user community formation (Flew & Humphreys, 2008:134-5).

But this will be the object of another work. Let’s now go back to the hired and salaried videogame developers.

**Videogame developers as a professional group**

The qualifications of the people who work in this sector vary widely. The core of the industry consists of highly skilled game designers who have postsecondary training in computer science or the arts. They are on the young side (age 18–35; only 18% are over 35), childless (77%), have partners (66% as opposed to 57% in the general population) and are generally well paid ($60,000 on average in 2006); the vast majority (90%) are men. They are just beginning their careers (74.4% have been in the industry for 8 years or less) and therefore have little experience (56% say that their peers have been in the industry for 2 to 5 years). Even among the development team ‘leads’, fewer than 10% have more than 10 years’ experience (De Peuter & Dyer-Witheford, 2005; IGDA, 2004, p. 15).

Both upstream and downstream, a host of contractual workers are employed in quality control and electronic materials manufacturing. Among them are testers, who have a precarious status and are paid minimum wage (Dyer-Witheford & de Peuter, 2009). Game development industry jobs break down as follows:

- 32% in programming
- 24% in quality control (testers, quality assurance technicians, software, support services, etc.)
- 23% in artistic production (3D artists, illustrators, 3D animators, interface designers, etc.)
- 10% in game design (scriptwriters, game designers, level designers)
- 10% in production management (production managers, producers, project managers, creative directors, artistic directors, technical directors) (Dumais, 2009, p. 4)

In this paper we will be dealing solely with game developers, a skilled industry segment that accounts for 76% of the workforce.
EFFECTS OF THE VALUE CHAIN ON WORK REGULATION

Work in the video game industry is organized under the project management regime where the iron triangle of constraints (budget, schedule and scope of the order), are paramount drivers in the lives of project team members (Chasserio & Legault, 2009; Legault & Bellemare, 2008). Each game must be completed on time, within budget, and have sufficient attributes to be popular among customers, because pre-release marketing and the date of product release are decisive factors of success (Deuze, Chase Bowen & Allen, 2007; Kline, Dyer-Witheford & dePeuter, 2003).

That brings us to the upper end of the value chain: venture capital. As each project is new and unique, production process is unlikely to be planned, and as uncertain as any innovative process. Hence, the financial risk is high, due to uncertainty of duration, required means and resources. Worst, when the project team has got over these obstacles, nothing ensures the producer of success among game consumers. Failures are far more common than commercial successes:

Game budgets skyrocket, but fewer than 5% of development projects actually break even once they reach the marketplace. [...] If the game fails to sell at a healthy pace during the 4-6 weeks following its release, retailers will quickly pull it from the shelves and replace it with something new. For a developer who has spent years working long hours and investing a great deal of himself or herself in a game, seeing it vanish from the market with barely a whimper is a depressing experience to say the least. [...] For a game, purchase opportunities are much more modest [than they are for movies] (IGDA, 2004, p. 22).

It is a well-known fact that a very small proportion of games published become successful in the marketplace. In 1999, fewer than 3% of PC games available on the market, and about 12% of console titles, sold more than 100,000 copies – a figure that is itself often far below the breakeven point (IGDA, 2004, p. 42).

Developing studios or independent developers are the ones to meet those risks, because game publishers - the industry giants - have a big aversion to risk:

Publishers point out that they face the “90:10” dilemma of a hit driven business; 10% of the games make 90% of the money, and they must contract developers knowing most games sink without a trace. [...] But, as in other cultural sectors, while the number of ‘independent’ production companies grows, these “absorb high product risks and labour costs for the giants, which maintain their control over the critical areas of finance and distribution” (Dyer-Witheford, 2005).

Developing studios have thus to manage a creation and innovation process that entails considerable risk. In order to support such a risk, they call for a work organisation mode much lighter than the bureaucratic mode, putting forward that this latter mode is as good to manage mass production that it poorly manages creation and innovation. Hence, project management seems imperative as an alternative.

The project mode is closely related to the movie industry to which it is often compared, and like the latter is an environment conducive to the development of nomadic careers, where labour mobility is high and the portfolio and the reputation are key factors. Though often full time, employment in game production is seldom long term and permanent. Inasmuch as employees are moving from project to project and studio to studio, their portfolio careers are boundaryless (Arthur & Rousseau, 1996; Hyde, 2000). There is high mobility in the trade, itself a direct consequence of high demand for workers, shortage of qualified workers and industry churn due to studio start-ups, shut-downs, buy-outs and mergers (Lamb & Sutherland, 2010).
Employers who want to retain their highly skilled and otherwise mobile talent often do so by offering high salaries, stock options, a creative basket of perks, and challenging meaningful work (Milton, 2003).

