

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Ascaron Entertainment GmbH		07/22/2009	COMPANY: GERMANY

**RECEIVING PARTY DATA**

Name:	Koch Media Gmbh
Street Address:	Gewerbegebiet 1
City:	Hoefen
State/Country:	AUSTRIA
Postal Code:	6604
Entity Type:	COMPANY: AUSTRIA

**PROPERTY NUMBERS Total: 4**

Property Type	Number	Word Mark
Registration Number:	3694861	SACRED
Registration Number:	3694860	SACRED
Registration Number:	3697770	SACRED
Registration Number:	3697769	SACRED

**CORRESPONDENCE DATA**

Fax Number: (924)245-3140  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: +49 89 24245140  
 Email: s.baer@kochmedia.com  
 Correspondent Name: Stefani Baer  
 Address Line 1: Lochhamer Str. 9  
 Address Line 4: Planegg, GERMANY 82152

**DOMESTIC REPRESENTATIVE**

Name:  
 Address Line 1:

**900162319**

**TRADEMARK  
 REEL: 004207 FRAME: 0016**

**OP \$115.00 3694861**

Address Line 2:

Address Line 3:

Address Line 4:

NAME OF SUBMITTER:

Stefani Baer

Signature:

/stefanibaer/

Date:

05/17/2010

Total Attachments: 8

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KOCH MEDIA

**Trademark Assignment and License Agreement**

Between

Ascaron Entertainment GmbH I.I.  
represented by Ist Managing Director  
Mr. Heiko tom Felde  
Vorler Str. 6  
D-33332 Gütersloh  
Germany  
Tel: +49 5241 9666 0  
Fax: +49 5241 9666 10

and

Studio II Software GmbH I.I.  
represented by Ist Managing Director  
Mr. Holger Flöttmann  
Theaterstrasse 98  
D-52062 Aachen  
Germany

both acting with consent of  
Rechtsanwalt Dr. Frank M. Welsch  
Händlernd als vorläufiger Insolvenzverwalter  
In dem Insolvenzantragverfahren über das Vermögen  
der Ascaron Entertainment GmbH und der Studio II Software GmbH.

Both hereinafter collectively referred to as „Ascaron“ or  
„ASSIGNOR“.

and

Koch Media GmbH  
Gewerbegebiet 1  
A - 6600 Höfen  
Austria  
Tel: +43 5672 606-0  
Fax: +43 5672 65580

Hereinafter referred to as „Koch“ or „ASSIGNEE“.

**WHEREAS**

Ascaron is the owner of the trademarks and other Intellectual property regarding "Sacred". Ascaron and StudioII are insolvent (42 IN 486/09 AG Bielefeld and 43 IN 510/09 Amtsgericht Bielefeld).

Koch is in the business of publishing interactive software products, and publishing its own and third party software products through its distribution network.

Koch desires to acquire all right, title and interest in and to the marks "Sacred" as well as the exploitation rights with respect to the Code-Basis of the Sacred Computer and Console Software Products.

**Sacred**

With the execution of this Assignment, Ascaron and Koch are executing an Intellectual Property Assignment and a Licensing Agreement.

NOW IS HEREBY MUTUALLY AGREED as follows:

**I. Subject of the Agreement****1. Trademark Assignment**

According especially to § 27 MarkenG ASSIGNOR hereby sells, assigns, transfers, conveys and contributes to ASSIGNEE the entire right, title, and interest of whatever kind in and to ASSIGNOR'S right, title, Marks and the Property of the Trademarks "Sacred" and all existing derivatives worldwide together with

(1) the goodwill of the business relating to the Products in respect upon which the Marks are used and for which they are registered (including, without limitation, the right to renew any registrations included in the Trademarks, the right to apply for trademark registrations based in whole or in part upon the Trademarks, and any priority right that may arise from the Trademarks),

(2) all income, royalties, and damages hereafter due or payable to ASSIGNOR with respect to the Marks, including without limitation, damages, and payments for past or future infringements and misappropriations of the Marks; and

(3) all rights to sue for past, present and future infringements or misappropriations of the Marks,

the same to be held and enjoyed by ASSIGNEE as fully and entirely as said interest could have been held and enjoyed by ASSIGNOR had this sale, assignment, transfer and conveyance not been made.

