



**WASHINGTON STATE  
GAMBLING COMMISSION PUBLIC  
MEETING - October 2018**

Hampton Inn and Suites  
4301 Martin Way E.  
Olympia, Wa 98516

## COMMISSIONERS



Bud Sizemore  
Chair



Julia Patterson  
Vice Chair



Ed Troyer

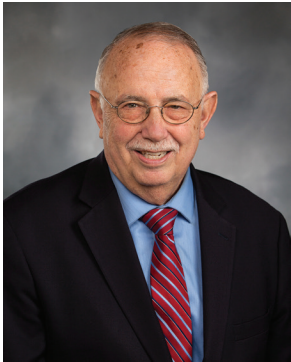


Chris Stearns



Alicia Levy

## EX OFFICIOS



Senator  
Steve Conway



Senator  
Lynda Wilson



Representative  
David Sawyer



Representative  
Brandon Vick

## STAFF



David Trujillo  
Director



Amy Hunter  
Deputy Director





STATE OF WASHINGTON  
**GAMBLING COMMISSION**

*"Protect the Public by Ensuring that Gambling is Legal and Honest"*

**Hampton Inn and Suites**  
**4301 Martin Way E. Olympia, WA 98516**  
**October 18, 2018**

*Please note, agenda times are estimates only. Items may be taken out of sequence at the discretion of the Chair.  
 Administrative Procedures Act Proceedings are identified by an asterisk (\*)*

<b>PUBLIC MEETING</b>	
<b>11:00 AM</b>	<b>Executive Session - Closed to the Public</b> Discuss Pending Investigations, Tribal Negotiations, and Litigation <b>The public meeting will reconvene at approximately 1:00 pm</b>
<b>1:00 PM</b>	<b>Call to Order</b> <b>Welcome and Introductions</b> <span style="float: right;"><i>Bud Sizemore, Chair</i></span> <ul style="list-style-type: none"> <li>• <i>Moment of Silence</i></li> </ul> <b>New Licenses and Class III Employees</b> <span style="float: right;"><b>(Action)</b></span> <b>Class III Employees/Snoqualmie &amp; Cowlitz Tribes</b> <span style="float: right;"><b>(Action)</b></span> <b>Proposed 2019 Gambling Commission Meeting Schedule</b> <span style="float: right;"><b>(Action)</b></span> <b>Director's Report</b> <span style="float: right;"><i>David Trujillo, Director</i></span> <b>2018 Centennial Accord Highlights</b> <span style="float: right;"><i>Julie Lies, Tribal Liaison</i></span>
<b>Tab 2</b>	<b>Muckleshoot Negotiations</b> <span style="float: right;"><b>(Action)</b></span> <span style="float: right;"><i>The Honorable Virginia Cross, Chairwoman, Muckleshoot Indian Tribe</i></span> <span style="float: right;"><i>David Trujillo, Director</i></span> <span style="float: right;"><i>Julie Lies, Tribal Liaison</i></span>
<b>Tab 3</b>	<b>*Petition for Declaratory Order – Big Fish Games, Inc.</b> <span style="float: right;"><b>(Action)</b></span> <span style="float: right;"><i>Brian Considine, Legal and Legislative Manager</i></span> <b>Potential Closed Session</b>
<b>Tab 4</b>	<b>*Defaults</b> <span style="float: right;"><b>(Action)</b></span> <span style="float: right;"><i>Haylee Mills, Staff Attorney</i></span> <ul style="list-style-type: none"> <li>• Cum Inn Bar &amp; Grill d/b/a Cum Inn Bar &amp; Grill, CR 2017-01455, Punchboard/Pull-Tab Revocation</li> <li>• Sonny R. Noudaranouvong, CR 2018-01511, Public Card Room Licensee Revocation</li> <li>• Thuan Q. Phan, CR 2018-00555, Public Card Room Licensee Revocation</li> <li>• Meisean Teurn, CR 2018-01076, Public Card Room Licensee Revocation</li> </ul>
<b>RULE UP FOR DISCUSSION ONLY</b>	
<b>Tab 5</b>	<b>*Petition for Rule Change Soft Count</b> <span style="float: right;"><b>(Action)</b></span> <span style="float: right;"><i>Tina Griffin, Assistant Director</i></span>
<b>RULE UP FOR DISCUSSION AND POSSIBLE FILING</b>	
<b>Tab 6</b>	<b>*Petition for Rule Change Marketing Level Restrictions</b> <span style="float: right;"><b>(Action)</b></span> <span style="float: right;"><i>Brian Considine, Legal and Legislative Manager</i></span>
	<b>Meeting Adjourn</b>

*Upon advance request, the Commission will pursue reasonable accommodations to enable persons with disabilities to attend Commission meetings. Questions or comments pertaining to the agenda and requests for special accommodations should be directed to Julie Anderson, Executive Assistant at (360) 486-3453 or TDD (360) 486-3637. Questions or comments pertaining to rule changes should be directed to the Rules Coordinator (360) 486-3473.*

*Please silence your cell phones for the public meeting*



## HOUSE-BANKED PUBLIC CARD ROOM REPORT

Current House- Banked Locations Operating					46
	City	Commission Approval Date	License Expiration Date	Org #	License #
ACES CASINO ENTERTAINMENT	SPOKANE	Mar 13, 2014	Dec 31, 2018	00-23112	67-00325
ALL STAR CASINO	SILVERDALE	Jan 14, 1999	Jun 30, 2019	00-18357	67-00058
BLACK PEARL RESTAURANT & CARD ROOM	SPOKANE VALLEY	Jan 10, 2013	Sep 30, 2018	00-22440	67-00321
BUZZ INN STEAKHOUSE/EAST WENATCHEE	EAST WENATCHEE	Oct 10, 2002	Dec 31, 2018	00-11170	67-00183
CARIBBEAN CARDROOM	KIRKLAND	Aug 13, 2009	Mar 31, 2019	00-21882	67-00285
CASINO CARIBBEAN	YAKIMA	Mar 14, 2002	Dec 31, 2018	00-17603	67-00093
CASINO CARIBBEAN	KIRKLAND	Nov 15, 2005	Sep 30, 2018	00-20427	67-00238
CHIPS CASINO/LAKEWOOD	LAKEWOOD	Apr 8, 1999	Dec 31, 2018	00-17414	67-00020
CLUB HOLLYWOOD CASINO	SHORELINE	Sep 9, 2010	Jun 30, 2019	00-22132	67-00303
COYOTE BOB'S CASINO	KENNEWICK	Jul 10, 2009	Mar 31, 2019	00-21848	67-00282
CRAZY MOOSE CASINO II/MOUNTLAKE TERRACE	MOUNTLAKE TERRACE	Jul 10, 2009	Mar 31, 2019	00-21849	67-00283
CRAZY MOOSE CASINO/PASCO	PASCO	Jul 10, 2009	Mar 31, 2019	00-21847	67-00281
EMERALD DOWNS	AUBURN	May 11, 2017	Mar 31, 2019	00-23814	67-00335
FORTUNE CASINO	TUKWILA	Oct 8, 2015	Jun 30, 2019	00-23465	67-00329
FREDDIE'S CLUB	RENTON	Jan 8, 2015	Sep 30, 2018	00-23339	67-00327
GOLDIE'S SHORELINE CASINO	SHORELINE	May 13, 1999	Dec 31, 2018	00-17610	67-00016
GREAT AMERICAN CASINO/DES MOINES	DES MOINES	Jul 13, 2017	Mar 31, 2019	00-23795	67-00334
GREAT AMERICAN CASINO/EVERETT	EVERETT	Nov 12, 1998	Dec 31, 2018	00-19513	67-00194
GREAT AMERICAN CASINO/LAKEWOOD	LAKEWOOD	Aug 14, 2003	Jun 30, 2019	00-19258	67-00184
GREAT AMERICAN CASINO/TUKWILA	TUKWILA	Jan 15, 1998	Sep 30, 2018	00-12554	67-00012
HAWKS PRAIRIE CASINO	LACEY	Jul 12, 2001	Jun 30, 2019	00-17579	67-00091
IRON HORSE CASINO	AUBURN	Jan 9, 2003	Dec 31, 2018	00-19477	67-00192

UL

**Current House- Banked Locations Operating**

**46**

	City	Commission Approval Date	License Expiration Date	Org #	License #
JOKER'S CASINO SPORTS BAR & FIESTA CD RM	RICHLAND	Nov 12, 1998	Dec 31, 2018	00-15224	67-00006
LANCER LANES/REST AND CASINO	CLARKSTON	Nov 13, 2008	Sep 30, 2018	00-21681	67-00276
LAST FRONTIER	LA CENTER	Feb 11, 1999	Sep 30, 2018	00-11339	67-00055
LILAC LANES & CASINO	SPOKANE	Jul 12, 2007	Jun 30, 2019	00-21305	67-00267
LUCKY 21 CASINO	WOODLAND	Oct 8, 2013	Jun 30, 2019	00-22918	67-00322
MACAU CASINO	LAKEWOOD	Jul 12, 2007	Mar 31, 2019	00-20428	67-00239
MACAU CASINO	TUKWILA	Jan 12, 2012	Sep 30, 2018	00-22573	67-00319
NOB HILL CASINO	YAKIMA	Sep 12, 2001	Dec 31, 2018	00-13069	67-00173
PALACE CASINO LAKEWOOD	LAKEWOOD	Jan 14, 1999	Dec 31, 2018	00-16542	67-00028
PAPAS CASINO RESTAURANT & LOUNGE	MOSES LAKE	Aug 13, 1998	Jun 30, 2019	00-02788	67-00004
RC'S AT VALLEY LANES	SUNNYSIDE	Nov 16, 2017	Mar 31, 2019	00-16220	67-00336
RIVERSIDE CASINO	TUKWILA	Aug 14, 2003	Jun 30, 2019	00-19369	67-00187
ROMAN CASINO	SEATTLE	Feb 10, 2000	Mar 31, 2019	00-17613	67-00057
ROXY'S BAR & GRILL	SEATTLE	Nov 18, 2004	Jun 30, 2019	00-20113	67-00231
ROYAL CASINO	EVERETT	Sep 9, 2010	Jun 30, 2019	00-22130	67-00301
SILVER DOLLAR CASINO/MILL CREEK	BOTHELL	Sep 9, 2010	Jun 30, 2019	00-22131	67-00302
SILVER DOLLAR CASINO/RENTON	RENTON	Sep 9, 2010	Jun 30, 2019	00-22134	67-00305
SILVER DOLLAR CASINO/SEATAC	SEATAC	Sep 9, 2010	Jun 30, 2019	00-22128	67-00299
SLO PITCH PUB & EATERY	BELLINGHAM	Aug 12, 1999	Jun 30, 2019	00-16759	67-00038
THE GETAWAY CASINO	WALLA WALLA	Mar 11, 2016	Jun 30, 2019	00-23485	67-00332
THE PALACE	LA CENTER	Apr 9, 1998	Jun 30, 2019	00-16903	67-00010
WILD GOOSE CASINO	ELLENSBURG	Apr 8, 2004	Dec 31, 2018	00-20009	67-00212
WIZARDS CASINO	BURIEN	Feb 11, 2010	Dec 31, 2018	00-21998	67-00287
ZEPOZ	PULLMAN	Nov 13, 2008	Mar 31, 2019	00-18777	67-00209

<b>Licensed, But Not Operating</b>					<b>1</b>
	<b>City</b>	<b>Commission Approval Date</b>	<b>License Expiration Date</b>	<b>Org #</b>	<b>License #</b>
CLEARWATER SALOON & CASINO	EAST WENATCHEE	Apr 9, 2015	Dec 31, 2018	00-23386	67-00328

<b>Applications Pending</b>					<b>1</b>
	<b>City</b>	<b>Commission Approval Date</b>	<b>License Expiration Date</b>	<b>Org #</b>	<b>License #</b>
REGINA'S ON THE WATER	LONGVIEW			00-23997	67-00337



COMMISSION APPROVAL LIST  
(Class III Gaming Employees)  
October 2018

Index

	<u>PAGE</u>
COWLITZ CLASS III GAMING EMPLOYEES.....	1
SNOQUALMIE CLASS III GAMING EMPLOYEES.....	2

PAGES: 2

Based upon the licensing investigations, staff recommends approving all new Class III employees listed on pages 2.

PERSON'S NAME

CERTIFICATION NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEES**

COWLITZ INDIAN TRIBE

ALVAREZ-JIMENEZ, VERA Z  
69-42496

BROWN, HAILEY A  
69-45464

BURKETT, APRIL J  
69-45409

CARMER, STEVEN M  
69-45465

CASE, WILLIAM M  
69-45291

COMPTON, AMBER L  
69-45371

DAVIS, TROY A  
69-45372

DING, ASHLEY L  
69-45469

DOIRON, BRIAN W  
69-45329

FELISARIO, JASON T  
69-45292

GALVAN MENDEZ, CRYSTAL D  
69-45406

GARRISON, ROMAN B  
69-45467

HALE, SCARLET R  
69-45466

JAMES, JESSICA R  
69-45470

JAMES, NATHAN J  
69-45472

JOHNSON, LORETTA  
69-45407

KELLERHALL, CHLOE C  
69-45473

KLEIDOSTY, STEVEN W  
69-45290

KNIGHT, ALANA L  
69-45474

KOMATHY, JACOB A  
69-45352

KUZMA, VIRGINIA M  
69-45289

LAURSEN, DENISE L  
69-45408

MCGEE, JESSICA L  
69-45367

MCLOONE, GAVIN J  
69-45328



PERSON'S NAME  
CERTIFICATION NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEES**

**COWLITZ INDIAN TRIBE**

NGUYEN, DONG NU P  
69-45286

PARSONS, KURT A  
69-45288

PLEASANTS, LARRY A  
69-45354

RAMIREZ, FABIAN  
69-45368

ROBERTS, SAMUEL D  
69-45369

SMITH, STEPHANIE M  
69-45370

SOWDER, JAYMI L  
69-45316

STORM-MCCOY, EMMYLEIGH L  
69-45317

THOMPSON, KAYLA M  
69-45314

WANN, NATASHA C  
69-45327

WARD, KENNETH J  
69-45287

WRAY, KRISTINA H  
69-45315

YEM, TRINA S  
69-45471

**SNOQUALMIE TRIBE**

CHAN, RAYMOND M  
69-45436

COCHRAN, TYLER J  
69-36104

LIU, BRANDON J  
69-45384

LIU, JEREMY K  
69-45432

MCLEOD, DAVID J  
69-45433

MILKS, JOHNATHAN S  
69-40969

ROBERTS, DERON W  
69-45434

SEELEY, SAMUEL R  
69-45278

SIMPKINS, KELLI M  
69-45435



COMMISSION APPROVAL LIST  
(New Licenses & Class III Gaming Employees)  
October 2018

Index

	<u>PAGE</u>
NONPROFIT ORGANIZATIONS & COMMERCIAL BUSINESSES.....	1-3
DISTRIBUTOR REPRESENTATIVE.....	3
MANUFACTURER REPRESENTATIVE .....	3-6
NON-PROFIT GAMBLING MANAGER.....	6
SERVICE SUPPLIER REPRESENTATIVE.....	6
CARD ROOM EMPLOYEE .....	6-11
CLASS III GAMING EMPLOYEES .....	12-20

PAGES: **20**

Based upon the licensing investigations, staff recommends approving all new Licenses and Class III employees listed on pages 1 to 20.