Game designers negotiate their working conditions individually, and their individual negotiating power is based on their reputation. Even though workers in the industry are often salaried employees paid by the hour, rather than on fixed-rate contracts, their careers are based on their reputations, results and individual merits. This kind of system creates confusion between the fixed-length lump-sum contract and the open-ended hourly-wage contract, which often leads to consenting to unlimited unpaid overtime (Legault & Ouellet, 2011).

International structure of the industry is a heavily structuring factor of:
- Work organisation, because venture capital investors impose constraints that make them important stakeholders and actors in the labour relations system of this industry, notably regarding work intensification and standardization of work. Indeed, because of the mobility of capital, the threat of moving out is always present, be it in developed countries for some activities, or developing countries for others.
- Public policies, because national governments wish to attract those new figureheads of the knowledge economy, in a context where capital is very mobile. So national governments compete over each other to offer the best business environment and keep, if not improve, their relative position on an international scale as employers. Hence, generous funding programs support the industry, directly or not (fiscal measures, employment subsidies);
- Workers’ stand on unionization, taken as an end-result of the two previous effects.

**Effects on Work Organisation**

We have seen that publishers have a big aversion to what's presented as a risky market and organise the licensing market in such a way that developing studios or independent developers will meet those risks. Ubisoft is a different case, because the giant is a publisher and a developer as well. The constraint imposed on developers echoes in the work organisation, both in the international division of labour and in the local working conditions.

**International Division of Labour and the Threat of Outsourcing**

Regarding game developing, outsourcing was until recently mostly circumscribed to unskilled tasks (testing, quality control) that add little value in the chain. But in other steps of the value chain (production and tools layer, hardware), the game factory has been globalized for many years; we must for instance bear in mind that the value chain begins primarily in the global South, where since the early 2000s, prices for Columbite-Tantalite, a rare mineral vital for cell phones and game consoles were driven to extreme heights by the launch of the Sony PlayStation 2, a demand which accelerated already-frenzied resource grabs on the childlabour mines of the Eastern Congo:

The human infrastructure of the digital-play business is thus sharply tiered—from the regimented assembly lines of the maquiladora and South China factories from which game machines pour, through to the toxic e-waste sites of Ghana and Delhi, where game products are among the most noxious disassembled by subsistence-wage scavengers. Beginning and end of the video-game value chain, it is in these places that the disembodied discourse of the knowledge economy meets
the expanding informal proletariat on our increasingly imperiled planet (De Peuter, 2010).

Now no longer constrained to countries in the core, the game factory comprises an increasingly distributed transnational meshwork of satellite offices, subsidiary studios, and contracted-out work, which means that product and talent layer, that’s to say the very making of the game, is now partly outsourced as well:

A design team may conceive of a new game concept while sipping espresso on the mountain vista patio of EA’s Vancouver-area studio, then dispatch elements of the game’s development to a World-Bank-funded developer in Vietnam, where programmers earn a fraction of their North American counterparts. EA outsources upwards of 20% of its development work to lower-cost regions—a rate that inched up alongside layoffs amid the economic crisis. In the industry at large, some commentators have put the current proportion of outsourced gamework as high as 60% (DePeuter, 2010).

Indeed, a paper by Simone Dahlmann and Ursula Huws (2006) illustrates the impact of offshore outsourcing of editorial work from the UK to India, describing the shock experienced by the British workers when they discovered that the skills in which they took pride were so easily replaceable, and the stress and insecurity experienced by the new Indian workforce as a result of having to meet the company’s demands for ‘flexibility’.

*Intensification and standardization of work*

The codification of tacit knowledge and the standardisation of work processes is an important precondition for computerisation. The more standardised each unit of work is, the more easily it can be monitored by results and managed remotely and the easier it is to fragment what used to form part of a single unified work process into separate modules that can be reconfigured in a variety of different ways. Such reconfiguration may take many different forms, ranging from the reskilling of an existing workforce remaining on the same site working for the same employer to offshore outsourcing to another continent (Huws, 2006).

VGDs in California have taken class action suits against their employers to win the right to overtime pay. Ironically in order to do so they had to argue that their work was not ‘creative’ because it involved working to tight supervision under conditions that bore more resemblances to a Fordist assembly-line than to the unstructured autonomous working conditions described in many accounts of the new economy. These Taylorised working conditions, he argues, cast doubt on the hypotheses that new autonomous forms of work are emerging (Schumacher, 2006).