2. As an exception to the above Assignment under No. 1. 1 ASSIGNEE has to respect the existing contractual rights granted by ASSIGNOR to CDV for the exploitation of Sacred 2 in the USA, Ascaron UK Ltd for China/Taiwan/Russia, Spike for Japan as well as any further existing agreements. Furthermore Ascaron has several existing contracts for Sacred1 and Sacred2 in place as listed in the attached Amendment 1. which will be given with Ascarons best efforts but without guarantee of completeness. Furthermore, with respect to the existing Co-Publishing Agreement and its Amendments relating to Sacred 2 and the Exclusive Publishing and Licensing Agreement between Studio II and Koch relating to Sacred 2 Add-On PC Koch shall not be obliged to pay fees according to this agreement.

3. ASSIGNOR authorizes the Commissioner of Trademarks of the Office for Harmonization in the Internal Market (Trade Marks and Designs) in Alicante with respect to Registration No.: 005707799 as well as any other empowered officials of any other Patent and Trademark Offices in any applicable jurisdictions in the Territory to record the

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Transfer of the registrations and/or applications for registration of the related Trademarks "Sacred" as well as derivative Trademarks to ASSIGNEE.

4. ASSIGNOR agrees to further execute any documents, papers, forms and authorizations and take all other actions that may be necessary to effect this assignment and for securing, completing, or vesting in ASSIGNEE full right, title, and interest in the Marks and the Property or to confirm ASSIGNEE's ownership of the Trademarks. Koch will bear the related fees.

#### 5. Licensing Agreement

Ascaron further grants to Koch the exclusive utilization and exploitation rights to the Code-Basis (as described below) of the Sacred Computer and Console Software Products as long as owned by Ascaron in order to enable Koch to use this as a basis for future exploitation and develop (or let be developed by a third party) further interactive products in every technically possible format. From the Exclusivity excluded are any previously granted rights to third parties (to distribute, publish or localize) under existing agreements (e.g. Japanese Version).

The Code Basis according to the Agreement of the contractual parties shall include but not be limited to the concepts, artwork, source code, object code, libraries, programming tools, content, server technology, controls, user interface, assets, code documentation etc. of Sacred 2 PC, Sacred 2 Xbox360, Sacred 2 PS3. Middleware such as Blink, Speedtree or TinCat technology (which has been licensed by Arvato) are excluded from the exclusivity and do not belong to Ascaron.

These rights include but are not limited to the right of development, production and replication of interactive software products and services based on the Code Basis of "Sacred" on CDs or DVDs or console cartridges or Online Games as well as the sale of the products online and offline, the right to present the products in public for sale purposes and the right to advertise in all media (TV, radio, press etc.).

This includes any type of commercial use to generate revenues with "Sacred" products, especially the right to produce, reproduce, translate, manufacture, publish, market, distribute, sell, licence, disseminate, diffuse, perform, display, exhibit, show, play, transmit, broadcast, convey, rent, issue to the public and otherwise exploit and authorise any third party to do any of the foregoing. These rights include but are not limited to stand-alone units, software and hardware bundles, OEM, covermounts.

Koch is entitled to grant sublicensing rights (inclusive OEM, covermount, compilation etc.) and may transfer all relevant rights to third persons as well as to the companies of Koch Group.

Ascaron will deliver the Code Basis of the Sacred Computer and Console Software Products physically to ASSIGNEE within 10 days after signature of this Assignment Agreement.

6. Koch may assign its rights under No. 1. to third Parties. An Assignment of rights from Koch to a third Party according to No. 1. before the 31.12.2015 needs to be approved by Ascaron. Such approval may not be unreasonably withheld.

#### II. Territory and Term

The agreed Territory is worldwide. The term is on a perpetual basis.