ORGANIZATION NAME

LICENSE NUMBER

PREMISES LOCATION

**NEW APPLICATIONS**

**BINGO**

EDMONDS LUTHERAN CHURCH  
00-24238 01-02766

23525 84 AVE W  
EDMONDS WA 98026

ELIZABETH BLACKWELL PTSA 2.8.54  
00-23880 01-02734

3225 205TH PL NE  
SAMMAMISH WA 98074

MCCLEARY PTA 4.2.8  
00-22559 01-02767

611 S MAIN ST  
MCCLEARY WA 98557

**RAFFLE**

BPOE 01742  
00-00517 02-01946

110 S ASH ST  
OMAK WA 98841

CR BOOSTERS  
00-24154 02-20863

800 NW 99TH ST  
VANCOUVER WA 98665

DUCKS UNLIMITED/SNOQUALMIE VALLEY  
00-23218 02-09428

36005 SE RIDGE RD  
SNOQUALMIE WA 98065

EDMONDS ROTARY FOUNDATION  
00-24252 02-20923

630 7TH AVE N  
EDMONDS WA 98020

ELIZABETH BLACKWELL PTSA 2.8.54  
00-23880 02-20714

3225 205TH PL NE  
SAMMAMISH WA 98074

F. & A. M. 00069 / PORT ANGELES  
00-00825 02-20931

622 S LINCOLN  
PORT ANGELES WA 98362

GOLF TEACHES INTEGRITY  
00-24245 02-20920

21623 E EUCLID AVE  
OTIS ORCHARDS WA 99027

HOLY REDEEMER CHURCH  
00-24257 02-20929

1707 S 3RD AVE  
YAKIMA WA 98902

IMMACULATE CONCEPTION CHURCH  
00-24248 02-20922

1200 E 5TH ST  
ARLINGTON WA 98223

LEFT RIGHT STRAIGHT  
00-24244 02-20919

282 WILKES AVE  
BREMERTON WA 98312

MCCLEARY PTA 4.2.8  
00-22559 02-20926

611 S MAIN ST  
MCCLEARY WA 98557

MORTON GENERAL HOSPITAL  
00-24159 02-20868

521 ADAMS AVE  
MORTON WA 98356

ORGANIZATION NAME

LICENSE NUMBER

PREMISES LOCATION

**NEW APPLICATIONS**

**RAFFLE**

ROTARY CLUB OF SPOKANE NORTH  
00-21480 02-08842

6631 N FOTHERINGHAM  
SPOKANE WA 99208

SEAHURST PTA HIGHLINE COUNCIL 9.5.142  
00-24251 02-20924

14603 14th AVE SW  
BURIEN WA 98166

ST HUBERT CATHOLIC CHURCH  
00-24254 02-20925

815 SARATOGA RD  
LANGLEY WA 98260

UNITED WAY OF SPOKANE COUNTY  
00-24242 02-20918

1411 EAST MISSION AVE  
SPOKANE WA 99252

WHITE PASS SCENIC BYWAY  
00-24247 02-20921

13068 US HWY 12  
PACKWOOD WA 98361

**PUNCHBOARD/PULL-TAB COMMERCIAL STIMULANT**

COCONUTS ISLAND GRILL  
00-24249 05-21561

1232 ALDER STREET  
CENTRALIA WA 98531

THE MILTON LODGE  
00-24213 05-21553

7320 PACIFIC HWY E  
MILTON WA 98354

**COMBINATION LICENSE**

COLVILLE COMMUNITY SENIOR CENTER "THE HUB"  
00-24221 08-00303

231 W ELEG AVE  
COLVILLE WA 99114

**NON HOUSE-BANKED CARD GAME**

COCONUTS ISLAND GRILL  
00-24249 65-07487

1232 ALDER STREET  
CENTRALIA WA 98531

PERSON'S NAME  
LICENSE NUMBER

EMPLOYER'S NAME  
PREMISES LOCATION

**NEW APPLICATIONS**

**DISTRIBUTOR REPRESENTATIVE**

BUANTEO, LUIS MARTIN S  
22-01268

AMERICAN GAMING & ELECTRONICS  
HAMONTON NJ 08037

HELTON, MICHAEL H  
22-01271

AMERICAN GAMING & ELECTRONICS  
HAMONTON NJ 08037

HICKMAN, STEPHEN R  
22-01267

AMERICAN GAMING & ELECTRONICS  
HAMONTON NJ 08037

KARLOWICZ, JOSEPH E  
22-01270

AMERICAN GAMING & ELECTRONICS  
HAMONTON NJ 08037

VELASQUEZ-GALVAN, FREDDY  
22-01265

AMERICAN GAMING & ELECTRONICS  
HAMONTON NJ 08037

WHITE, ALAN M  
22-01266

AMERICAN GAMING & ELECTRONICS  
HAMONTON NJ 08037

**MANUFACTURER REPRESENTATIVE**

ASUNCION, ANTONETTE L  
23-02806

EVERI PAYMENTS INC  
LAS VEGAS NV 89113-2175

BONILLA, JONATHAN  
23-02797

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

BRIER, JASON L  
23-02795

EVERI GAMES INC.  
AUSTIN TX 78746

BRIGHTWELL, ARTHUR J  
23-02808

VGT  
FRANKLIN TN 37067

BUSKA, CHARLES D  
23-02814

ARIES TECHNOLOGY LLC  
GROVE OK 74344-6251

COLEY, MARLENA C  
23-02811

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

CRUZ, ELIAZAR S  
23-02780

AINSWORTH GAME TECHNOLOGY INC  
LAS VEGAS NV 89118

DAVIS, WILLIAM C  
23-02788

VGT  
FRANKLIN TN 37067

DE BARROS LEITE ABREU, AUGUSTO  
23-02784

AINSWORTH GAME TECHNOLOGY INC  
LAS VEGAS NV 89118

PERSON'S NAME  
LICENSE NUMBER

EMPLOYER'S NAME  
PREMISES LOCATION

**NEW APPLICATIONS**

**MANUFACTURER REPRESENTATIVE**

DIXIT, MONIKA  
23-02791

VGT  
FRANKLIN TN 37067

EVANS, CHAD W  
23-02809

VGT  
FRANKLIN TN 37067

GONZALES, YVONNE M  
23-02805

EVERI PAYMENTS INC  
LAS VEGAS NV 89113-2175

GRAY, DAVID L  
23-02785

VGT  
FRANKLIN TN 37067

HAACK, PAUL R  
23-02816

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

HARTER, DIANE E  
23-02821

BALLY TECHNOLOGIES  
LAS VEGAS NV 89119

HUERTA, RICARDO A  
23-02807

IGT  
LAS VEGAS NV 89113

INUMARTY, SRINIVAS  
23-02819

BALLY TECHNOLOGIES  
LAS VEGAS NV 89119

KATAYOSE, KATIE B  
23-02804

IGT  
LAS VEGAS NV 89113

KOBASHIGAWA, MARK Y  
23-02238

IGT  
LAS VEGAS NV 89113

LATHIM, SHAUN D  
23-02783

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

LIMONEZ, GEORGE A  
23-02801

AGS LLC  
LAS VEGAS NV 89118

LITTLE, DERRICK M  
23-02789

VGT  
FRANKLIN TN 37067

MANOR, HERBERT W  
23-02786

VGT  
FRANKLIN TN 37067

MCKEEVE, SCOTT J  
23-02781

IGT  
LAS VEGAS NV 89113

MONGOLO, MARIO M  
23-02813

BALLY TECHNOLOGIES  
LAS VEGAS NV 89119

PERSON'S NAME

EMPLOYER'S NAME

LICENSE NUMBER

PREMISES LOCATION

**NEW APPLICATIONS****MANUFACTURER REPRESENTATIVE**

MONTENEGRO, ANDRES  
23-02810

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

MUNOZ, LISA M  
23-02798

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

PEMBERTON, COTY C  
23-02782

AGS LLC  
LAS VEGAS NV 89118

PERKINS, DONALD L  
23-02764

VGT  
FRANKLIN TN 37067

REDENIUS, EMERY H  
23-02802

AGS LLC  
LAS VEGAS NV 89118

RENAUD, RONALD L  
23-02800

AGS LLC  
LAS VEGAS NV 89118

REVELY, TYRONE Z  
23-02796

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

SCHREIBER, MICHAEL L  
23-02790

VGT  
FRANKLIN TN 37067

SEAY, STEPHEN B  
23-02815

AGS LLC  
LAS VEGAS NV 89118

SEXTON, JOSHUA W  
23-02256

XPERTX  
RENO NV 89511

SHANMUGA SUNDARAM, VISHWANATHAN  
23-02818

BALLY TECHNOLOGIES  
LAS VEGAS NV 89119

SHINES, NICHOLAS R  
23-02799

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

SPANN, TERRENCE A  
23-02812

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

TAYLOR, DANIEL J  
23-00692

AINSWORTH GAME TECHNOLOGY INC  
LAS VEGAS NV 89118

UBILLUZ, MIGUEL A  
23-02803

IGT  
LAS VEGAS NV 89113

VASHISHTHA, ASHEESH  
23-02787

VGT  
FRANKLIN TN 37067

PERSON'S NAME  
LICENSE NUMBER

EMPLOYER'S NAME  
PREMISES LOCATION

### NEW APPLICATIONS

#### MANUFACTURER REPRESENTATIVE

WEBB, KAMERON D  
23-02763

VGT  
FRANKLIN TN 37067

WILLIAMS, THOMAS R  
23-02792

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

WILSON, SHAWN T  
23-02793

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

ZULKIEWICZ, MARK R  
23-02794

ARISTOCRAT TECHNOLOGIES INC  
LAS VEGAS NV 89119

#### NON-PROFIT GAMBLING MANAGER

BARTHOL, RICHARD A  
61-04676

FOE 03865  
OROVILLE WA 98844-0000

JONES, GENELLEN A  
61-04680

BPOE 01204  
ANACORTES WA 98221

PROFIT, RANDY L  
61-04679

FOE 00696  
ROSLYN WA 98941

#### SERVICE SUPPLIER REPRESENTATIVE

LIPSON, GEORGE R  
63-00849

WG-AIRWAY HEIGHTS LLC  
LAS VEGAS NV 89119

TATTERSALL, ALEC T  
63-00848

SALISHAN-MOHEGAN LLC  
VANCOUVER WA 98660

#### CARD ROOM EMPLOYEE

AIELLO, SCOTT D  
68-10810

B

IRON HORSE CASINO  
AUBURN WA 98002

BARBER, JONATHAN G  
68-34974

B

CLUB HOLLYWOOD CASINO  
SHORELINE WA 98133

BARRAZA-GODINEZ, MARIA E  
68-34944

B

CHIPS CASINO/LAKEWOOD  
LAKEWOOD WA 98499



PERSON'S NAME

EMPLOYER'S NAME

LICENSE NUMBER

PREMISES LOCATION

**NEW APPLICATIONS****CARD ROOM EMPLOYEE**

BORUFF, ALEXUS T 68-34960	B	GREAT AMERICAN CASINO/DES MOIN DES MOINES WA 98198
BOSINGER-GOSS, JACQUILYNN R 68-34948	B	BUZZ INN STEAKHOUSE/EAST WENAT EAST WENATCHEE WA 98802
BURNS, SEAN-PATRICK N 68-34977	B	SLO PITCH PUB & EATERY BELLINGHAM WA 98225
CARROLL, STEPHANIE R 68-23513	B	SILVER DOLLAR CASINO/SEATAC SEATAC WA 98188
CARTER, JALON S 68-34943	B	ROMAN CASINO SEATTLE WA 98178
CHANTHASOM, ALLEN N 68-33670	B	RIVERSIDE CASINO TUKWILA WA 98168
CHEN, BAI YUAN 68-34961	B	GOLDIE'S SHORELINE CASINO SHORELINE WA 98133
CIBART, RANAE R 68-34968	B	THE GETAWAY CASINO WALLA WALLA WA 99362
CODY, CHRISTINA M 68-34985	B	ROYAL CASINO EVERETT WA 98204
DOAN, NINA T 68-34942	B	RIVERSIDE CASINO TUKWILA WA 98168
EDWARDS, PATRICIA E 68-34979	B	ROYAL CASINO EVERETT WA 98204
FRIEDMAN, JOSHUA A 68-20386	B	THE GETAWAY CASINO WALLA WALLA WA 99362
HAYNES, JESSICA T 68-34966	B	PALACE CASINO LAKEWOOD LAKEWOOD WA 98499-8434
HERRERA, EFREN 68-34962	B	RC'S AT VALLEY LANES SUNNYSIDE WA 98944
HILL, JEANE S 68-30710	B	LUCKY 21 CASINO WOODLAND WA 98674
HUA, LIFEN 68-34981	B	RIVERSIDE CASINO TUKWILA WA 98168

PERSON'S NAME  
LICENSE NUMBER

EMPLOYER'S NAME  
PREMISES LOCATION

**NEW APPLICATIONS**

**CARD ROOM EMPLOYEE**

JONES, TYE L 68-09668	B	FREDDIE'S CLUB RENTON WA 98055
KACHER, BRIAN J 68-34937	A	CLUBHOUSE BAR & GRILL EVERETT WA 98203
KEBBEH, MUHAMMED L 68-30670	B	SILVER DOLLAR CASINO/RENTON RENTON WA 98057
LARSON, RODNEY A 68-34952	B	GOLDIE'S SHORELINE CASINO SHORELINE WA 98133
LE, KELLY H 68-22987	B	GREAT AMERICAN CASINO/LAKEWOOD LAKEWOOD WA 98499
LE, TAN H 68-34957	B	ROXY'S BAR & GRILL SEATTLE WA 98126
LE, TRAM T 68-34984	B	RIVERSIDE CASINO TUKWILA WA 98168
LI, BUFAN 68-34976	B	GREAT AMERICAN CASINO/DES MOIN DES MOINES WA 98198
LICEA, EVERARDO V 68-34965	B	NOB HILL CASINO YAKIMA WA 98902
LICEA, MARCO A 68-30814	B	CASINO CARIBBEAN YAKIMA WA 98901
LOPEZ, KARMEN D 68-30237	B	RC'S AT VALLEY LANES SUNNYSIDE WA 98944
LUCIA, JENNIFER L 68-08313	B	GREAT AMERICAN CASINO/LAKEWOOD LAKEWOOD WA 98499
MAGDZIAK, JEREMY E 68-22122	B	SILVER DOLLAR CASINO/SEATAC SEATAC WA 98188
MALECOT, PAULETTE A 68-12524	B	LANCER LANES/REST AND CASINO CLARKSTON WA 99403-2219
MALONE, PAMELA A 68-05987	B	LUCKY 21 CASINO WOODLAND WA 98674
MEDINA, PATRICIA K 68-18707	B	ALL STAR CASINO SILVERDALE WA 98383

PERSON'S NAME

EMPLOYER'S NAME

LICENSE NUMBER

PREMISES LOCATION

**NEW APPLICATIONS****CARD ROOM EMPLOYEE**

MERCER, JESSE L 68-34971	B	THE PALACE LA CENTER WA 98629
MOORE, ALAN C JR 68-34949	B	GREAT AMERICAN CASINO/EVERETT EVERETT WA 98204
MORENO, RAMANDA R 68-22937	B	NOB HILL CASINO YAKIMA WA 98902
MOSS, ERIC M 68-18189	B	CASINO CARIBBEAN YAKIMA WA 98901
MURPHY, CALVIN M 68-05635	B	SILVER DOLLAR CASINO/RENTON RENTON WA 98057
MUSIC, DANIEL L 68-21394	B	ALL STAR CASINO SILVERDALE WA 98383
MY, SOMOLL S 68-06137	B	IRON HORSE CASINO AUBURN WA 98002
NGUYEN, CAM H 68-23376	B	SILVER DOLLAR CASINO/RENTON RENTON WA 98057
NGUYEN, KEITH V 68-30298	B	GREAT AMERICAN CASINO/LAKEWOOD LAKEWOOD WA 98499
NGUYEN, MY 68-34972	B	RIVERSIDE CASINO TUKWILA WA 98168
NGUYEN, TRANG N 68-34986	B	RIVERSIDE CASINO TUKWILA WA 98168
NHEM, RICKY V 68-06378	B	GREAT AMERICAN CASINO/TUKWILA TUKWILA WA 98168
PADILLA, RASHELL A 68-34990	B	GREAT AMERICAN CASINO/LAKEWOOD LAKEWOOD WA 98499
PARKER WHITE, EDARIUS D 68-34945	B	MACAU CASINO LAKEWOOD WA 98499
PETERSEN, DAVID A 68-08115	B	GREAT AMERICAN CASINO/DES MOIN DES MOINES WA 98198
POWELL, KATHARINE M 68-34967	B	WIZARDS CASINO BURIEN WA 98166-2524

PERSON'S NAME  
LICENSE NUMBER

EMPLOYER'S NAME  
PREMISES LOCATION

**NEW APPLICATIONS**

**CARD ROOM EMPLOYEE**

ROE, JEFFREY R 68-34958	B	BLACK PEARL RESTAURANT & CARD SPOKANE VALLEY WA 99206-471
ROMERO, JENNIFER L 68-34983	B	THE GETAWAY CASINO WALLA WALLA WA 99362
RUECKERT, CALEB M 68-34956	B	THE PALACE LA CENTER WA 98629
RYAN, JEREMIAH D 68-34978	B	ALL STAR CASINO SILVERDALE WA 98383
SCHRODER, JACOB J 68-34950	B	ROMAN CASINO SEATTLE WA 98178
SIMPSON, WAYNE C 68-17033	B	CASINO CARIBBEAN YAKIMA WA 98901
SNYDER, JUSTIN M 68-34982	B	CASINO CARIBBEAN YAKIMA WA 98901
STEVENS, LARRY E 68-21137	B	CHIPS CASINO/LAKEWOOD LAKEWOOD WA 98499
THEPVONGSA, GARY A 68-34988	B	ROMAN CASINO SEATTLE WA 98178
TORREY, TERRY E 68-34964	B	LANCER LANES/REST AND CASINO CLARKSTON WA 99403-2219
TRAN, MY H 68-34947	B	RIVERSIDE CASINO TUKWILA WA 98168
WATTS, CHRISTOPHER L 68-34951	B	GREAT AMERICAN CASINO/EVERETT EVERETT WA 98204
WILEY, KIM S 68-34955	B	LAST FRONTIER LA CENTER WA 98629-0000
WILSON ALVAREZ, DOMINIC A 68-34969	B	PAPAS CASINO RESTAURANT & LOUN MOSES LAKE WA 98837
WOODRUFF, ROBERT A 68-34941	B	IRON HORSE CASINO AUBURN WA 98002
WRIGHT, NECHELLE E 68-16881	B	PAPAS CASINO RESTAURANT & LOUN MOSES LAKE WA 98837

PERSON'S NAME  
LICENSE NUMBER

EMPLOYER'S NAME  
PREMISES LOCATION

**NEW APPLICATIONS**

**CARD ROOM EMPLOYEE**

YU, JUSTIN K  
68-26170

B

RED DRAGON CASINO  
MOUNTLAKE TERRACE WA 9804

ZAVALA, JESSE I II  
68-24109

B

CRAZY MOOSE CASINO/PASCO  
PASCO WA 99301

PERSON'S NAME

CERTIFICATION / ELIGIBILITY NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEE**