The threat of outsourcing, among others, is a factor enabling studio managers to extract extreme hours (and unlimited and unpaid overtime). Indeed, long working hours and unlimited and unpaid overtime are a paramount problem in the trade. This is at the heart of the quality of life movement and data pointing to high turnover, burn-out and work-life conflict (IGDA, 2004). I’ll be brief on that since I’ve documented that important feature of the industry elsewhere (Legault & Ouellet, 2011; Legault & Weststar, 201*), providing figures in both the industry and my precise sample of respondents. Let me just remind that it’s an important deterrent factor in developers’ anticipated early exodus from the industry, and the object of an important developers’ claim to change.
Effect on Public policies: Creating an attractive business environment and impunity of MNCs

The Government of Canada is very generous in its support for the industry, and the Government of Quebec even more so, primarily through tax breaks for Montreal’s Cité du multimédia, where up to a quarter of game production costs are said to be funded by government. Elsewhere in Canada, studios can also take advantage of federal tax exemptions for research and development (Alliance NumericQ, 2003, 2008).

VGDs do not allow much resources in challenging the legal framework in any of the countries where their employers operate studios, for instance regarding overtime because, to put it bluntly, this framework will only prove to be useful in protecting them if employers comply to it. Yet, MNCs are not much moved by these local legal provisions and their influence on those rather consist in neutralizing them...

In Québec, where our interviews took place, the Act respecting labour standards (RSQ, ch. N-1.1, sec. 52-55) clearly states that an employer who explicitly asks an employee to work overtime must pay for the overtime hours at premium rate; conversely, if the employer does not want to pay for the overtime, he cannot require an employee to work it.

Still, studios’ practices are legally ambiguous because managers and supervisors do not actually ask designers to work overtime. They claim that overtime is never compulsory, but that developers do it on their own initiative. Some of our interview respondents did refuse to work overtime; however, they usually end up having to limit their career ambitions as a result. While some developers are compensated for these ‘willingly worked’ overtime hours based on a bonus system and compensatory free time, compensation is never guaranteed. Moreover, when they are compensated, it is only in part, and its level is uncertain and discretionary. According to data from the 2009 Quality of Life survey, almost half of the sample (N=1943) received no compensation for crunch. Nine percent receive overtime pay, 20% get time off, 15% receive perks during crunch and 13% receive a bonus. The way overtime is managed is a source of significant dissatisfaction.

The resulting portrait immediately raises the question: how do companies get these unhappy developers to work so many hours of unpaid overtime? I’ve put forward an explanation that is based on the existence of an informal, albeit highly effective system of rewards and punishments that relies on the importance of reputation. Developers need a strong portfolio and good name to increase or maintain their mobility and work on high-profile games in an industry resolutely focused on creation, innovation and drive (Legault & Ouellet, 2011). Neither purely voluntary and freely agreed to, nor required and forced, overtime comes under the broad category of “voluntary but expected” working hours (Campbell, 2002:141).

In fact, there has been no case reported at the Labour Standards Commission concerning unpaid overtime until now, and this strategic explanation can account for it, at least partially. Threat of outsourcing can also account for it; a review of the blogs, as well as our interviews, reveal profound strategic rationales among actors in the trade, who keep a watchful eye on videogame’s business strategy.

However, the Commission could in principle act of its own initiative (but never did):

98. Where the employer fails to pay to an employee the wage owing to him, the Commission, on
behalf of that employee, may claim the unpaid wage from that employer.

99. Where the employer fails to pay the other pecuniary benefits resulting from the application of this Act or a regulation, the Commission may claim these benefits on the basis of the usual hourly wage of the employee and his gratuities or tips declared and attributed under sections 42.11 and 1019.4 of the Taxation Act (chapter I-3).

...

105. The Commission may also make an inquiry of its own initiative.

In US, there have been many collective actions regarding unlimited and unpaid overtime among professional workers in general, and VGDs in particular (Legault & Weststar, 201*). As game studios are heavily state-funded, one should think that they could do without the bad publicity that goes along, and in general without the one that’s ongoing in the social media regarding unlimited and unpaid overtime. Social media strategies rely on the existence of a so-called “supplier market”. So, employers are supposed to respond to the publicized concerns to preserve their recruitment and retention in a tight labour market.

Regardless, the managerial response may have a perverse effect. Following the class actions wave in California, EA transferred hundreds of developers to Florida and Canada, wishing to avoid its new liability to pay them overtime (Feldman & Thorsen, 2004). Such a loud and clear retort can chill a movement and stall would-be union organizers in a context where the threat of outsourcing always lies in the background. Developers show fear as well and many maintain anonymity in online posts that are critical of their employer or the industry in general (Legault & Weststar, 201*). This way, Canada is still a much more friendly business environment until now. In fact, certain myths should be seriously addressed, because developed countries, and Canada among them, benefit from outsourcing, a large part of knowledge work being outsourced from a developed country to another, as in the movie industry (Mosco, 2006).