**III. Advance**

Koch agrees to pay a non-refundable but fully recoupable (against any agreed royalties) advance amount of [REDACTED] excl. VAT (the "Advance") to Ascaron.

The Advance shall be payable within 30 days from the delivery of the Code Basis according to No I. 5 of this Agreement.

The parties agree that the entire advance amount will be non-refundable but may be fully recoupable against any payables from Koch to Ascaron arising from this Agreement only. All revenues derived from all products and services, in all language versions and in the whole Territory, at all price points shall be fully deductible, but there will be no cross-collateralisation with revenues from other agreements between the parties.

Ascaron shall issue invoices to Koch. Any invoices must be issued to KOCH Media GmbH, International Licensing Department, Gewerbegebiet 1, A-6604 Hüfen, Austria and the Original to be sent to KOCH Media, Department Publishing, Lochthamer Str.9, D - 82152 Planegg/Munich Germany.

**IV. Royalty**

Royalties to Ascaron shall fall due on a title by title basis after Koch has fully recouped its Pre-Costs (as more fully described below) for the related title with its Net Revenues. There shall be no cross-collateralisation of the total Pre-Costs between different titles with total Royalties of all titles.

Pre-Costs shall be all direct related costs to the products/services or the brand as they have been executed in Ascaron's history. Such areas are development, internal and external Q/A, localisation, brand PR, etc.

Royalties will be paid as follows.

(a) [REDACTED] for all finally sold products / services which will be developed and distributed by Koch on basis of the delivered code of the previous and existing Sacred products. This may be eg. further Add-Ons or Gold-Versions (PC and Console) of Sacred2.

(b) [REDACTED] for all finally sold products / services which will be based on the Know-how or parts of the Code Basis of already existing products, as eg. A potential Sacred3-development with the full former Ascaron Development Teams in Aachen or Güttersloh.

(c) [REDACTED] for all finally sold products / services which will only use the assigned mark "Sacred", as eg. new games not using the existing code.

The Calculation Basis shall be the Net Revenues generated by Koch after deduction of all authorised (RMA issued) or received returns of the Product, minus standardized cost of sales and distribution costs of [REDACTED] relating to physical products as well as online products and services, minus third party marketing costs as well as third party revenue shares (eg. to marketing partners in online games etc.), minus cost of goods manufactured (COGS) which shall be defined as the actual costs less VAT invoiced by the manufacturer of the product during the accounting period, being DVD disc, manual, printed materials and box and platform fees, copy protection fees and, minus direct costs of providing the product or services including but not limited to community server costs, middleware licence costs and costs for branding partners.

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Net Revenues shall be defined as the invoiced price minus VAT after the deduction of rebates, bonuses, standardized coop fees and discounts granted to Koch's customers minus taxes or fees levied on sales revenues required by certain countries. Online revenues shall include but shall not be limited to revenues from online competitions, online advertising and marketing activities, subscriptions, revenues from skill-based gaming, pay-per-play and any other revenue sources currently known as well as invented in the future.

Royalties will generally be paid only for products which will be released before the 31.12.2013. Products which will be released by Koch after this date will not qualify for any Royalties.

~~Royalties paid by Koch shall be reported and paid in EURO. For transactions in other currencies Koch will calculate the payment by taking the actual average official Euro rate to the relevant currencies as defined by the European Central Bank on the day the payment is due.~~

All transactions that are in EURO will be reported and paid in EURO. For transactions in other currencies Koch will calculate the payment by taking the actual average official Euro rate to the relevant currencies as defined by the European Central Bank on the day the payment is due.

**V. Accounting Statements and Payments**

Accounting statements will be rendered to Ascaron for each half year within 30 days of the end of a half year (June, 30<sup>th</sup> and December, 31<sup>st</sup>) of taking into account any received, authorised and expected product returns within the related period.

Payments will follow after full recoupmnt of all Pre-Costs and the Advance within 14 days from due date of half year statement net.