**CHEHALIS CONFEDERATED TRIBES**

BURGHHER, AARON J  
69-45423

DAN, WINTER K  
69-45444

GABLE, JESSI I  
69-45340

HARPER, GWENDOLYN C  
69-45392

HENRY, DAVID V  
69-45395

KETCHUM, SEAN W  
69-45360

MARTIN, ANDREW E  
69-45302

MARTIN, CRYSTAL D  
69-45358

MCALISTER, MELISSA R  
69-45396

MIELITZ, JEREMIAH D  
69-45359

NANCE, WILLIAM K II  
69-45445

QUILLIN, CHRISTOPHER J  
69-45301

RESENDEZ, JOSE H JR  
69-34274

WILDER, COLE A  
69-45284

WORLEY, HEATHER R  
69-45431

**COLVILLE CONFEDERATED TRIBES**

BOYD, JASON L  
69-45460

GEORGE, STEPHANIE R  
69-45334

HJALTASON, SIGURDUR G  
69-45333

ORTIZ, ROBERT D  
69-25991

SALDANA, SESAR  
69-45486

TRAXLER, KAITLYN M  
69-39864

PERSON'S NAME

CERTIFICATION / ELIGIBILITY NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEE**

**KALISPEL TRIBE**

BRAUN, BLAKE R  
69-45344

CALLIHAN, KIMBERLY A  
69-45343

DICERTO, VINCENT E  
69-45303

DRAPEAU, JOSIE M  
69-33492

HAAS, KATRINA E  
69-25328

SAMMONS, KOREY A  
69-45332

STUART, MATTHEW C  
69-45411

YEAGER, STEVEN H  
69-42302

**LUMMI NATION**

BARRON, FRAJANA E  
69-45424

DANIELS, JESSICA H  
69-45355

ENGEL, PHIL L  
69-45479

HAWLEY, JORDAN M  
69-45449

JOHN, LAVINE D  
69-45448

KAUBIN, CORRINA J  
69-45373

KENDALL, IAN M  
69-38423

LANE, CRYSTAL L  
69-20471

POTEETE, ADRIEANA M  
69-45356

ROBERTSON, CEDRIC M  
69-45357

**MUCKLESHOOT INDIAN TRIBE**

AFRAID OF BEAR, REGINA B  
69-45346

AHO, KAIMI W  
69-06953

AYALA, CHE W  
69-45463

BROWN, BREANNA S  
69-45300

PERSON'S NAME

CERTIFICATION / ELIGIBILITY NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEE**

**MUCKLESHOOT INDIAN TRIBE**

CLARK, LEFONZ A  
69-45304

COURVILLE, MYCKENZI  
69-45393

DO, NY M  
69-27336

HARDY, JERRY W JR  
69-30359

KAMAUNU, LEATA A  
69-45305

LANG, VICHANA  
69-45308

MADISON, MARIATERESA C  
69-45462

MUNOZ SANDOVAL, ALAN A  
69-45306

SANTOS, EMERITA A  
69-45307

SMITH, ERIK J  
69-45461

STEVENSON, JASON G  
69-45345

**NISQUALLY INDIAN TRIBE**

CHO, YANETH  
69-45381

HOWARD, DEBRA L  
69-45380

VILLALOBOS, PRICILLA S  
69-45376

VILLANUEVA, CLARICE  
69-45375

**PORT GAMBLE S'KLALLAM TRIBE**

CROCKER-REDBIRD, SONYA L  
69-45442

FINLEY-VALYAN, DIANNA L  
69-45451

HEADLY, WILLIAM R  
69-45450

LARA, LISA E  
69-45441

MORRIS, JEFFERY S  
69-45251

NICHOL, TIFFANY L  
69-45452



PERSON'S NAME

CERTIFICATION / ELIGIBILITY NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEE**

**PORT GAMBLE S'KLALLAM TRIBE**

PURSER, ABBY G  
69-29233

**PUYALLUP TRIBE OF INDIANS**

AGREDA, JOSE B JR  
69-45388

BENAVIDEZ, BRITNI B  
69-39388

BLAKE, LOYCE A  
69-45297

BORRES, ALEXANDREA M  
69-45377

BROWER, ARHON M  
69-45382

CHOMSZAK, MARIAN A  
69-45443

DYCUS, CRISTINA M  
69-45298

ELLIS, GABRIELLE P  
69-45326

FARKAS, SUSIE M  
69-45312

FLORES OLIVARES, JESSE  
69-45400

HARRIS-CROSSLAND, JULIE R  
69-45383

JACOBS, TORIE L  
69-45285

JENNINGS, ASHLEY N  
69-45483

KAVANAUGH, MELISSA N  
69-40455

LADWIG, RHONDA E  
69-45293

LEYVA, ERNESTO  
69-45310

LIM, DALE L  
69-45296

LOOKING, DAWNETTE K  
69-11164

MATHISON, ROSS J  
69-45350

MAXEY, PAUL M  
69-45282

MEE, KENYA T  
69-45311

NICHOLSON, KATINA M  
69-45412

PERSON'S NAME

CERTIFICATION / ELIGIBILITY NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEE**

**PUYALLUP TRIBE OF INDIANS**

OUK, DEVON D  
69-45415

PEACE, LORI L  
69-16607

ROSADO, GABRIELLE A  
69-45482

SHIPPENTOWER, LEON J  
69-45453

VIVAO, ASHLEY E  
69-45481

WILLIAMS, STEPHEN M  
69-45349

**QUINAULT NATION**

BASTIAN, LISA K  
69-14344

JENKINS, BRIAN S  
69-45318

QUILT, EMMALINE C  
69-45319

QUILT, RONALD M  
69-45341

VALENTA, JOHN M  
69-45413

**SKOKOMISH TRIBE**

CHIASSON, BRITTANY L  
69-45414

TRUE, MARY L  
69-08709

**SPOKANE TRIBE**

BAKER, CIERRA K  
69-45390

CROSS, STEVEN E  
69-45389

FINLEY, ERIC A  
69-45342

FLETT, CRYSTAL R  
69-38465

HASHANI, ARBESIJAN  
69-45437

SWAN, LORENA R  
69-45438

PERSON'S NAME

CERTIFICATION / ELIGIBILITY NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEE**

**SQUAXIN ISLAND TRIBE**

BRAY, COURTNEY J  
69-45338

CHURCH, CATHLEEN M  
69-45272

DELASANCHA, RUTH E  
69-21899

GIBSON, JAMES W  
69-45399

HARPER, KEVIN A  
69-45454

HAYNIE, ODESSA J  
69-45244

HENDERSON, JODY D JR  
69-45447

HOLLOWAY, AUSTIN S  
69-45387

MANTEI, MATTHEW H  
69-45416

NUTT, CHRISTIAN S  
69-45348

PETERS, MICHAEL A  
69-12764

TESSENDORF, JAMES S  
69-45455

TUSON, JULI A  
69-45477

WARNER, KELLY L  
69-45475

YATES, RONALD R III  
69-45273

ZOOK, ERIC L  
69-03103

**STILLAGUAMISH TRIBE**

ANDERSON, CHARLESEARL H  
69-45374

CHRISTMAN, SHELLEY M  
69-45402

CISSELL, MICHAEL A  
69-38448

DEARBORN, LAWRENCE A JR  
69-45361

FLORES, RAVEN P  
69-45309

FRANCIS, BRIAN H  
69-11668

GABEHART, DREW E  
69-45362

GAMIO-MACIEL, ANGELIA M  
69-00958

PERSON'S NAME

CERTIFICATION / ELIGIBILITY NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEE**

STILLAGUAMISH TRIBE

GOBEL, ZACKARY K  
69-45363

HOLAPPA, AMANDA S  
69-45401

JOHNSON, JAMES M JR  
69-06276

KELLEY, MICHAEL P  
69-39277

LARSSON, KATIE M  
69-24387

LOBERG MARTIN, MEGAN V  
69-45330

MEYER, TINA M  
69-45339

SCHLAGEL, ZACHARY L  
69-28839

WRIGHT, ALEXANDRIA B  
69-45457

SUQUAMISH TRIBE

PANTIG, ANDREA C  
69-45440

VARONA, KAYDE SHANNEL P  
69-45428

WILCHER, ALEXANDER J  
69-45347

SWINOMISH INDIAN TRIBAL COMMUNITY

BAZAN, MICHAEL V  
69-45313

CERRILLO, GABRIEL R  
69-42764

ERNSTER, LUCAS P  
69-45351

HEALY, EDWARD G  
69-45210

THE TULALIP TRIBES

COMENOTE, SHAWN D  
69-32882

CROSS, ROBERTA M  
69-45365

DAUD, NHUR K  
69-45386

GETTSY, PAUL J JR  
69-45404

PERSON'S NAME

CERTIFICATION / ELIGIBILITY NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEE**

**THE TULALIP TRIBES**

HORNE, ETHAN I  
69-45337

JONES, JOHN B  
69-45446

MARKER, MIRIAM N  
69-20555

MOORE, KAREN K  
69-45295

PERRIN, EMMA M  
69-45385

RUIZ, ELIZABETH M  
69-45405

SMITH, CODY W  
69-45366

**UPPER SKAGIT INDIAN TRIBE**

BECHTHOLD, ANN-MARION M  
69-45394

DODD, KAETLYN D  
69-45391

FRANKS, JEREMIAH J  
69-45336

KNUTSON, BRENDA C  
69-45484

LEGER, CAROLYN M  
69-45299

RUIZ, JORGE J  
69-45485

WILLIAMS HARPER, JESSICA W  
69-45418

**YAKAMA NATION**

ANDY, KAMILLE M  
69-45420

AUTREY, KRISTEN N  
69-45324

AZURE, CAROLE J  
69-45419

BAILEY, OLIVIA S  
69-45425

CELESTINE, SUZANA M  
69-39543

COLLINS, GAIL L  
69-45421

PERSON'S NAME

CERTIFICATION / ELIGIBILITY NUMBER

**NEW APPLICATIONS**

**CLASS III GAMING EMPLOYEE**

YAKAMA NATION

DONES CAMPOS, DESTINY N  
69-45426

GARCIA, WYNONNA J  
69-45323

HARTGROVE, ELIZABETH A  
69-09732

JOHNSON, VICTOR C  
69-45422

LILLIE, TINA A  
69-45459

LUCEI, ANTOINETTE L  
69-45429

RAMIREZ, RICK K  
69-45321

REDHEART, SHERYL K  
69-45379

SANCHEZ, ANNA M  
69-45322

SCHMOE, PAUL D  
69-45456

WILLIAMS, DEANNA L  
69-45439

WYMAN, JOSEPH R JR  
69-45378

YALLUP, YVETTE M  
69-45430

ZAMORA, SONYA  
69-45427

**WASHINGTON STATE GAMBLING COMMISSION**  
**Proposed 2019 Commission Meetings Schedule**

<b>January 10</b>	<b>Hampton Inn and Suites</b> 4301 Martin Way E. Olympia, WA 98516
<b>February 14</b>	<b>Hampton Inn and Suites</b> 4301 Martin Way E. Olympia, WA 98516
<b>March 14</b>	<b>Hampton Inn and Suites</b> 4301 Martin Way E. Olympia, WA 98516
<b>April 11</b>	<b>Great Wolf Lodge</b> 20500 Old Highway 99, SW <b>Grand Mound, WA 98531</b>
<b>May 9</b>	<b>The Heathman Lodge</b> 7801 NE Greenwood Dr. Vancouver, WA 98662
<b>June</b>	<b>NO MEETING</b>
<b>July 11</b>	<b>Hotel Murano</b> 1320 Broadway Plaza Tacoma, WA 98402 253-238-8000
<b>August 8</b>	<b>Hampton Inn and Suites</b> 4301 Martin Way E. Olympia, WA 98516
<b>September 12 &amp; 13</b>	<b>The Davenport Grand Hotel</b> 333 W. Spokane Falls Blvd Spokane, WA 99201 (509) 598-4319
<b>October 17</b>	<b>Hampton Inn and Suites</b> 4301 Martin Way E. Olympia, WA 98516 (360) 459-5000
<b>November 14</b>	<b>Hampton Inn and Suites</b> 4301 Martin Way E. Olympia, WA 98516 (360) 459-5000
<b>December</b>	<b>NO MEETING</b>

# WASHINGTON STATE GAMBLING COMMISSION

---

## SUMMARY

Mission: Protect the public by ensuring that gambling is legal and honest.

Foster full cooperation between tribes and the state based upon equality and a shared concern for the welfare of all the citizens of the state and tribes as a result of gaming.

Of the 29 federally recognized tribes in Washington state, 29 have compacts for Class III gaming and 21 of the tribes operate 27 casinos.

## HIGHLIGHTS

Building on the consultation meeting approach we used in 2017, where we involved all tribes, rather than the tribe-by-tribe approach outlined in the compacts, the Chair of the Commission and staff had two meetings during the reporting period. We are currently working on several projects of mutual interest. First is an update to our agency's tribal relations policy. The policy is being re-written to align with our current processes and practices, and we are requesting input from tribes to improve the policy. Second, we are working with a group of tribal regulators, operators, and industry staff to improve the review process for electronic gambling equipment used only in tribal gaming facilities. Third, we are working with the Tribal Gaming Agency (TGA) directors, as directed by tribal leadership, on two other important processes: a) to review and improve the current regulatory billing structure outlined in the Class III gaming compacts and b) to coordinate tribal input on a possible statewide self-exclusion process proposed by the legislature. Although HB 2332/SB 6331 regarding self-exclusion did not pass, we expect it will be proposed again in upcoming sessions. The proposals coming from these two processes discussions will be presented to tribal leadership for final review and agreement. We will continue to have regular discussions and updates for tribal leaders on these and any other emerging topics.

We provided updates and participated in, or organized meetings and training for, licensing staff, TGA directors, gaming executives, equipment manufacturers, and independent testing laboratories.

In an effort to ensure that our electronic gambling lab does not duplicate testing already performed by the independent testing laboratories, we coordinated a visit to one of the major independent testing laboratories to observe testing performed and collaborate testing processes. We also conducted meetings with new Tribal Lottery System manufacturers to ensure the requirements of Class III Gaming Compact Appendix X2 are understood and submissions are not unduly delayed due to a misunderstanding or misinterpretation of the requirements. These result-oriented approaches are working well. We have refined our process so that 15-day submissions are approved within an average of eight calendar days and 60-days submissions are approved within an average of forty calendar days.

In partnership with the Puyallup TGA, we conducted a weeklong new agent training course for 60 students from our agency and 13 tribes; the students were regulatory staff who will be



working at the tribal casinos. Topics included history, licensing, and regulation of Class III gaming in Washington state. In partnership with the Port Gamble S’Klallam TGA, we conducted a daylong licensing training attended by 34 representatives from 15 tribes, to answer tribe-specific questions and provide training about licensing, interviewing applicants, and criminal history reviews.

As part of our ongoing co-regulatory relationship with the tribes and to improve operational efficiency and the use of technology, we jointly agreed to 59 clarifications of compact appendices via Appendix A and X2 revisions and memorandums of understanding, and we concurred with 336 internal control and game rule submissions. We agreed to a second memorandum of understanding that allows a player’s ticket to be used in both the Class III Tribal Lottery System and Class II player terminals. The state gaming agency monitors Class III gaming while the TGA monitors Class III and Class II. This agreement allows the two agencies to work together across jurisdictions. We also jointly agreed to a new electronic table layout that improves integrity and regulatory control for roulette.

As a result of an amendment to the Jamestown S’Klallam Tribe’s Class III gaming compact, staff coordinated with the Jamestown S’Klallam TGA to develop a registration process as well as a revised internal control review process. We altered our licensing system to support the registration process, which was new for Class III gaming employees. We created a format for the internal controls process based on compact requirements.

## **STAFF CONTACT**

Julie Lies, Tribal Liaison, 360-486-3586, [julie.lies@wsgc.wa.gov](mailto:julie.lies@wsgc.wa.gov)



Sept. 25, 2018

Jaime Smith | [jaime.smith@gov.wa.gov](mailto:jaime.smith@gov.wa.gov)  
360.902.4136

April Leigh, Suquamish Tribe | [aleigh@suquamish.nsn.us](mailto:aleigh@suquamish.nsn.us)  
360.394.7102

## Inslee and Washington tribes convene for 29th Annual Centennial Accord

Gov. Jay Inslee and chairs and councilmembers from Washington tribes convened in Suquamish today for the 29th Annual Centennial Accord. Leaders representing more than two dozen tribal governments and about 25 state agencies convene every year to discuss a range of issues and policy priorities.

The Suquamish Tribe hosted this year's Centennial Accord at the Suquamish Clearwater Casino Resort. Suquamish Tribal Chairman Leonard Forsman and Inslee opened the accord by emphasizing the importance of government-to-government collaboration and the many shared priorities of tribes and the state.

"The Suquamish Tribe is honored to host this year's Centennial Accord," Forsman said. "Governor Inslee and Tribal Leaders have shown allegiance to the agreement made back in 1989 by working together to find solutions to our shared challenges including climate change, access to healthcare and education, and improving our Tribal communities."

"I am proud to reaffirm my administration's commitment to the Centennial Accord and its principles. We respect the sovereignty and history of our tribal communities," Inslee said. "Our destinies are intertwined. Our desire to protect the air, land and water for our future generations is mutual and it is deep. I am grateful for this government-to-government relationship and the ongoing partnership we have to solve many of our most urgent challenges."