In the absence of Labour Standards Commission’s case law on overtime among VGDs, we can only speculate on what the result could be. But overall, though the decision of refraining to fill a complaint would fall on developers, if we aim at grabbing the whole picture, isn’t the very context of competition among Nation-States to attract MNCs’ studios responsible for neutralizing any effect of the legal framework?

Indeed, as venture capital in this industry is very mobile, and as barriers of many kinds are less and less important (Porter, 1985, 1996), economical competitive advantage is fleeting and could be lost as quickly as it is gained.

**Effect on Collective action and workers’ stand on unionization**

*Threat of outsourcing and propensity to unionizing*

With the exception of contract employees, designers are not in principle excluded from the right to collective labour relations and have a right to unionize. However, they are neither unionized nor organized in any way in an advocacy group at any of the industry’s studios, although they can join an association, such as the IGDA, which in the last few years has begun to play an advocacy role.

Videogame developers (VGDs) have claims pertaining to working conditions at the international level, as the industry is world-wide. Many respondents and actors in the field keep a watchful eye on the emergent
countries as the coming source of a competing workforce that could rapidly overpower the present developers’ bargaining power. The constant - though latent - threat of outsourcing is a relatively efficient union avoidance strategy. Evidence of this notion abounds in online discussions among developers and industry analysts. This issue is abundantly addressed in the dedicated website Gamasutra (www.gamasutra.com). Among our respondents, as much as in the social web, an important mass of VGDs worry about outsourcing and base their reluctance to unionizing on that factor.

What is not articulated among developers, though, is that protection against outsourcing could be a reason to organize or that unionization of the industry internationally could help to raise standards overall. An example is the movie industry (Mosco, 2006) where Indian union leaders are looking for joint initiatives with American unions to prevent social dumping in working conditions (Legault & Weststar, 201*).

Mobility and enterprise-based certification

Even among sympathizers to unionization, international and national developers’ mobility is a powerful deterrent to unionization as long as the North American certification and bargaining model is enterprise-based. In such a system, all the negotiated advantages held in a collective agreement are linked to the ongoing employment relationship and to residing in a proper national territory. High-tech workers who are in demand are very committed to their work and professional groups but see their employers as fungible. Though issues at stake are important to them, they do not find any interest in local battles they would have to support before leaving for another project. Low continuance commitment and attractive employment alternatives predispose them to change studios rather than lobby for change, while jobs are abundant (Legault & Ouellet, 2011, Milton, 2003). Sector-based certification and negotiation and world wide regulation would suit these mobile workers much better, notably regarding pension plans and health insurance plans.

All of this is an important, deeply-rooted critique of the contemporary union movement and its rules. Not only do new media workers question the use unions make - and don’t make - of information technology and the social web (Lucio, Walker & Trevorrow, 2009) in their daily routine, but the deeper model of collective action they carry. However, an industry-wide, multi-employer certification and negotiation process could address many of the above obstacles to unionization. The Act respecting the professional status and conditions of engagement of performing, recording and film artists (RSQ c. S-32.1) in Québec is an example. This system for the performing trades allows for social insurance plans that follow you throughout your multiple employers and is an early adopter of the portable rights principle (Legault & D’Amours, 201*; Remo, 2008) as in the US film industry (Amman, 2002). Under this system, artists can also benefit from the State’s health and security plan, and co-regulate the sharing out of incomes drawn royalties and residuals (Lefebvre & Merrigan, 2007).

Intellectual property rights are very important to developers too and they are in need of an overarching protection system not limited to the employment contract duration (Legault & D’Amours, 201*). Moreover, the Act respecting the professional status can capture the appreciation for merit. This system promotes a minimum standard hiring contract, but allows for better conditions, should the artist be more in demand or more prestigious. Similarly, individual negotiations or “above-scale deals” are a long-time industry practice in
the motion picture and television unions (Amman, 2002; Batt, Christopherson, Rightor & van Jaarsveld, 2001).

**Alternative means of collective action**

I said above that VGDs have their ways of collective action, not under the unionized mode well known in North America.