If a royalty payment for one payment term amounts to less than € 250- (excluding VAT), then the accounting party reserves the right for reasons of rationalisation not to draw up an account and to carry forward the outstanding balance to the next payment term. If it should arise that the sales account is negative (more returns/credits than sales/invoices), then that amount may be debited against any royalties due in the subsequent accounting period.

In relation to physical product sales only the parties agree on a standard returns reserve of the half year net revenues multiplied by the applicable royalty rate to be reversed back to the report within 90 days at the following percentages:

- 25% in the first half year of release of each product sku
- 20% in the second half year term
- 15% in all subsequent half year terms

Koch will only have to account revenues until 31.12.2015. After this date Koch will have to pay no further Royalties. Koch will render a final Accounting statement on the 30th January 2016.

**VI. Audit**

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Ascaron is entitled to appoint an independent German or Austrian auditor in order to inspect all accounts, records and books of Koch appertaining to the distribution and marketing of the Programmes. The auditor may inspect in maximum all documents directly or indirectly pertaining to the two foregoing half year statements received 2 weeks prior to Koch's receipt of Ascaron's notice to conduct an audit. He may inspect the Documents upon 10 working days prior notice from time to time during normal business hours but only to determine if any claimed inaccuracies may exist. The cost of the audit shall be borne by Ascaron unless it is determined that Ascaron has been underpaid by more than 5% (five percent) of the payments due to Ascaron. In such case, the reasonable costs of the audit shall be borne by Koch. Any underpaid monies will have to be paid by Koch will take into account the currency exchange rates which should have been applied at the respective due dates of the payments in order to avoid a disadvantage to Ascaron.

All royalty statement shall be final and binding on Ascaron and shall be conclusive evidence as to the total of royalties that have accrued to Ascaron unless a written notice specifying in reasonable detail the nature and reason of any bona fide objection is received by the Publisher within three months from the date of the statement. No action, suit or proceeding of any nature in respect of any royalty statement or other accounting may be maintained unless it is commenced against the publisher within six months of Publishers notice of rejecting such objection.

#### VII. Representations and Warranties

##### 1. Ascaron represents and warrants that to its best knowledge:

(i) Ascaron has full right and authority to enter into and perform its duties under this Agreement and that it shall not have effected and shall not effect any dispositions that are contrary to the transfer of rights under Section 1 of this Agreement.

(ii) The delivered Code Basis does not use any work fragments (commonly known as "samples") that are subject to protection by a performing rights society or a copyright collecting society under copyright law. TinCat technology which has been licensed by Aryato is excluded from this warranty.

(iii) Ascaron is the owner or valid licensee of the delivered Code Basis and to the best of its knowledge the content and materials are free from third party rights and do not infringe any copyrights or industrial property rights such as patents, utility models, design patents and/or industrial labelling rights, including but not limited to title rights and trademark rights, and also do not violate other laws in the Territory.

##### 2. Koch represents and warrants that to its best knowledge:

(i) Koch has full right and authority to enter into and perform its duties under this Agreement.

(ii) The Products and services, as sold and distributed to consumers, shall conform to all local requirements and will be of high quality, free from any physical defects dangerous to consumers.

3. Ascaron hereby indemnifies Koch and undertakes to defend Koch against and hold Koch harmless from any and all claims, suits, liabilities, loss, damage, reasonable cost or expense, including reasonable attorneys' fees, based upon or arising out of a breach or alleged breach of any of Ascaron's representations, warranties and covenants contained herein, including but not limited to claims asserted that the Products infringe a third party's intellectual property right. If such third party claims force Koch to discontinue distribution of the Products, Koch will be entitled to compensation for its reasonable lost profits in addition to any court costs and reasonable legal fees incurred by Koch.



4. Koch hereby indemnifies Ascaron and undertakes to defend Ascaron against and hold Ascaron harmless from any and all claims, suits, liabilities, loss, damage, reasonable cost or expense, including reasonable attorneys' fees, based upon or arising out of a breach or alleged breach of any of Koch's representations, warranties and covenants contained herein.