Among the most pressing issues Inslee spoke about was the statewide effort to protect threatened Southern Resident killer whales in Puget Sound's waters and the corresponding effort to restore the orcas' primary food source, Chinook salmon. Inslee said he plans to propose significant new investments in restoring and improving culverts for fish passage and will be relying on the recommendations from his orca task force to prioritize additional investments and policy actions in the 2019 legislative session.

"I am hopeful that by illuminating the intersection of salmon recovery, orca prey and fisheries we will better understand which actions will make the most difference as soon as possible," Inslee said.

Inslee also spoke about his intention to pursue more expansion of broadband, saying he views it as one of the most important tools for opening up economic opportunities across Washington. Inslee recently celebrated an [effort in La Push with the Quileute Tribe to bring broadband internet](#) to the coastal community.

"This has tremendous potential for tribal communities," Inslee said. "We know the spirit of innovation and entrepreneurship runs deep in your tribes. Tribes and tribal-owned businesses support more than 27,000 jobs

across the state, for both native and nonnative Washingtonians. Broadband can open up even more economic opportunity.”

The day’s discussions included updates on legislation to improve reporting and investigating the disappearance of Native American women, tribal traffic safety, natural resources and fisheries, social services, health care and education.

On Monday evening, Inslee attended a ceremony at the Kiana Lodge where attendees were treated to a traditional salmon dinner and a cultural night of sharing with the Suquamish and Sacred Water Canoe Families. Songs and dances were shared along with gifts of cedar baskets filled with smoked geoduck and teas.



*Suquamish Cultural Coordinator Tina Jackson gifts Gov. Jay Inslee with a traditionally woven cedar basket, smoked geoduck and handmade teas as part of the honoring celebration during an evening of cultural sharing at the 2018 Centennial Accord, hosted by the Suquamish Tribe.*

---



*Governor Jay Inslee and Council Representatives from Tribes throughout Washington State at the 2018 Centennial Accord, hosted by the Suquamish Tribe at Clearwater Casino Resort in Suquamish, WA.*



**STATE OF WASHINGTON  
GAMBLING COMMISSION**

**“Protect the Public by Ensuring that Gambling is Legal and Honest”**

**TO:**                 **COMMISSIONERS**                                 **EX OFFICIO MEMBERS**  
Bud Sizemore, Chair                                 Senator Steve Conway  
Julia Patterson, Vice-Chair                                 Senator Lynda Wilson  
Christopher Stearns                                 Representative Brandon Vick  
Ed Troyer                                 Representative David Sawyer  
Alicia Levy

**FROM:**             Brian J. Considine, Legal and Legislative Manager

**SUBJECT:**       **Sports Gambling Monthly Update – October 2018**

This memo continues my sports gambling updates submitted to you in June, July, and August. I will be attending G2E prior to our Commission Meeting, and the Expo has numerous sports gambling educational opportunities that I will attend. I will report back with any important information learned from G2E.

Below is an updated sports gambling summary within the U.S. as of October 1, 2018:

Congress

The U.S. House of Representatives Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigation held a hearing on September 27, 2018 titled: titled: “Post-PASPA: An Examination of Sports Betting in America.” The panel of speakers were: Sara Slane, Senior Vice President, Public Affairs, American Gaming Association; Becky Harris, Chair, Nevada Gaming Control Board; Jocelyn Moore, Executive Vice President, Communications and Public Affairs, National Football League; Jon Bruning, Counselor, Coalition to Stop Internet Gambling Les Bernal, National Director, Stop Predatory Gambling.

The NFL advocated for a federal framework that contained “core standards” needed to protect the integrity of sporting events in the U.S, including requiring operators to purchase official league data from the professional sports leagues. Ms. Harris and Ms. Slane countered that the states are in the best position to regulate sports gambling, especially since Nevada has been effectively regulating sports gambling for decades, and the integrity of sports is currently being protected without federal intervention. Mr. Bruning and Mr. Bernal testified about the social consequences of online gambling, including potential availability of gambling to minors, and a possible need for federal laws and regulation to address off-shore, online sports gambling and the enforcement of UIEGA and the Wire Act.

Chair Jim Sensenbrenner (R-Wisconsin) closed the hearing stating that he believed Congress should act and appeared committed to working on legislation that will protect citizens from the

social costs of sports gambling. The national consensus is still that Congress is unlikely to enact sports gambling legislation at this time.

Additionally in August, Senator Chuck Schumer, (D-New York) published his federal framework for consumer protection and sports integrity. Some of Senator Schumer suggestions are: setting the legal age at 21; prohibit advertising towards persons under 21; require all sportsbooks only use official league data to determine outcomes; and allow sports leagues to be involved in determining bets accepted by operators; and provide a pathway to legal online and mobile sports gambling.

The American Gaming Association (AGA) responded to Senator Schumer in a published letter that argues against the need for his proposed federal framework. The AGA argues that the gambling industry is already effectively regulated by state and tribal regulators. Additionally, states should not be involved in sports leagues' commercial interests and integrity fees and data agreements can be resolved through private business contracts. Lastly, states already promote responsible gambling and are committed to protecting consumers and game integrity.

### Sports Leagues

Professional sports leagues (NBA, NFL, NHL, MLB, and PGA) have recently focused on lobbying Congress for a uniform regulatory model, integrity or royalty fees, and control over the sharing of their statistics and data. It is expected that they will re-engage state legislatures once they are back in session.

### States

Delaware, Mississippi, New Jersey and West Virginia currently offer a full-range of sports gambling within their state casinos and horse racetracks. Rhode Island and Pennsylvania are each expected to have their new operations begin by the end of football season. Additional state being mentioned as the "next wave" of states that could authorize sports gambling during their next legislative session are: Colorado, Kentucky, Iowa, Ohio, Michigan, and Virginia. Here is an update for states who recently authorized sports gambling:

Delaware – Sports gambling started in the state on June 5, 2018. The state Lottery is the primary regulator. Sports gambling is only offered at three land-based racetracks and casinos, and these are joint operations by the state through a vendor. The allocation of net revenues are 12.5% to the vendors (Scientific Games, William Hill, and StadiumTech) and the remaining 87.5% of net revenues are allocated 50% to the state, 40% to the racetrack/casinos, and 10% to horse racing purses. From June through September 2018, the state has taken approximately \$39.7 million in wagers and \$5.19 million in revenues, with approximately \$2.59 million for the state.

Mississippi – Sports gambling started in the state on August 1, 2018. The Gaming Commission is primary regulator, and gross revenues are taxed at 12%. Sports gambling is land-based only and mobile gambling is only allowed on the operator's property. However, no mobile gaming is available yet. Only 11 of the 28 state casinos offered sports gambling in August, but they accepted approximately \$6.26

million in wagers for approximately \$645,000 in gross revenues, \$77,400 of which was state tax revenue.

New Jersey – Sports gambling started in the state on June 14, 2018. The Casino Control Commission is the primary licensing authority and Attorney General's Division of Gaming Enforcement (DGE) is the primary regulator. Land-based gross revenues are taxed at 8.5% and online revenues are taxed at 13%. Since June, approximately \$158 million was wagered, including approximately \$95 million in August. Additionally, there was approximately \$13.36 million in land-based revenues and \$3.1 million in online revenues, \$1.53 million of which was state tax revenue.

Pennsylvania – The Gaming Control Board is the primary regulator and sports gambling can occur at the state's twelve licensed commercial casinos and through mobile and internet platforms. The state requires a \$10 million licensing fee and gross revenues will be taxed at 36%. On October 3<sup>rd</sup>, the Gaming Control Board approved two operators to operate sports gambling at three locations. Another operator has applied and is awaiting approval of its sports gambling license. Operators hope to be open by November.

Rhode Island – The state lottery is the primary regulator and operator. It will operate the sports gambling through two commercial casinos. The allocation of net revenues are 51% to the state; 32% to the Vendor (IGT); and 17 % to the casino. The state hopes to begin operations in October or November.

West Virginia – Sports gambling started in the state on September 1, 2018. The state Lottery is the primary regulator for that state's five licensed race racetrack/casinos, and gross revenues are taxed at 10%. For the first three weeks of September, there was approximately \$3.36 million in wagers for approximately \$1 million in gross revenues, \$100,000 of which was state tax revenue.

### Tribal Governments

The Mississippi Band of Choctaw Indians became the first Tribe outside of Nevada to offer sports gambling. The Tribe's Gaming Commission issued regulations in May and it began offering sports gambling at two of its Mississippi casinos in September 2018.

### Commercial Operators

Commercial operator activity continues to move at a frenetic pace. I will try to summarize the most notable activity in my November Commission Meeting memo. However, there are two items to note. First, International Gaming Technology (IGT) and William Hill announced an agreement for the companies to create a "full-service solution for sports betting" to be marketed towards state lotteries. These two companies are already contracted to run the sports gambling operations in Delaware and Rhode Island.

Additionally, New Jersey's online sports gambling continues to expand and there are currently eight online operators, with the majority of these operators starting in September.



STATE OF WASHINGTON  
GAMBLING COMMISSION

*"Protect the Public by Ensuring that Gambling is Legal and Honest"*

September 3, 2018

Bud Sizemore, Chairman  
Washington State Gambling Commission  
401 North I Street  
Tacoma, WA 98403

Dear Chairman Sizemore:

I am sending this correspondence to notify you that we have reached a tentative agreement with the Muckleshoot Indian Tribe to amend their Class III Gaming Compact. Per RCW 9.46.360, when a tentative agreement with a Tribe is reached, a standing committee of the House of Representatives and the Senate will hold a public hearing and forward any comments to the Gambling Commission. The Gambling Commission, including ex officio members, then votes, usually after giving the public an opportunity to comment, to determine whether to forward the proposed compact to you for review and execution or return it to me with instructions for further negotiation.

We have been informed that the joint legislative hearing on the proposed Class III Gaming Compact Amendment will be on September 6, 2018, at 10am, and the Gambling Commission will hold its public hearing concerning the proposed Amendment on October 18, 2018, at Hampton Inn and Suites, 4301 Martin Way E. Olympia, Washington. The meeting will likely begin at 9am; the exact time will be available on our website ([www.wsgc.wa.gov](http://www.wsgc.wa.gov)).

I have enclosed a summary and a copy of the proposed Class III Gaming Compact amendment. For additional information, please call me at 360 486-3512, or the Commission's Assistant Attorney General, Sharon James at 360 664-0542.

Sincerely,

David E. Trujillo  
Director

Enclosures:

Amendment  
Summary of changes





Bud Sizemore, Chairman

September 3, 2018

Page 2 of 2

Duplicate Original:

The Honorable Virginia Cross, Chair, Muckleshoot Indian Tribe

The Honorable Bud Sizemore, Chair, Washington State Gambling Commission

The Honorable Karen Keiser, Chair, Senate Labor & Commerce Committee

The Honorable Shelley Kloba, Interim Chair, House Commerce & Gaming Committee

cc: Commissioners and Ex-Officio Members, Washington State Gambling Commission

Cyrus Habib, Lieutenant Governor

The Honorable Frank Chopp, Speaker of the House

The Honorable Sharon Nelson, Senate Majority Leader

Kathryn Leathers, General Counsel, Governor's Office

Sheri Sawyer, Senior Policy Advisor for Government Operations, Office of Governor Jay

Inslee

Sharon James, Counsel, Attorney General's Office

Mark Phillips, NW Regional Director of the National Indian Gaming Commission

Craig A. Bill, Executive Director, Governor's Office of Indian Affairs

Deryl Brown-Archie, Attorney, Office of the Tribal Attorney, Muckleshoot Indian Tribe

## Summary of Changes

The Washington State Gambling Commission has reached a tentative agreement with the Muckleshoot Indian Tribe on an amendment to its Class III gaming compact. This amendment adds changes that are consistent with several other tribes' gaming compacts.

- **Player Terminal Allocations** – The Tribe's allocation of player terminals (gaming machines) will be increased from 975 to 1,125. In addition, the proposed amendment does not change the maximum number of machines allowed at a facility.
- **Appendix X2 Addendum** – The Tribe may increase its allocation by 50 player terminals, but only if the following conditions are met:
  - A Tribe provides the State with written notice that there are 500 or fewer player terminals available for lease among all Tribes participating in the Tribal Lottery System, along with a certification from an independent accounting firm confirming the number of machines available.
  - Within 30 days, the State reviews the certification and verifies the player terminals available for lease in the state. Any allocation change would be effective 30 days after notification by the State to the Tribe.
  - This allocation is limited to one (1) per twelve (12) month period. However, if any Washington Tribe will operate more than 1,075 player terminals upon opening a new gaming facility, a Tribe can notify the State, and with State concurrence, receive an additional 50 player terminal increase within the twelve month period.
  - When a Tribe receives an increase under this section, any other compacted Washington Tribe shall receive the same increase.
- **Annual Regulatory Fees**
  - **Cost Allocation** – Regulatory fees for each Tribe's gaming activities shall be determined according to the State's current cost allocation model. The amendment eliminates the 10% pre-payment discount, credit, and alternative regulatory fee agreement options.
  - **Revisions to the State's Cost Allocation Model** – The State may revise its cost allocation model upon 90 day's notice to a Tribe. In the event of a dispute, the parties shall meet informally then follow the Regulatory Fee Dispute section in Appendix X2, if needed.
  - **Audit** – The State shall give each Tribe an audited accounting of its actual costs by April 30<sup>th</sup> of the following year.

The Indian Gaming Regulatory Act of 1988 provides that Indian tribes may conduct Class III gaming activities on Indian lands when the gaming is conducted in conformance with a tribal-state compact.

RCW 9.46.360 provides that the Gambling Commission negotiate those compacts on behalf of the state. The Muckleshoot Indian Tribe's tribal-state compact for Class III gaming was originally signed in February 1993 and this is the fifth amendment. Public comments regarding this compact amendment may be submitted to [compactcomments@wsgc.wa.gov](mailto:compactcomments@wsgc.wa.gov).

**FIFTH AMENDMENT TO THE TRIBAL-STATE COMPACT  
FOR CLASS III GAMING BETWEEN  
THE MUCKLESHOOT INDIAN TRIBE AND THE STATE OF WASHINGTON**

**WHEREAS**, on February 19, 1993, the State of Washington ("State") and the Muckleshoot Indian Tribe ("Tribe") executed a Class III Gaming Compact ("Compact"), pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA"), P.L. 100-407, codified at 25 U.S.C. Section 2701 *et. seq.* and 18 U.S.C. Sections 1166-1668; and

**WHEREAS**, the Class III Gaming Compact executed by the State and the Tribe, as well any amendments thereto, were approved by the Secretary of the Interior and are in full force and effect (hereinafter referred to as the "Compact"); and

**WHEREAS**, the State and Tribe subsequently conducted additional negotiations in accordance with the provisions of IGRA and the terms of the Compact; and

**WHEREAS**, the Tribe and the State have agreed to certain changes to the Compact, including certain provisions found within Appendix X2, and agreed to incorporate an optional Addendum to that Appendix,

**NOW, THEREFORE, the Compact shall be, and is hereby amended as follows:**

1. **Add Compact Section III.**

N. Acceptance of Electronic Benefits Cards From the State of Washington.

The Tribe shall ensure that all cash dispensing outlets, including without limitation, automated teller machines (ATM) and point of sale machines located within the Tribe's Gaming Facility or Facilities, shall not accept electronic benefits cards issued by the federal government, the State, or any political division thereof.

2. **Amend Appendix X2, Section 12.1 to:**

12.1 Allocation. The Tribe shall be entitled to an Allocation of, and may operate or transfer the ability to operate, up to 1075 Player Terminals ("Allocation").

3. **Amend Appendix X2, Section 13.4, Sub-Sections 13.4.1 to 13.4.5 to:**

13.4.1 First Year Regulatory Fees. Upon commencement of operations of a Gaming Operation, the SGA shall make a good faith estimate of the cost of regulating the Tribe's activities under this Appendix for the remainder of the calendar year.

13.4.2 Cost Allocation. Notwithstanding anything in the Compact to the contrary, the Regulatory Fees for all class III activities under the Compact, including those applicable to the activities described in this Appendix (except for the first year fees set by estimate as provided in Sections 13.4.1), shall be set by determining the cost of regulating the Tribe's class III activities using the State's cost allocation model currently in use as of the effective date of this Amendment.

13.4.3 Billing and Payment. The SGA shall notify the Tribe of the forthcoming Regulatory Fee at least 45 days prior to its becoming due. Regulatory Fees may be paid for an entire year in advance of the date on which the billing year commences (calendar year) or in no more than 12 equal monthly installments, each of which shall be due on the first day of each month, which monthly payments shall commence on the first day of the first month of the billing year, or within 45 days following notification of the amount of the forthcoming year's Regulatory Fee, whichever is later.

13.4.4 Audit. The SGA shall send the Tribe an annual audited accounting of actual costs on or before April 30<sup>th</sup> of the following year.

13.4.5 Revisions to State's Cost Allocation Model. The State may revise its cost allocation model, which shall become effective upon 90 days' notice to the Tribe. If the Tribe disputes the revised model, the State and Tribe shall meet and confer in an attempt to resolve the matter within 30 days. If the parties cannot resolve the dispute, the dispute resolution provisions set forth in section 13.5 shall apply.