For instance, in 1999, the *Ubifree* website, in which an anonymous group was ironically describing working conditions at Ubisoft, claimed to be the virtual union of Ubisoft employees and sent an invitation to join the union to all employees around the world. The small initiative harvested a huge amount of reactions and supportive messages, many of them denouncing the working conditions. After a few months only, management of Ubisoft announced many improvements; the anonymous group closed down the website-union. However, showing the fragility of *voice*, one improvement was the addition of an employees’ representative seat in a few committees; however, this rep was never granted any decision-making power.

The “EA spouse” affair is another landmark. Erin Hoffman, once a developer’s fiance, in November 2004 used her *LiveJournal* blog to denounce an abusive situation of constant *crunch time* in Los Angeles’ Electronic Arts (EA) studio. In the same way than Ubifree previously succeeded to do, her first account, though not threatening nor calling for job action, triggered thousands of comments from gaming fans and beleaguered developers at EA and other studios. They rallied a huge movement against EA in particular and crunch time in general, and triggered three class-action suits (EA, Vivendi and Sony) that alleged studios denied employees overtime pay. EA has later banned work on Sundays and adopted a policy favouring five working days a week. In addition, EA reclassified nearly 200 positions as eligible for overtime pay; however, they were no longer given stock options...

Inspired by fans’ support, Hoffman launched *GameWatch* in April 2006, a watchdog website dedicated to policing employment practices in studios by using whistle-blowing, which is still rather effective. Unlike the class actions wave in California that I mentioned above, the watchdog websites are striking internationally, are not territory-based, so they do not give way to moving away threats so easily. IGDA is betting on the fact that studios dislike bad publicity aimed at developers, in a context of highly competitive head hunting.

With their skills, resources, communication channels and connectivity, high-tech workers are able to form issue-based networks and be very effective (Milton, 2003:45), as EA spouse affair shows:

> One essay written months ago set off a powder keg of response, not just from the game industry but from the entire software development community. Truly, the power of the Internet is astounding, and all other things aside, we live in a positive age when so much information can be shared so easily and quickly. The thing that lifted this up into public view, though, was not my essay so much as the response to it. (LiveJournal, update as of Dec15th 2004, Hoffman, 2004)

Capacity to instantly and internationally share strategic information and to coordinate collective action by the same means allows for quickly constituting a redoubtable stock of evidence in case of media or legal
action. Social networks remove two important obstacles to collective action: limits to circulation of information and the constraint of physical gathering to deploy collective expression (Shirky, 2008:143-160). Closer to a democracy of the multitude model, emblematic of alter-globalization movement, many developers reject any transcendental hierarchy of command in collective action. They prefer to collectively produce social organization in temporary coalitions under an immanent model where the various social actors collaborate, instead of being imposed an order by an external authority, be it camarades’ (Hardt & Negri, 2004:336-40; Milton, 2003).

But most of all, for the purposes of this demonstration, this kind of job action is international and as such, more promising for our respondents than local job action.

**CONCLUSION**

So, in materialist terms, developers are not void of motives for collective action and their current individual and collective means seem unable to fix systemic problems in the industry. However, under likewise materialist criteria, there are a host of deterrents keeping them from unionization. The very structure of the industry is one. A project based, regionally and internationally mobile workforce is meant for a blend of sector-related and international forms of unionism still to be born.

Social aspects of the trade, no less important, are serious issues to address; developers are organized into a star-system with a somewhat hermetic professional culture and they are not fit for unions’ traditional approaches. Facing union avoidance strategies that also chill any unionization prospect, developers have developed alternatives forms of collective action such as the issue-based coalitions noted by Milton (2003) that disband when no longer needed (i.e., EA spouse-like mobilization). Though these are much frailer than collective bargaining, they fit the paramount ideological current and robust social identity of VGDs as well as the international structure of the industry.

The notion of representation then remains a complicated issue for this group of workers and their high-tech peers where a complex web of interactions both push towards stronger forms and pull away from apparently outmoded options.

In a recent collection of research results relative to citizenship at work, Coutu & Murray (2010a, b) emphasize the urgent need for regulating international workforce circulation, as capital and workforce mobility are here to stay. There is a deficit of regulation in trans-national workforce movements. Though much of the research on decent work focus on non skilled workers (World Commission on the Social Dimension of Globalization, 2004, quoted in Coutu & Murray, 2010b), the gap between national and internationally mobile highly qualified workforce concerning economic security and fringe benefits is deepening, while public policy has not yet addressed this issue.

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2 We can estimate the destructive potential of such technological means for an organisation, even a robust one, with the story of the spectacular success of sexual abuse victims who used the social web to denounce priest in Survivors Network of those Abused by Priests (SNAP) or Voice of the Faithful (VOTF) in the US (See Shirky, 2008:143-160).
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