5. If any action shall be brought against one of the parties hereto the Indemnified Party shall cooperate with the Indemnifying Party in all reasonable respects in connection with the defence of any such action at the expense of the Indemnifying Party and in a manner consistent with the parties' respective confidentiality obligations, and preservation of attorney/client, work product, and other such privileges. The Indemnifying Party may, upon written notice to the Indemnified Party, undertake to conduct all proceedings or negotiations in connection with the action, assume the defence thereof, including settlement negotiations in connection with the action. The Indemnifying Party, however, will not enter into any settlement of such claim without the prior approval of the Indemnified Party, which approval will not be unreasonably withheld. Notwithstanding the fact that the Indemnifying Party may elect to control the defence and/or settlement of any claim with respect to which it has an indemnity obligation hereunder, the Indemnified Party shall have the right to retain separate counsel and participate in the defence of any such action or claim at its own expense.

#### VIII. Confidentiality

Each party shall treat as strictly confidential all information of a confidential nature which is disclosed to it by the other party and Intellectual Property and which relates to the business of the other party (the "Confidential Information"). Neither party shall use the Confidential Information of the other for any purpose not envisioned in this Agreement. However, each party may use or disclose information which would otherwise be Confidential Information if and to the extent that: (a) it is required to do so by law or any securities or regulatory or governmental body; (b) the information has come into the public domain through no fault of that party; or (c) the information was previously disclosed to it without any obligation of confidentiality.

#### IX. Applicable Law / Miscellaneous

This Agreement, in accordance with the intentions of the parties, shall have validity also for the legal successors on both sides if applicable law so provides.

Koch shall be authorized to offset claims that are due to group companies, subsidiaries, affiliated companies, or other companies in which Koch holds a direct or indirect interest. This shall also apply if the due dates are different.

The Appendices and enclosures attached to this Agreement are integral components thereof. Amendments and additions to this agreement and/or to the enclosures and Appendices must be executed in writing. This applies also to a renunciation of the requirement for the written form. A fax version of this agreement or amendments is valid. No verbal agreements have been made.

The use of the General Business Conditions is expressly ruled out by both parties. The contracting parties herewith confirm that contractual performance and consideration are adequate and in accordance with the parties economic intentions. Any rescission of the contract based on error, consideration being less than half of true value or on similar grounds is herewith excluded.

If one of the terms of the agreement should turn out to be wholly or partially invalid, the

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remaining terms shall not be affected thereby. The invalid term shall be interpreted according to its sense and replaced by a new regulation that achieves the commercial purpose of the invalid term as much as possible. The place of performance for all activities of both parties shall be at Koch address in Höfen / Austria.

Austrian Law applies to this agreement. The exclusive place of jurisdiction for any possible disputes arising out of this agreement is agreed to be the court that has competence for Koch, in Höfen / Austria. However, Koch reserves the right to take Ascaron at its' own discretion to court, at the court place which according to the law has competence for the Ascaron in the matter in question.

This Trademark Assignment Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts taken together shall constitute one and the same instrument. Each counterpart may be delivered by facsimile transmission, which transmission shall be deemed delivery of an originally executed document.

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Assignment and License Agreement as of the date first above written.

Gütersloh, on 22-07-09

Ascaron Entertainment GmbH I.I.  
represented by

Helko Tom Felde  
Helko Tom Felde  
Managing Director

Studio II Software GmbH I.I.  
represented by

Mr. Holger Flöttmann  
Mr. Holger Flöttmann  
Managing Director

Dr. Frank M. Wolsch, *vertrauens*  
Dr. Frank M. Wolsch  
Insolvenzverwalter

Höfen, on 22.07.09

Koch Media GmbH  
represented by

Dr. Klemens Kundratitz  
Dr. Klemens Kundratitz  
Managing Director

Dr. Reinhard Gratl  
Dr. Reinhard Gratl  
Managing Director

Appendix: Contracts with 3rd Parties

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