4. **Amend Appendix X2, Sections 14.4 and 14.5 to:**

14.4 Problem Gambling. Thirteen one-hundredths of one percent (0.13%) of the net win derived from all Class III gaming activities, determined on an annual basis, shall be dedicated to problem gambling education, awareness, prevention and treatment in the State of Washington. Contributions shall be made to governmental, charitable and/or non-profit organizations, which may include the Department of Social and Health Services' Division of Alcohol and Substance Abuse (DSHS/DASA), that are directly related to helping to reduce problem gambling. The 0.13 percent of net win shall be paid annually, commencing with the conclusion of the Tribe's first full fiscal year following the date upon which this Appendix becomes effective and shall be paid annually within one year of the close of the Tribe's fiscal year. The Tribe shall include information describing the Tribe's contributions for Problem Gambling in the annual Community Investments and Contributions Report required in Section 14.7.2.

14.5 Smoking Cessation and Prevention. Thirteen one-hundredths of one percent (0.13%) of the net win derived from Tribal Lottery System activities, determined on an annual basis, shall be dedicated to smoking cessation, prevention, education, awareness, and treatment in the State of Washington. Contributions shall be made to governmental, charitable and/or nonprofit organizations that have as a purpose the discouragement of the use of tobacco. However, if the Tribe operates any of its Class III gaming facilities as entirely smoke-free, the Tribe's smoking cessation contribution shall be reduced proportionally based upon the pro rata number of Tribal Lottery System machines in that non-smoking facility compared to the total number of Tribal Lottery System machines operated by the Tribe. Additionally, it is also agreed that if the Tribe completely prohibits the sale and use of alcohol in all of its Class III gaming facilities, the Tribe shall be entirely excused from making the smoking cessation contribution required by this subsection for as long as the prohibition on the sale and use of alcohol remains in effect. The 0.13 percent of net win shall be paid annually, commencing with the conclusion of the Tribe's first full fiscal year following the date upon which this Appendix becomes effective and shall be paid annually within one year of the close of the Tribe's fiscal year as set forth in section 14.6.3.

5. **Incorporate by reference as a fully enforceable part of the Compact:**

Appendix X2 Addendum Tribal Lottery System Terminal Allocations, in the form attached hereto.

This Amendment shall take effect upon publication of notice of approval by the United States Secretary of the Interior in the Federal Register in accordance with 25 U.S.C. § 2710(d)(3)(B).

IN WITNESS WHEREOF, the Muckleshoot Indian Tribe and the State of Washington have executed this Fifth Amendment to the Compact.

MUCKLESHOOT INDIAN TRIBE

STATE OF WASHINGTON

BY: \_\_\_\_\_

Virginia Cross  
Chairperson

BY: \_\_\_\_\_

Jay Inslee  
Governor

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

DRAFT

**Muckleshoot Indian Tribe - State of Washington  
Class III Gaming Compact**

**Appendix X2 Addendum  
Tribal Lottery System Terminal Allocations**

**Section 1. Overview**

The Parties executed the Fourth Amendment to the Tribal-State Compact, known as Appendix X2. Appendix X2 became effective May 31, 2007. This Appendix X2 Addendum further supplements Appendix X2 as follows:

**Section 2. Definitions**

All terms not defined herein shall have the same definitions as in the Tribe's Compact and its amendments and appendices.

- 2.1 **"Available for Lease"** means a Player Terminal that is part of an Eligible Tribe's Allocation of Player Terminals and is neither in use in any Eligible Tribe's Gaming Facility or Facilities, nor leased to another Eligible Tribe.
- 2.2 **"Certification"** means a confirmation conducted and signed by an Independent Accounting Firm that states the number of Player Terminals Available for Lease in the State of Washington.
- 2.3 **"Eligible Tribe"** means a Washington Tribe that has entered into a compact authorizing operation of a Tribal Lottery System consistent with Appendix X2.
- 2.4 **"Independent Accounting Firm"** means a person or firm licensed by the Washington State Board of Accountancy.

**Section 3. Increases to Tribe's Allocation of Player Terminals**

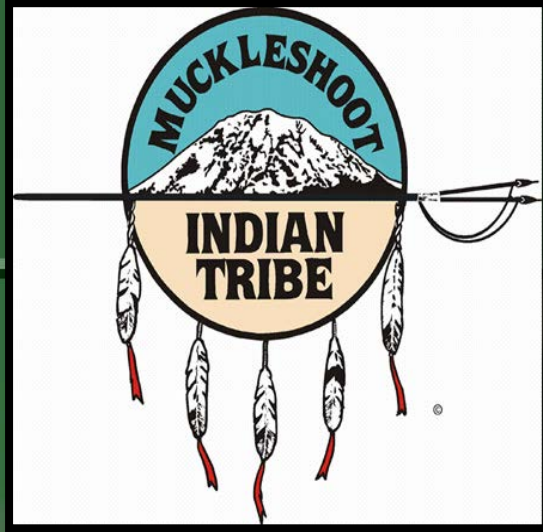
- 3.1 The Tribe's Allocation of Player Terminals as set forth in Appendix X2 may increase by 50 Player Terminals upon meeting the procedures and conditions set forth in this Addendum.
- 3.2 The Tribe shall provide the State Gaming Agency with written notice, along with Certification from an Independent Accounting Firm, that there are 500 or fewer Player Terminals Available for Lease among all tribes participating in the Tribal Lottery System under Appendix X2. The Tribe shall derive its notice and Certification from information provided by participants in the plan described in Section 12.2.2 of Appendix X2.
- 3.3 Upon receipt of the Tribe's notice, the State Gaming Agency shall review the Certification and verify the Player Terminals Available for Lease in the state. To

facilitate the State Gaming Agency's review and verification process, the Tribe shall authorize the Independent Accounting Firm to make available for review by the State Gaming Agency all supporting records used to develop the Certification.

- 3.4 The State Gaming Agency has 30 days to review, verify, and provide written notification to the Tribe of the additional Allocation of Player Terminals set forth in Section 3.1. Any such increase to the Tribe's Allocation shall become effective 30 days after notification by the State Gaming Agency.
- 3.5 Such notice by the State Gaming Agency shall for all purposes increase the Allocation of Player Terminals for the Tribe until such time as, if ever, another notice and Certification is delivered to the State Gaming Agency for an increase to the Allocation.
- 3.6 Except as set forth in Section 3.7, additional increases to the Tribe's Allocation of Player Terminals under this Section are limited to one (1) increase per twelve (12) month period.
- 3.7 Notwithstanding the limitation set forth in Sections 3.5 and 3.6, if the Tribe, or another Eligible Tribe, licenses a new Gaming Facility on Tribal Lands that will operate more than 1,075 Player Terminals at its initial opening, the Tribe may provide written notification to the State Gaming Agency of such licensure. After receipt of such notification, the State Gaming Agency has 30 days to review, concur, and provide written notification to the Tribe that the Tribe's Allocation of Player Terminals shall increase by an additional 50 Player Terminals.
- 3.8 In the event any other Eligible Tribe becomes entitled to an increased Allocation of Player Terminals under that tribe's version of Section 3.4 or 3.7, the Tribe shall be automatically entitled to the same Allocation increase authorized to that other Washington tribe by its version of Section 3.4 or 3.7 above, and the State shall provide prompt notification of the increase to the Tribe.

#### **Section 4. Dispute Resolution**

- 4.1 If a dispute arises between the Tribe and the State with respect to the terms and conditions set forth in this Addendum, including but not limited to the number of Player Terminals Available for Lease, the State and Tribe shall meet and attempt to resolve the dispute not later than 30 days prior to the increased Allocation of Player Terminals going into effect.
- 4.2 If either party believes, after the meet and confer has commenced, that a resolution by the parties cannot be achieved, then either or both parties shall be entitled to have the dispute resolved pursuant to the dispute resolution provisions of the Compact.



# Muckleshoot Indian Tribe

Compact Amendment Hearing

October 18, 2018

The Honorable Virginia Cross, Chair, Muckleshoot Indian Tribe

David Trujillo, WSGC Director

Julie Lies, WSGC Tribal Liaison





# Commissioners



**Chair Bud Sizemore**



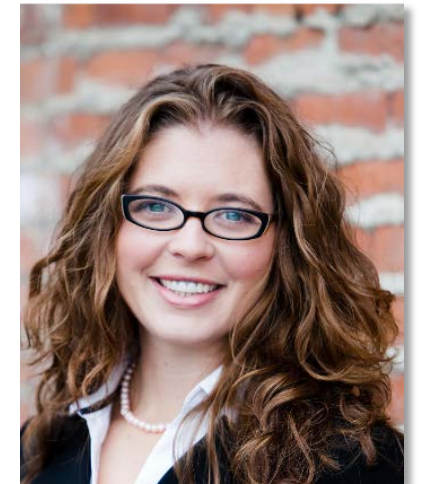
**Vice Chair Julia Patterson**



**Chris Stearns**

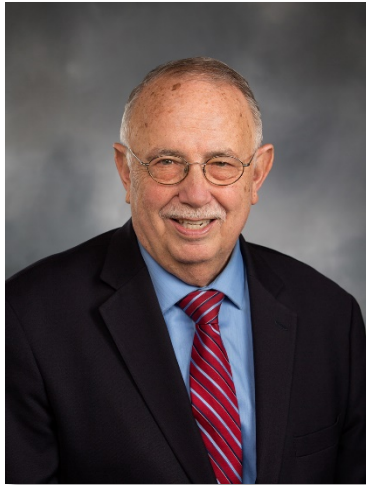


**Ed Troyer**



**Alicia Levy**

# Ex Officio Members



Senator  
**Steve Conway (D)**  
*29<sup>th</sup> District*



Senator  
**Lynda Wilson (R)**  
*17<sup>th</sup> District*



Representative  
**David Sawyer (D)**  
*29<sup>th</sup> District*



Representative  
**Brandon Vick (R)**  
*18<sup>th</sup> District*

# Our Mission

---

*“Protect the public by ensuring  
that gambling is  
legal and honest”*

# 1988: Indian Gaming Regulatory Act

***“Class III gaming activities shall be lawful on Indian lands only if such activities are... located in a State that permits such gaming... and are conducted in conformance with a Tribal-State compact...”***

*“The State must  
**negotiate in good faith**  
when a compact or  
amendment is requested  
by a Tribe”*

# Negotiation Topics

Casino-style gaming activities

Criminal and civil jurisdiction

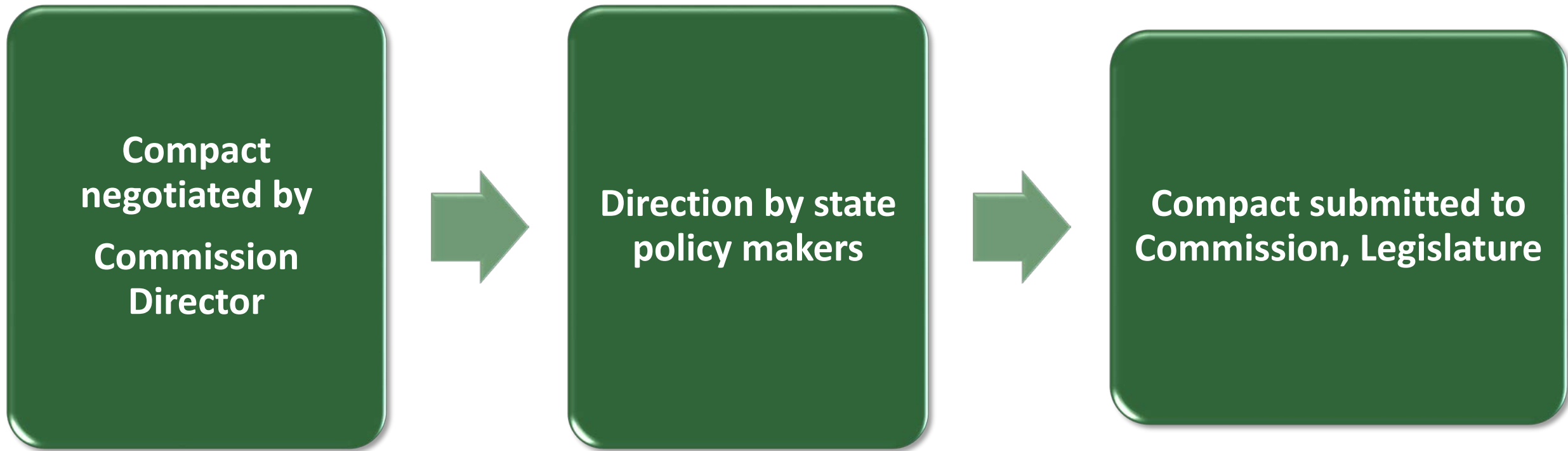
Fees for state regulation

Remedies for breach of contract

Standards of operation



# Gaming Compact Approval Process



# Gaming Compact Approval Process

Commission has 45 days to:  
1) Hold public hearing;  
2) Forward amendment to Governor; or  
3) Return to Director for further negotiation



Legislature has 30 days to review and comment



Governor reviews and has final execution authority



Tribe forwards to Secretary of Interior



# Public Protection Interests



No criminal involvement

Gaming conducted fairly, honestly

Gaming limited to authorized activities

Minimize negative impacts on local law enforcement, emergency services

# Muckleshoot Indian Tribe



# Muckleshoot Tribal Council

The Muckleshoot Tribe has a long history of stable and progressive government

Elected Tribal Council consists of 9 members, serving rotating 3-year terms



Virginia Cross, Chair



Anita Mitchell, Vice-Chair



Jessica Garcia-Jones  
Secretary



Jaison Elkins, Treasurer



John Daniels Jr.



Louie Ungaro



Jeremy James



Donny Stevenson



Mike Jerry Sr.

# Seven Generations of Poverty

Since time immemorial, Coast Salish peoples, blessed by nature's bounty, enjoyed lives of prosperity and plenty. This was replaced by grinding poverty following their confinement to reservations in the 1850's, where they became the poorest of the poor.



# Migrant Workers



**For generations, Coastal Natives traveled seasonally to pick crops. When she was a girl, Virginia and her whole family were part of this migrant stream.**

# Poverty in the Midst of Prosperity



Photo from 1970's Seattle Times series about poverty on the Muckleshoot Reservation.

These shoeless little girls are carrying water in teapots. When Virginia was their age, one of her jobs was to fetch water from a nearby creek for her family.

# Two-Thirds of an Acre



1930's: The women of the tribe raised funds any way they could, often putting on cultural performances in the Seattle area, until they were able to build a community hall.

1970's: It burned to the ground; the tribe was left with only its chimney and the 2/3 acre of land it stood on.

# Up from the Ashes: Believing in the Future

Photo: Virginia's grandmother and family  
Virginia was a student at Auburn HS

She was one of the first Muckleshoot members to graduate

Earned a master's degree from the University of Washington

Served as the tribe's first Head Start Director





# Education is the Key to the Future

Muckleshoot received 1 of 2 initial Indian Head Start grants in the U.S.

The other recipient was the massive Navajo Nation of Arizona and New Mexico.

Years later, the first major building constructed by the tribe was the Muckleshoot Child Development Center.



# Child Development Center











**Tribal Council members with Muckleshoot Tribal School Class of '18**

Muckleshoot Tribal School graduated a record 34 students in 2018.

# The Dawn of a Bright New Era

Swan Flats rental housing  
neighborhood  
(bottom left)

Tribally-protected  
wilderness canyon of the  
White River  
(bottom right)



# Health & Wellness Center





# Adult Recovery House



# Muckleshoot Casino



# Muckleshoot Casino

The casino has a new paint job, featuring traditional black and red colors and colossal-sized Coast Salish paintings by Muckleshoot artists



The casino with its old Caribbean-themed paint treatment



# Summary of Compact Changes

## **Add 2015 Appendix X2 Amendment:**

Add restriction on Electronic Benefits Cards

Smoking Cessation & Problem Gambling Contribution payments  
will match other contribution timeframes

Change Annual Regulatory Fees calculation

Increase Player Terminal allocations

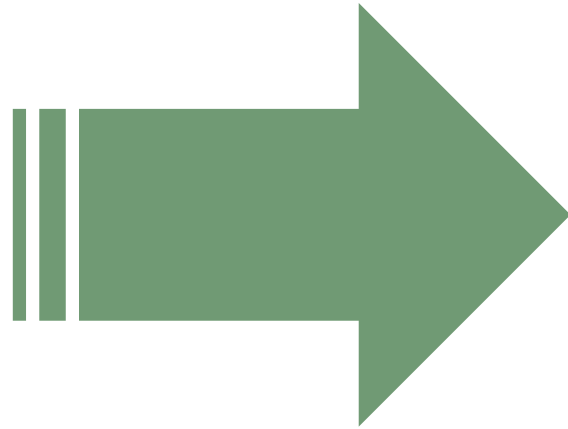


Questions?



# Today

**Hold hearing  
Answer questions**

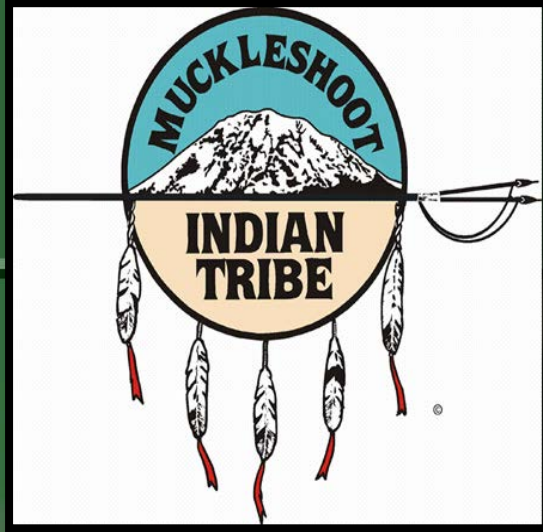


**Vote to:**

- 1) Forward to Governor for review & final execution,**  
**or**
- 2) Return to Director for further negotiation**

# Staff Recommendation

**Vote to forward the proposed compact amendment to the Governor for review and final execution**



# Muckleshoot Indian Tribe

Compact Amendment Hearing

October 18, 2018

The Honorable Virginia Cross, Chair, Muckleshoot Indian Tribe

David Trujillo, WSGC Director

Julie Lies, WSGC Tribal Liaison







**STATE OF WASHINGTON  
GAMBLING COMMISSION**

**“Protect the Public by Ensuring that Gambling is Legal and Honest”**

October 1, 2018

**TO:**           **COMMISSIONERS**  
                  Bud Sizemore, Chair  
                  Julia Patterson, Vice-Chair  
                  Christopher Stearns  
                  Ed Troyer  
                  Alicia Levy

**EX OFFICIO MEMBERS**  
                  Senator Steve Conway  
                  Senator Lynda Wilson  
                  Representative Brandon Vick  
                  Representative David Sawyer

**FROM:**       Brian J. Considine, Legal and Legislative Manager

**SUBJECT:**   **Petition for Declaratory Order from Big Fish Games, Inc.**

On July 3, 2018, the Gambling Commission received a Petition for Declaratory Order from Big Fish Games, Inc. The Petition asks the Commission to enter a declaratory order finding that the company’s online games are not gambling under Washington State law.

As a reminder, the Administrative Procedure Act (APA) ([RCW 34.05.240](#)) and our declaratory order rule ([WAC 230-17-180](#)) provide that the Commission is required to do one of the following within thirty days after receipt of a petition for a declaratory order: (1) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances; (2) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition; (3) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or (4) Decline to enter a declaratory order, stating the reasons for its action.

The Commission may extend a time limit above for a decision if it has good cause. Additionally, the Commission may not enter a declaratory order that: (1) would substantially prejudice the rights of a person who would be a necessary party; and (2) who does not consent in writing to the determination of the matter by a declaratory order proceeding.

At our July 12, 2018 Commission Meeting, you heard from Ms. Beth Brinkman for Big Fish Games, Inc.; Mr. Alex Tievsky for Cheryl Kater; and Mr. Cyrus Ansari and Mr. Joe Sigrist for Double Down Interactive, LLC. Additionally, you received letters from Mr. Tievsky on behalf of his client and attorneys on behalf of Double Down Interactive, LLC and Huuuge, Inc.

You extended your review of the Petition to the August Commission Meeting and requested that the parties provide you information and/or briefing on the following by August 2, 2018: (1) What

a “thing of value” means under Washington state law; (2) What constitutes a “necessary party” in our law and rule that states an “agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party . . . .”; and (3) Any other factors a party believes the Commission should consider while it is under consideration.

At our August Commission Meeting, you heard from Ms. Emily Hann for Big Fish Games, Inc. and Mr. Alex Tievsky for Cheryl Kater about their interpretation of “thing of value” and “necessary party.” You also received letters/comments from: Ms. Beth Brinkmann, attorney for Big Fish Games, Inc.; Mr. Alex Tievsky attorney for Cheryl Kater; Stanley Peirre-Louis Senior Vice President and General Counsel for the Entertainment Software Association; Suzie Kelly from Plano, Texas; P.M. from Puyallup, Washington; and Dr. Natasha Schull, Associate Professor, New York University.

This month’s packet contains: the petition; transcripts from our July and August Commission meetings; letters, comments, and briefing received for the July and August Commission Meetings; and the following public comments received by the September 30, 2018 deadline: Beth Brinkmann, Big Fish Games, Inc.; Stacy Friedman, Olympian Consulting, LLC; Jerry Allen, 7 Cedars Casino and Resort Properties; Lynn Franklin, Individual; Deb Pittack, Individual; and Kitty Towns, Individual.

At our October public meeting, I will review the submitted information and ask you if you wish to hear any additional comments from the Petitioner or the public. After you review the petition in a closed session, you will have the option to issue an order: (1) continuing your review until a future Commission Meeting if you find there is good cause to continue your review; (2) declaring Big Fish Games, Inc.’s online games as not gambling; (3) declaring Big Fish Games, Inc.’s online games as gambling; or (4) declining to issue an order.

OCTOBER COMMISSION MEETING  
PUBLIC COMMENTS

BIG FISH GAMES, INC.  
PETITION FOR DECLARATORY ORDER

# COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG  
LONDON LOS ANGELES NEW YORK SAN FRANCISCO  
SEOUL SHANGHAI SILICON VALLEY WASHINGTON

**Beth S. Brinkmann**

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5312  
bbrinkmann@cov.com

**Via Email (brian.considine@wsgc.wa.gov)**

September 30, 2018

Commissioner Bud Sizemore, Chair  
Commissioner Julia Patterson, Vice-Chair  
Commissioner Chris Stearns  
Commissioner Ed Troyer  
Commissioner Alicia Levy  
Brian Considine, Esq., Legal and Legislative Manager

Washington State Gambling Commission  
4565 7th Avenue S.E.  
Lacey, WA 98503

Re: Big Fish Games, Inc. Petition for Declaratory Order

Dear Mr. Chairman, Commissioners, and Mr. Considine:

We appreciate the Commission's continuing consideration of Big Fish Games, Inc.'s July 3, 2018 petition for a declaratory order. We welcome this opportunity to provide additional input in support of our petition, and in follow-up to our letters to the Commission of July 26, 2018, and August 2, 2018.

The petition asks the Commission to issue a declaratory order on a very narrow question of law: whether Big Fish Casino ("BFC") online social games amount to gambling for purposes of RCW 9.46.0237. The petition discusses the correct interpretation of the statute and seeks a declaration consistent with that long understood meaning and past practices of the Commission regarding such games, on which companies, their employees, and game players have depended for years.

The Entertainment Software Association ("ESA") August 2, 2018 letter to the Commission provides an important perspective and context for the Commission's consideration:

- The ESA demonstrates how denial of the BFC petition "would lead to an absurd result that runs contrary to the stated policy of the [Washington Gambling Act]" because it would "find gambling where a player risks no money and has no chance to make a profit."
- The ESA highlights how a denial of the petition would negatively impact "many other apps and games that undoubtedly are not the types of activities that would be considered gambling under the traditional principles that have guided this analysis."

## COVINGTON

September 30, 2018

Page 2

- The ESA explains that courts in other States have rejected attempts to reinterpret their States' statutes—which also apply only to gambling that is defined to include a potential real-world payout—and have refused to transform those statutes into much broader laws that would extend government regulation to a wide variety of online video games.

The petition does not call for a determination as to whether the State of Washington should regulate video games that are not gambling under Washington law. Such government regulation would require enactment of state legislation apart from RCW 9.46.0237. Should the State Legislature choose to consider such measures, petitioner and many others involved in the video game industry, particularly companies headquartered in Washington, would engage in the legislative process as responsible corporate citizens. The Legislature is the appropriate forum for informing, debating, and considering topics and policy questions that might be of interest in connection with many types of online social games, online media, and other online entertainment. The Commission should reject attempts to interject those issues into this proceeding.

In addition, the petition does not involve issues the Commission previously considered in the context of skins trading and loot boxes, relating to concerns over the transfer of money and of gambling through secondary markets and platforms. Big Fish Casino games' Terms of Use expressly prohibit virtual items from being “transferred or resold for commercial gain in any manner, including, without limitation, by means of any direct sale or auction service,” and from being “purchased or sold from any individual or other company via cash, barter or any other transaction,” and also specify that “[v]irtual items have no monetary value, and cannot be used to purchase or use products or services” of real-world value.

Finally, the declaratory order requested by the petition is consistent with the 2014 guidance *Online Social Gaming: When is it Legal? What to Consider* published by the Commission, and with the Commission's past practices.

Attached is a draft declaratory order for the Commission's convenience. We appreciate the opportunity to provide this additional input to the Commission.

Sincerely,



Beth Brinkmann

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE WASHINGTON STATE GAMBLING COMMISSION**

In the Matter of the Petition of Big Fish Games,  
Inc. for a Declaratory Order

**[PROPOSED] DECLARATORY ORDER**

**I. INTRODUCTION**

THIS MATTER came before the undersigned Commissioners of the Washington State Gambling Commission (“Commission”) at the Commission’s regularly scheduled meetings on July 12 and August 9, 2018 in Tacoma, and Pasco, Washington, respectively, on Big Fish Games, Inc.’s Petition for Declaratory Order pursuant to RCW 34.05.240 and WAC 230-17-180, where petitioner was represented by Beth Brinkmann and Emily Henn of Covington & Burling LLP. Specifically, Big Fish Games seeks a declaratory order stating “that its Big Fish Casino suite of online video games (‘BFC’) does not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237, and therefore is not subject to the Commission’s regulatory or enforcement jurisdiction.”

The Commission considered the Petition for Declaratory Order, dated July 3, 2018, and accompanying declarations of Gary Rubman of Covington & Burling LLP and Andy Vella of Big Fish Games; Big Fish Games’ presentations at the July 12 and August 9 meetings and its July 26, August 2, and September 30, 2018 letters to the Commission; and numerous submissions by interested members of the public, both in written form, which were publicly posted, and at presentations at the Commission meetings. After consideration of all of these materials, the Commission concludes that the record supports the Findings of Fact, Conclusions of Law, and Declaratory Order specified below.

1 **II. FINDINGS OF FACT**

2 1. BFC allows players to play its social video games for free by providing virtual tokens for free to  
3 players at the start of play, and at various intervals during play; players may also purchase additional  
4 tokens.

5 2. BFC games’ virtual tokens exist, and can be used, only within BFC games.

6 3. BFC game players cannot win money or anything else of real-world value by playing the games.

7 4. BFC games’ Terms of Use prohibit their virtual tokens from being redeemed for money or  
8 anything else of real-world value.

9 **III. CONCLUSIONS OF LAW**

10 **A. RCW 34.05.240 & WAC 230-17-180**

11 The petition satisfies the criteria for the issuance of a declaratory order in RCW 34.05.240(1) and  
12 WAC 230-17-180(1). Granting the petition would not substantially prejudice the rights of any person  
13 who would be a necessary party and who has not consented in writing to the determination of the matter  
14 by a declaratory order proceeding. RCW 34.05.240(7); WAC 230-17-180(5).

15 **B. The Gambling Act, RCW 9.46**

16 1. The Gambling Act defines “gambling” to mean “staking or risking something of value upon the  
17 outcome of a contest of chance or a future contingent event not under the person’s control or influence,  
18 upon an agreement or understanding that the person or someone else will receive something of value in  
19 the event of a certain outcome.” RCW 9.46.0237.

20 2. The Gambling Act defines “thing of value” to mean “any money or property, any token, object or  
21 article exchangeable for money or property, or any form of credit or promise, directly or indirectly,  
22 contemplating transfer of money or property or of any interest therein, or involving extension of a service,  
23 entertainment or a privilege of playing at a game or scheme without charge.” RCW 9.46.0285.

24 3. The virtual tokens that have been used in BFC games are not “thing[s] of value” within the  
25 meaning of RCW 9.46.0285 because they cannot be redeemed for money or anything else of real-world  
26 value.

27 4. Playing BFC games does not involve the “staking or risking something of value” within the  
28 meaning of RCW 9.46.0237.

1 5. BFC games do not award “something of value in the event of a certain outcome” within the  
2 meaning of RCW 9.46.0237.

3 6. BFC games therefore are not “gambling” within the meaning of RCW 9.46.0237.

4 **IV. ORDER**

5 The Commission hereby orders that Big Fish Games, Inc.’s Petition for Declaratory Order is  
6 GRANTED for the reasons specified herein.

7  
8 DATED this \_\_\_ day of October, 2018  
9

10  
11 \_\_\_\_\_  
12 BUD SIZEMORE, Chair

11 \_\_\_\_\_  
12 JULIA PATTERSON, Vice Chair

13  
14 \_\_\_\_\_  
15 CHRISTOPHER STEARNS

13  
14 \_\_\_\_\_  
15 ED TROYER

16  
17 \_\_\_\_\_  
18 ALICIA LEVY  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



September 18, 2018

Brian Considine  
Washington State Gambling Commission  
By email: [brian.considine@wsgc.wa.gov](mailto:brian.considine@wsgc.wa.gov)

**Re: Petition of Big Fish Games, Inc. for Declaratory Order**

Dear Mr. Considine:

My name is Stacy Friedman. My company, Olympian Gaming LLC, is a Commission licensee. I support the petition by Big Fish Games, Inc. for a declaratory order confirming that a non-redeemable virtual game credit is not a “thing of value” under the Washington Gambling Act, and I welcome this opportunity to provide this submission to the Commission.

**Executive Summary**

1. The 9<sup>th</sup> Circuit construed “extension ... of a privilege of playing at a game or scheme without charge” in RCW 9.46.0285 as meaning “prolong” the play of that game.
2. That construction is incongruous with that term’s use elsewhere in the statute, implicates games that are not intended to fall under the definition of “gambling” such as video arcade games, board games or casino simulations, and has nonsensical implications for tax policy.
3. In context, the proper interpretation of “extension” in RCW 9.46.0285 is “proffer.”
4. Under that construction, “thing of value” does not include virtual game credits or play money in video arcade games, board games or casino game simulations, but *does* include casino free bet chips and slot machine free play vouchers that have non-zero expected value.
5. Gaming addiction and gambling addiction are both important public policy concerns but are unrelated to the statutory interpretations being considered by the Commission.

**Introduction**

I am a professional casino game designer and mathematician with over 20 years of experience in the gaming industry, including employment with slot machine manufacturers Silicon Gaming and IGT. In 2001, I started Olympian Gaming, LLC to advise Internet casino software vendors, new game developers, and casino game manufacturers on wagering, gameplay design, mathematical analysis, and statistical verification. In late 2010 through 2011, I was engaged by DoubleDown Interactive in Seattle, a social gaming company offering free-to-play slot machine games on Facebook, and I designed the mathematics, payouts, and game features for all of DoubleDown's virtual slot machine games prior to its acquisition by IGT in 2012.

Olympian Gaming also designs, markets, and licenses proprietary games. Olympian Gaming has held a Washington State Gambling Commission license since 2007 and Bad Beat Blackjack has been approved and operated in Washington State since 2009.

I also serve as a subject matter expert consultant in gaming-related disputes. Since 2005 I have provided expert witness testimony or analysis in over 40 cases, including for the Mississippi Gaming Commission, the Alabama Attorney General, the Humboldt County California Public

Defender, a Costa Rican legislator, the Seneca Nation of Indians, and the Atlantic Lottery Corporation in Canada. I have also consulted on many intellectual property disputes between gaming manufacturers, including testimony before the U.S. Patent and Trademark Office as well as courts in the United States, Canada, and the United Kingdom. I have also been interviewed by several media organizations for my perspective on gambling topics, including NPR, CBS, and the Oregonian newspaper.

I have reviewed the materials posted on the Commission's website related to the Big Fish petition, including the transcripts of Commission meetings held July 12 and August 9, 2018. In my view, the submissions relating to "thing of value" have not directly addressed the construction of the phrase "extension of a service, entertainment, or a privilege of playing at a game or scheme without charge." I specifically address that issue in this submission.

### **Washington Gambling Act, RCW 9.46**

The relevant definitions in RCW 9.46 are:

RCW 9.46.0237: "Gambling," as used in this chapter, means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling does not include ... bona fide business transactions valid under the law of contracts ...

RCW 9.46.0225: "Contest of chance," as used in this chapter, means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

RCW 9.46.0285: "Thing of value," as used in this chapter, means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

The 9<sup>th</sup> Circuit noted the well-known three-part understanding of gambling in *Kater*: "[A]ll forms of gambling involve prize, chance, and consideration."<sup>1</sup> With this in mind, several initial conclusions can be reached from the statutory language:

First, a "contest of chance" must have at least two outcomes because a contest with a solitary outcome would not *depend in a material degree upon* an element of chance. Similarly, a "future contingent event" must also have at least two outcomes or it is not *contingent* on anything.

Second, at least one of the outcomes in a gambling game must result in someone "receiv[ing] something of value in the event of [that] outcome." There is no gambling if there can be no prize.

---

<sup>1</sup> *Kater v. Churchill Downs, Inc* (886 F.3d 784, 786)

Third, it must be possible to play a contest of chance with something that is not a thing “of value” because otherwise the words “of value” in the definition of “gambling” are surplusage.

Fourth, in a gambling game where “extension of entertainment” is the prize or “thing of value,” that entertainment is separate from the “contest of chance” being wagered upon. Otherwise any entertaining chance-based game would be its own reward (that is, the chance and prize elements would be the same thing), violating the three-part understanding of “gambling” and reducing the meaning of “entertainment” to surplusage.

For example, playing video arcade games is not gambling. Although the game costs money and the player may earn an extra credit, no possible outcome results in any person receiving something of value regardless of how long the game may last. The quarter played in an arcade game is not a wager, it is a purchase of entertainment. Similarly, playing poker with Monopoly money is not gambling. Although poker is a contest of chance, Monopoly money is not a “thing of value.” Also excluded from gambling are computer-based casino game simulations involving no money whatsoever (other than the purchase of software) that depict simulated wagering of virtual game credits on slot machines, blackjack, roulette, and the like. Such computer games have been in the market for over 30 years and include products from Washington-based companies such as Sierra On-Line and Microsoft.

#### **Kater v. Churchill Downs and the Meaning of “Thing of Value”**

However, in March 2018 the 9<sup>th</sup> Circuit held that game credits with no monetary value are nevertheless “things of value” because they “extend the privilege of playing.”<sup>2</sup> As such, the 9<sup>th</sup> Circuit has opened the door to the interpretation that many types of games involving non-redeemable game credits fall under the Washington statutory definition of “gambling” because the game credits themselves can be viewed as both “consideration” and “prize,” regardless of how those credits are obtained or what they are worth.

Specifically, the Court stated:

- a) “They then can play the games for free using the chips that come with the app, and may purchase additional chips to *extend* gameplay.”<sup>3</sup>
- b) “In sum, these virtual chips *extend* the privilege of playing Big Fish Casino.”<sup>4</sup>
- c) “users receive free chips throughout gameplay, such that *extending* gameplay costs them nothing.”<sup>5</sup>

As demonstrated by these passages, the Court has construed “extension of ... a privilege of playing at a game or scheme without charge” to mean “prolonging the play of any game.” Under this interpretation, if a game credit prolongs gameplay, whatever the game, then it is a “thing of value” even if that credit is freely provided or cannot be redeemed for money or property.

---

<sup>2</sup> *Kater v. Churchill Downs, Inc* (886 F.3d 784, 787).

<sup>3</sup> *Id.* at 785

<sup>4</sup> *Id.* at 787

<sup>5</sup> *Id.*

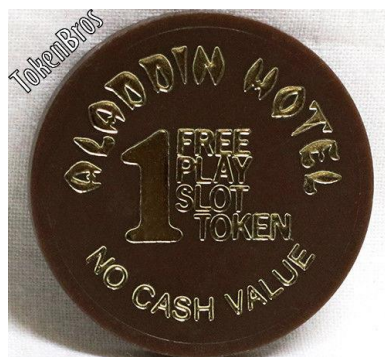
Respectfully, this interpretation is mistaken. The term “game or scheme” is properly understood to be a winnable “contest of chance” as opposed to some other type of game, and the term “extension” is properly understood to mean “proffer” as opposed to “prolong.”

### **“Extension” Means “Proffer”**

The statutory construction of “extension” must be consistently applied to all three categories: “extension of a service, entertainment or a privilege of playing at a game or scheme without charge.” But it is not true that a service (e.g., an oil change) or entertainment (e.g., a baseball game) is a thing of value only when it is *prolonged*. Services and entertainment are things of value by themselves, regardless of duration. For the same reason, the “privilege of playing at a game or scheme without charge” is also a thing of value by itself, regardless of duration. Therefore, “extension” does not mean “prolong.” The only meaning of “extension” that leads to consistent and sensible interpretations for all three categories is “proffer.”

The proffer of a service such as an oil change is a thing of value. The proffer of entertainment such as a baseball game is also a thing of value. The proffer of a privilege of playing at a game or scheme without charge is also a thing of value, because the player can win when playing at that game or scheme.<sup>6</sup> For example, a token that can substitute for a \$10 wager at a casino’s roulette table, and that can win or lose just like any other \$10 wager, is also a thing of value.

The token in this last example is exactly what is meant by the statutory language “extension of a privilege of playing at a game or scheme without charge.” Such tokens are commonly known as “free bet” or “match play” for table games, or “free play” in slot machines. Free bets and free play have been part of casino gambling operations for many decades and predate the passage of the 1973 Washington Gambling Act. Depicted below are two examples of free play tokens, one good for a \$1 bet on craps, roulette or blackjack and the other good for a free slot play.<sup>7</sup>



<sup>6</sup> The words “game” and “scheme” are used equivalently in the definitions of both “contest of chance” and “thing of value.” The privilege to play a contest of chance without charge must be distinct from “entertainment” or it is surplusage, and the distinction lies in the possibility for the player to win. In its petition, Big Fish notes that the qualification “without charge” means that a “form of credit” is a thing of value only if it is a credit for playing at a game for which there would otherwise be a charge. That is correct but not sufficient: bowling or arcade games also normally cost money but neither is what is meant by “privilege to play at a game or scheme without charge.” As described in this section, that privilege should be understood as a free substitute for “consideration” in a game that also has both “chance” and “prize.”

<sup>7</sup> Images from eBay auctions

In my opinion, and to directly answer Director Trujillo’s question from the August 9, 2018 meeting,<sup>8</sup> such free play tokens and the like are what the Washington legislature intended by the statutory term “extension of a privilege of playing at a game or scheme without charge.”<sup>9</sup>

In a casino, free play tokens, vouchers or credits have no pecuniary value by themselves and may not be redeemed for money. However, the privilege to play a gambling game “without charge” yet have the right to win money *as if a wager had been placed* has a calculable and non-zero *theoretical or expected value* (EV).

Those outside the gambling industry may not be familiar with the concept of EV so I provide a brief overview. All wagers have an “expected value” which is the sum of each possible outcome multiplied by its probability. The EV of a wager is related to its “house edge,” and for slot machine games, to the “return to player” percentage or RTP. The EV of a \$10 roulette wager on “red” is about \$9.47. If the player actually bets \$10, this expected \$9.47 represents a theoretical loss of \$0.53. Similarly, the EV of \$10 wagered in a slot machine with a 95% RTP is \$9.50.

If a player is given a free bet token for a \$10 roulette red bet, the value of that token is still \$9.47. In other words, the “privilege” to make a \$10 roulette bet “without charge” is worth an average of \$9.47. This is why free bet tokens are things of value. Similarly, for a slot machine with a 95% RTP, \$10 in free play for that slot machine game has an EV of \$9.50. Thus the privilege to wager \$10 on roulette or slot machines “without charge” is a thing of value even though the privilege cannot be redeemed for money. The free wager may win or lose, but the privilege to make that wager without charge is itself a “thing of value” because it *could* win.

### **“Extension” Does Not Mean “Prolong”**

The 9<sup>th</sup> Circuit’s holding that a gameplay-prolonging virtual game credit is a “thing of value,” combined with the unstated position that “game or scheme” can be any game whatsoever, means any such in-game credit can legally satisfy both the prize *and* consideration elements of gambling – even when the credits do not exist outside the game itself and the game never returns anything to the player. This leads to nonsensical outcomes by expanding the scope of gambling in Washington to include:

1. Any video arcade game where players can win extra credits via some element of chance. This includes many coin-operated arcade games such as Ms. Pac Man or Asteroids, even when set to free play mode, since players can win game-prolonging extra credits or extra lives and many game behaviors are random.
2. Any board game involving both play money and an element of chance, such as dice, if that play money can be won during the game and prolongs gameplay. Board games such as Monopoly fall into this category.

---

<sup>8</sup> “Can you explain why the legislature would write “without charge,” what that means?”

<https://www.wsgc.wa.gov/sites/default/files/public/news/big-fish/8-9-18-BigFishPetitionTranscript.pdf>, at 1:43:16

<sup>9</sup> The prior statutory definition of gambling, which appears to be from 1909, uses the phrase “money or property or any representative of either.” Free bet tokens arguably did not meet that prior definition but they clearly meet the current one. I cannot think of another reason why lawmakers would have added the language if not to reflect free bets tokens and other casino equivalents.

- Any chance-based casino game simulation using free and non-redeemable play credits, whether digital or otherwise, because the credits used to play the game can also be won and thereby prolong play.

This last example is personally relevant. I invented Bad Beat Blackjack, a casino game approved by the Commission that has been played in Washington since 2009. There is a playable demo of this game using virtual game credits on the Olympian Gaming website.<sup>10</sup> Depicted in the screenshot below are a main wager of \$100, a Bad Beat Blackjack wager of \$25, and a player’s bankroll of \$2,025 in the lower right. The virtual game credits, called “chips” in this demo, can neither be purchased nor redeemed for money. These chips are created on demand by the demo software: if a visitor to my website wants to prolong play, he or she can click the message directly beneath the bankroll that reads “CLICK HERE TO GET \$500 MORE CHIPS.”



Olympian Gaming holds a license from the Commission to distribute gambling games but not to operate them, and in any event online gambling is illegal in Washington. I recently renewed the license for Olympian Gaming and re-agreed to the Oath of Application which includes the following language: “I understand that untruthful, misleading, or incomplete answers whether through misrepresentation, concealment, inadvertence, or mistake, are cause for suspension or

<sup>10</sup> <https://olympiangaming.com/bad-beat-blackjack/>

revocation of any gambling license(s) currently held, or denial of any future applications for a new license. **I understand that I am responsible to know and comply with all rules and laws, RCW 9.46 and WAC 230**” emphasis added. If the entirely free online casino game simulations on the Olympian Gaming website are “gambling” because the virtual credits created by my website are “things of value” then (a) Olympian Gaming’s license may be at risk and (b) I may be personally liable for criminal prosecution.<sup>11</sup> To be blunt, that would be a ridiculous outcome. Therefore, the 9<sup>th</sup> Circuit interpretation cannot be correct.

Additionally, the interpretation that a virtual game credit is a “thing of value” has nonsensical financial implications. If a virtual game credit that can be created on demand by software is a “thing of value,” what is that value? How much are the \$500 in free chips created by my demo worth? Gambling winnings are taxable: does winning a virtual wager with those game credits invoke tax reporting consequences? It would be ridiculous to suggest that the free chips created by Olympian Gaming or by Big Fish Casino software would have an impact on the player’s net worth or income tax – or that Olympian Gaming or Big Fish Casino should be able to deduct the “value” of the virtual game credits created by its software. This is because, in truth, there is no value to those virtual game credits. They are created freely by game software and have no financial impact to either the player or the operator. In contrast, there are very real operational and tax implications of actual casino free play that, as described above, affords the player a chance to win real money.<sup>12</sup>

For these reasons, the Commission should reject “prolong” as the meaning of “extension” in the definition of “thing of value,” and should further acknowledge that “privilege of playing at a game or scheme” does not apply to any of the non-wagering games described in this section.

### **Sidebar: Addiction, Video Games, and Public Policy**

Many of the submissions to the Commission on this matter have focused on the issue of addiction and public policy. Addiction mitigation is an important public policy topic, and the Commission’s number one goal in its 2018-2022 strategic plan is to increase its role in helping people who are suffering from gambling disorders.<sup>13</sup>

In her comments to this Commission, Dr. Schüll writes “for regular players of **slot machines and mobile games alike** (and most certainly for **addicts** of those games), *winning money is not the point*; rather, the point is *continuing to play*,” italics in original, boldface added.<sup>14</sup> With video games, the point has always been continuing to play. This was true for video arcade game players in the 1980s just as it is true today for players of console, desktop or mobile games. Winning money in video games was never the point because *winning money was never a possibility*.

---

<sup>11</sup> To this point, I incorporate by reference the comments made by Big Fish Games in its petition at paragraph 23.

<sup>12</sup> “The Free-Play Tax Deduction Debate: How Academic Research Can Help”, Lucas A.F. & Spilde, K.A. (2017), *UNLV Gaming Research & Review Journal*, 21(1), 25-42.

<https://pdfs.semanticscholar.org/8c88/7c256f7126119a95fc913667599620574b4e.pdf>.

<sup>13</sup> [https://www.wsgc.wa.gov/sites/default/files/public/reports-publications/Strategic%20Plan%202018-2022\\_FF.pdf](https://www.wsgc.wa.gov/sites/default/files/public/reports-publications/Strategic%20Plan%202018-2022_FF.pdf)

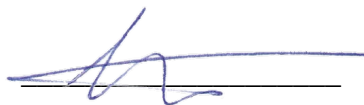
<sup>14</sup> <https://www.wsgc.wa.gov/sites/default/files/public/news/big-fish/Dr.%20Schull%20Comments.pdf>

Dr. Schüll appears to be conflating the question of what games may be “addictive” with what games satisfy the statutory definition of “gambling.” However, Vice-Chair Patterson correctly noted that “there is a difference between gambling addiction and gaming addiction,”<sup>15</sup> and Director Trujillo noted that Dr. Schüll’s research “applies to definitely things that are not gambling as well as things that are gambling.”<sup>16</sup> Thus, I recommend that the Commission continue to focus on the narrow question set forth in the Big Fish Petition that I have discussed above, and decline to conflate that analysis with matters of broader public policy.<sup>17</sup>

### **Conclusion**

For the reasons set forth above, the statutory definition of “gambling” in RCW 9.46 does not properly include (a) paying to play a video game of variable duration with no possibility to win, (b) playing Monopoly or poker with play money, and (c) playing a simulated casino computer game without money at all. However, adopting the 9<sup>th</sup> Circuit’s interpretation of Washington State law forces the opposite conclusions. As a Commission licensee whose business in Washington State would be upended by that interpretation, I support the petition from Big Fish Games and respectfully request that the Commission issue a declaratory order that “extension” in RCW 9.46.0285 should be construed to mean “proffer” rather than “prolong,” and further that virtual game credits that only prolong the duration of play and have no expected value are not “things of value” under RCW 9.46.0285.

Respectfully Submitted,



Stacy Friedman  
President,  
Olympian Gaming, LLC

---

<sup>15</sup> <https://www.wsgc.wa.gov/sites/default/files/public/news/big-fish/8-9-18-BigFishPetitionTranscript.pdf>, at 2:00:01

<sup>16</sup> *Id.*, at 2:00:24

<sup>17</sup> In my opinion, any future public policy on video game regulation will need to balance the State’s interest in mitigating social harms from problem behavior with the State’s *disinterest* in restricting individual liberty such as the freedom to spend time or money on video games or to start a video game company. Consideration should be given to industry monetization models such as virtual credit purchases or loot boxes, but defining the contours of any future policy or regulatory oversight is beyond the scope of this letter.



September 26, 2018

Washington State Gambling Commission  
4565 7th Avenue S.E.  
Lacey, WA 98503

Dear Commissioners:

The Jamestown Tribe and 7 Cedars Casino submits this letter in support of the petition for a declaratory order by Big Fish Games.

The petition presents an important opportunity for the Commission to confirm that online social games like those at issue in the petition do not constitute gambling under Washington law, as the Commission indicated previously in its 2014 brochure *Online Social Gaming: When is it legal? What to Consider, Let's play a game*. That brochure set forth an understanding of state gambling law that is consistent with the widespread understanding of the gaming community -- that a game in which a player cannot win money or anything else of real-world value is not gambling and not subject to the Commission's regulation or law enforcement jurisdiction.

How the Commission resolves the petition could have a significant impact on Washington State Tribes and their businesses. Rejection of the petition would disrupt longstanding law, intrude on the sovereign rights of Washington Tribes, and could exceed state authority under the IGRA and the tribal-state compacts. A rejection would create uncertainty that would be harmful to continued economic development that is important to the State and Tribes.

By contrast, issuance of the requested declaratory order would be consistent with the longstanding interpretation of Washington state gambling law by players, game owners, and regulators alike. It would support the strong economic interests of the State, its residents, and Washington Tribes.

We urge the Commission to not stray from the statute and to confirm the law as it has stood for many years.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jerry Allen", with a long horizontal flourish extending to the right.

Jerry Allen  
CEO

7 Cedars Casino & Resort Properties

**From:** dan.heisel@watech.wa.gov  
**To:** [Rules Coordinator \(GMB\)](#)  
**Subject:** Request for Public Comment Submission from wsgc.wa.gov  
**Date:** Wednesday, September 19, 2018 8:26:30 PM

---

Submitted on Wednesday, September 19, 2018 - 8:26pm

Submitted by anonymous user: 66.87.139.108

Submitted values are:

Select a Topic: Big Fish Games, Inc. Petition for Declaratory Order

Name: Lynn Franklin

Organization: Self

Comments: I strongly disagree with the courts interpretation that virtual chips are a "thing of value" . At no time is there an expectation of any return value. Personally, I have 40 million in PokerStars virtual chips. I've never paid for a single virtual chip and I have no expectation of gaining any value from these chips. Should I lose all 40 million, PokerStars would re-establish a small starter amount in my account free of charge. The only reason anyone would spend (lose?) money on these sites is if they were too impatient to wait for the site to re-establish their account. This is not an expectation of value, and is a totally unnecessary expense taken voluntarily by the individual paying for the chips. It is profoundly unfair to punish all virtual chip players because of one person's impatience.

The results of this submission may be viewed at:

<https://www.wsgc.wa.gov/node/19/submission/450>

**From:** dan.heisel@watech.wa.gov  
**To:** [Rules Coordinator \(GMB\)](#)  
**Subject:** Request for Public Comment Submission from wsgc.wa.gov  
**Date:** Sunday, September 30, 2018 2:32:53 PM

---

Submitted on Sunday, September 30, 2018 - 2:32pm

Submitted by anonymous user: 207.118.110.194

Submitted values are:

Select a Topic: Big Fish Games, Inc. Petition for Declaratory Order

Name: Deb Pittack

Organization:

Comments: Big Fish is an amazing avenue for those of us who love to play these types of games! Please rule in favor of them. I have been a player with them for years. I hope you Do the right thing and I'll th y are NOT a gambling facility. When you DO figure it out, please make it fast so this of us who are loyal to them and live in Washington State. Thank you.

The results of this submission may be viewed at:

<https://www.wsgc.wa.gov/node/19/submission/462>

**From:** dan.heisel@watech.wa.gov  
**To:** [Rules Coordinator \(GMB\)](#)  
**Subject:** Request for Public Comment Submission from wsgc.wa.gov  
**Date:** Saturday, September 29, 2018 9:11:06 AM

---

Submitted on Saturday, September 29, 2018 - 9:11am

Submitted by anonymous user: 73.59.41.247

Submitted values are:

Select a Topic: Big Fish Games, Inc. Petition for Declaratory Order

Name: Kitty Towns

Organization:

Comments: I get fun & social interaction through playing games at BIG Fish casinos. Their clubs allow communication with other members & we feel like a family supporting & cheering each other on.

The results of this submission may be viewed at:

<https://www.wsgc.wa.gov/node/19/submission/460>

JULY AND AUGUST COMMISSION  
MEETING TRANSCRIPTS

BIG FISH GAMES, INC.

PETITION FOR DECLARATORY ORDER

**July 12, 2018**  
**Washington State Gambling Commission Meeting Transcript for**  
**Big Fish Games, Inc. Petition for Declaratory Order**

**0:31:43 MS:** All right, thank you, Haylee. The next item we have on our agenda is a Petition for Declaratory Order for Big Fish Casino, and we will have Brian Considine, Legal and Legislative Manager representing the agency, and Beth Brinkmann, Counsel for Petitioner. Good afternoon.

**0:32:14 MS:** Good afternoon.

[pause]

[background conversation]

**0:32:26 Brian Considine:** Thank you, Mr Chair, members of the commission, Brian Considine, your Legal and Legislative Manager. Before you, I believe is Tab 9, is a Petition for Declaratory Order from Big Fish Games Incorporated. The petition was received by the Gambling Commission on July 3rd of last week. Ms. Brinkmann is next to me, she is counsel on behalf of the petitioner, Big Fish Games Inc. I will just give a quick brief rundown of how this stands procedurally, and then I will turn it over to her to give a short summary of her client's petition. But as you know, we've talked about the Kater v. Churchill Downs case where the Ninth Circuit interpreted Washington state law and determined that in that case, based on the procedural posture, and just as a reminder, it was a motion dismissed, where basically in the Federal Court...

**0:33:20 BC:** The Federal Court was supposed to take the allegations as true, and if whether or not the allegations by law were gambling. The Federal Trial Court in Seattle said, "Nope, it's not gambling." And then the Ninth Circuit as we've talked about several times said, "We disagree, we think based on the allegations that it is gambling." So there hasn't been a trial, there hasn't been a fact finding by a court in that Kater v. Churchill Downs.

**0:33:43 BC:** If you'll recall, the defendant in that case, Churchill Downs asked for the Ninth Circuit to have a larger panel of judges review it. En Banc Review is what it's called. And just I think two weeks ago, the Court denied that request and issued a mandate, basically a final order, affirming their decision and so now that case is remanded back to the Federal District Court in Seattle. Technically, there's 90 days for them to file a petition with the Supreme Court and ask for the US Supreme Court to review it, but as of right now it's with Federal Court. I do not know exactly what the litigation posture of that is, but Mr. Tievsky is counsel for Ms. Kater in that case. He is here, and my understanding is that he'll want to have some public comment, so if you have any questions about that, you'll be able to ask him.

**0:34:37 Julia Patterson, Vice-Chair:** I have a question, Mr. Chair.

**0:34:40 MS:** Yes.

**0:34:41 JV:** So, I'm not an attorney, Brian. Essentially, what I think I heard you say is that the

case isn't over yet?

**0:34:47 BC:** That's a great summary, Commissioner Patterson. Yes, [laughter] the case is not over yet. Thank you for always reminding me that I sometimes do lawyer speak. So my apologies for that. Yes, the case is not over yet.

**0:34:58 JV:** Thank you. [chuckle]

**0:35:00 BC:** Nope. My apologies. I know, I'm still learning that part of it. Anyways...

**0:35:06 JV:** I might have your job now, I think.

**0:35:08 BC:** It is. [laughter] You know, you're right. Very true, very true. I put on the attorney hat more than I did the... Yes. Anyways yes, not over yet, back to court. And this petition is now here before you. Just as a reminder, there are at least four other cases where this issue has been raised. Also, none of those cases are final either, they're still in the process of figuring that out. You have the Administrative Procedures Act, and our rule basically say that there are specific things that should happen when the commission receives a Petition for Declaratory Order like this. One of them is within 15 days to give notice to, "all persons whom notice is required by law and may give notice to any other persons it deems desirable." I sent an email out to all the parties in the cases that this issue has come up in.

**0:36:02 BC:** So in both the Kater and Churchill Downs case and the other four cases, I let all of the attorneys know that this was happening, which is probably why we have such a great crowd today, and we tried to let other stakeholders who usually want to know these things as possible. I expect that we will post this information on our website next week as well, and along with any comments or any other letters that we receive on this. Along with the petition, you should have received today, three letters. There are two letters in support of the petition and there is one letter opposing the petition and asserting that they are a necessary party to this petition, and they do not consent. And I say that to kind of preface what the procedural posture is for you today moving forward, but...

**0:36:55 JV:** Mr. Chair?

**0:36:56 MS:** Yup.

**0:37:00 JV:** So Brian, if the case isn't over yet and we make some sort of a decision here today, would our decision potentially influence the way the case is ultimately decided?

**0:37:13 BC:** Yes, Commissioner Patterson, it could, which is why... Ms. Brinkmann can speak to why they brought the petition, but from the legal perspective, yes, the whole purpose of a declaratory order which this commission, I think, most recently did in the last few years with Microsoft is, this is an order that does have precedential value, is something that a state court would take into consideration because you are the folks that get to interpret our state laws within the capacity of how your authority is. So if you were to issue a declaratory order, quite frankly, one way or the other, yes, it is gambling, no it is not gambling, that is something that any party

could take to a court and use as a reason to a court go one way or the other. Yes, it would provide the clarification that they believe is potentially lacking based on the Ninth Circuit decision. And also, Ninth Circuit decision isn't necessarily... Doesn't bind state courts, so your declaratory order would be something that someone could take into state court.

**0:38:23 BC:** Any additional questions? All right. So just quickly, the posture to set it up for you and then I'll give Ms. Brinkmann the microphone, is within 30 days after receiving this petition, which is approximately on or about August 1st, but today will definitely do. You're asked to enter an order declaring the applicability of the statute rule order essentially, is it gambling, is it not gambling, answering their question, and clearly it can be more sophisticated than that, but that's the basic gist of it. Set the matter for a specified proceedings to be held no more than 90 days after receipt of the petition. So you could set it for our August commission meeting or September commission meeting, so that you have more time, staff have more time to review this, and to come up with possibilities, what your options are. Also, you can set a specified time in which you'll enter a declaratory order saying, "We'll take this matter under consideration and by our September commission meeting or by September 31st, or whatever time you choose, we will have a declaratory order on this." Or you can decline to enter a declaratory order and give good reason for that.

**0:39:33 BC:** The time limits, for the 90 days, you also can extend. So right now I think the 90th day is on or about October 1st. So let's say we set this in August and you wanna take a few more months to figure this out because we need more time, you need more time, you need more information, you would be able to go on the record, so long as you had good cause, you could push it out past those 90 days. The one letter that you've received from Mr. Tievsky relates to the one part that says, "An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding."

**0:40:14 BC:** You do not need to reach that decision today, you can if you want, but you don't have to. That is just one more thing that will be... That's gonna come before you for consideration and Mr. Tievsky, when there's public comment, I'm sure can come up and explain that a little bit more. So basically, the gist of it is you don't have to do anything today, you can reset this for our August or September meetings but you're also... You're perfectly able to make a decision today if you so choose. Are there any questions about the procedure or process? All right. I will turn it over to Ms. Brinkmann.

**0:40:50 Beth Brinkmann:** Thank you so much, and may it please the commission, we very much appreciate the opportunity to kinda walk through our petition. My name's Beth Brinkmann, I'm here on behalf of the petitioner, Big Fish Games. I'd like to give a summary of the petition, I think, and walk through and I'd also like to take a couple of minutes to then after that to address the letter that was filed yesterday. So the questions that you asked, Commissioner, are really, I think, very significant to understand how all of this fits together. And one thing that's really important to understand that this is a question of state law. So that litigation that's been referenced is in Federal Court, and those Federal Courts look to what the state courts, how they would interpret it.



**0:41:31 BB:** So that's, I think, part of how it interacts, and we're here, Big Fish Games, as the owner of Big Fish Casino, to have a declaratory order about our games. So we can resolve uncertainty that was created by that opinion. And that opinion didn't exactly decide this issue, so I can explain that too. But a declaratory order here today is about the responsibility that the state legislature has charged you all with as a law enforcement agency to apply the statute to these games. So that's all that's before you in this declaratory order. So our petition is to ask for a declaratory order that confirms that Big Fish Games, Casino Games are not gambling because their virtual tokens cannot be redeemed for real money, they have no real world value and their terms of use expressly prohibit the transfer or resale for commercial gain.

**0:42:32 BB:** And I know one thing that has been looked at in the state over the past year, other situations like skins gambling that involves a market where there actually is monetary real world value. That's not this situation. That's expressly prohibited by the terms of use here. So that's a different situation. So the declaratory order we're asking for is only about the Big Fish Casino Games, not about anything broader that might... Because I know there had been some legislative discussion of that earlier in the year. And the order that we're requesting is consistent with the long-standing and common understanding of owners, players and with guidance publications from the commission since 2014. There was a brochure that's attached to the declaration, one of the declarations in support, and it makes clear that these kinds of social games, no real world value for any kind of virtual tokens, do not constitute gambling. It doesn't include the prize factor.

**0:43:38 BB:** That understanding... So we looked back at that and we tried in the petition to kind of just give some highlights of how that is clearly the appropriate understanding of the statute, all indicators of how you would interpret a state statute support that reading. We've gone through some of these principles of statutory construction, what they're called, they use Latin names all the time to kind of... It's like your grammar class back in high school or something, about how you look at a sentence and how you read it. And when they talk about thing of value it talks about property, money, things that are monetized, that have real world value, not something that was just a virtual token that doesn't have any real world value.

**0:44:20 BB:** We also looked at the purpose of the law and the legislature was very clear when they enacted the Gambling Act that this wasn't to outlaw games for amusement, that type of thing, where it wasn't a professionally for profit enterprise. And also the history, as I mentioned, there's the brochure that was provided as guidance and the brochure talks about explicitly giving guidance to both players and owners. And that was published back in 2014. Also I think it's consistent with the enforcement actions of the agency. There's been no enforcement actions over the years. And so there's just been this common understanding by anyone that if you look at the guidance that was presented, that none of these factors that would make it gambling are met.

**0:45:12 BB:** So it's very important to Big Fish Games as a business to resolve the uncertainty that was created by the Court of Appeals case that was referenced. And that didn't decide this exact issue because what that Court of Appeals, as Mr. Considine very well explained, it was at this preliminary phase so they were just looking at what was alleged in the complaint. And they read it to say that in order to play Big Fish Casino Games you had to pay real money after you first signed on, after that you had to pay real money to get virtual chips. So those chips had to be

worth real money, but that's not the fact. There's regular repeated inner rails where additional chips are automatically provided, and there's a declaration, a valid declaration in support of our petition that makes that clear.

**0:46:05 BB:** So the Court of Appeals did not decide the facts of this where you don't have to pay to play, you get these virtual tokens all of the time. But it's certainly created confusion. And even to hear people, I think, Commissioner Patterson's questions. Everything's, "Oh, the Ninth Circuit decided this. Oh, we'd be reversing it." No, they were looking at different kinds of facts, allegations saying, "Well, you have to pay this game, so this is... Have value." That's not the facts, our declaration supports it. And that uncertainty though, it's important for us, for our business to have resolved. And one of the things too is we were talking about is I think it's important because that is the state's job to decide what state law does. And Federal Courts are supposed to look to state law. So here what happened is, the Court of Appeals saw the brochure because we had submitted it, and they said that was too informal. And then they went off and said, "Well, this is what we think gambling means, but in a much more generic sense."

**0:47:06 BB:** So we would request a declaratory order because we think that would be the formal action that would be clear and reinforce the common understanding that has always been, that this does not constitute gambling. So that's how I think the procedural posture plays at. And we do think it's part of that, what the legislator has tasked the commission with as a law enforcement agency to apply that law here. I wanted to address briefly the letter that was filed yesterday that Mr. Considine mentioned because it suggests that the plaintiff from that other suit is a necessary party whose rights would be substantially prejudiced in a way that they can prevent this proceeding and that's under WAC 23-17180. But that is not the purpose nor the scope of that provision in the regulation. Just for a couple things, I wanna say a couple factual things and then get to the law. This isn't a situation where Big Fish Games petitioner here is a party in that case. In fact, the attorney who filed the letter in their counsel opposed participation in that case, Big Fish Games being substituted.

**0:48:23 BB:** So it's not that we're a party in that case. But regardless of that, and really getting to the law, more importantly, the letter does two things. One, it talks about the standard for Rule 19. That's different from WAC 230-17-180. Rule 19 is a rule about when a court has to join a party in a court action. The WAC provision is about when this necessary party kicks in. They use different language. And just to be clear for rule... They're not a party that's necessary under either standard, but I just wanna make clear what the two standards are because they cite a case. So Rule 19 says if you have an interest relating to the subject of the action, and that might be impeded or impaired, you should be joined. That's not what WAC says. WAC says that it's only if you have a right that will be substantially prejudiced. So the case they cite is a Rule 19 case, but even under that, it's much more of a direct interest.

**0:49:29 BC:** That was the case where a prisoner wanted some records from the Department of Corrections, and Department of Corrections went into court to get an order against that. So that was the situation where they said, "Well there's a right, there's something connected there." Under the WAC provision, we went and looked to see what other kind of agencies, how they treat this necessary joinder, because it's also in the general administrator provision. And when you look at that, the right that has to be substantially impaired, is much more kin to like a

contractual right. There is a... And again, we were looking since yesterday. There's this case that where it went to the public employment agency, the public employment commission, and it was a labor union trying to get a determination about whether a collective bargaining agreement covered them or not. And the commission said, "No, the other party to that agreement, that contract was a necessary party. They had a right there."

**0:50:30 BC:** So that is a much higher standard than Rule 19, but even under Rule 19, this is just an interest in how the law is applied. What you decide doesn't adjudicate any of these other cases. It's state determining what state law means. And if you took that... I realize I just have a minute left, but if you take the broad breadth of the interest that anybody who had a case pending, who had an interest in what the state law meant, that would mean any member of the purported class could be a necessary party, any of the plaintiffs in the other cases, and if I could just finish my sentence, and also, I mean, even any player of a game might say, "I have an interest in how this law is applied."

**0:51:17 BB:** But that's not what that necessary party provision, you have to have a right that's at stake. And it's good it's a high standard because that would be really exceptional to prevent you from exercising your authority that the legislature gave you. So we would ask that you enter the declaratory order for Big Fish Games Casino so this uncertainty about their games is resolved. And we really appreciate it. We also obviously ask any opportunity if we can provide you any kind of further information, we'd be happy to do that.

**0:51:51 MS:** Commissioner Troyer.

0:51:55 Ed Troyer, Commissioner: So this is all really new to us. I know it's something that we're gonna have to deal with as the different laws are changing around, let it be sports betting or free betting. Let me ask you a scenario so I can get this in my head. If a 14 or 15-year-old kid signs on to play a free game, and I'm only gonna use Frogger because that already exists, where you try and cross the road with frogs and when they all get hit by cars, the game's over, right? What if you could buy more frogs? Is that legal? A 15-year-old kid's on there and his 30 frogs get hit by a car, can he go on and spend \$20 and buy another 25 frogs and continue playing?

**0:52:35 BB:** I think that the question is whether it fits the gambling provision. I mean, people pay to watch movies and people pay for all kinds of amusements. So we know that paying...

**0:52:44 EC:** Right, but they're paying to gamble. When you're talking about playing Big Fish Poker, they're playing to gamble. What about the problem gambler that's sitting at home and how much money could somebody spend on playing Big Fish Poker? How much money could somebody spend? \$500 a month in buying free chips? Is that possible?

**0:53:06 BB:** If that's the kind of amusement they want. What here is the question though is whether there is the consideration, chance and prize, because there are many types of any kind of video game, there's such a swath of video games that have virtual items that can be purchased. It's in the world of amusement. It can't be monetized. I think the skins gambling is a very different scenario from what I looked at from the legislative efforts there. It has to do with this whole market where it became real money and that's the line. That is...

**0:53:41 EC:** And we're aware of that, we've really taken a look at that. But on the back end of what you're doing, you're still gambling. Even though it's virtual nothing, you're still playing against other people and gambling.

**0:53:51 BB:** Well, if you look at...

**0:53:53 EC:** You basically have created a system where there's no chance to win. You can spend money as much as up to \$1,000 a month on free chips, and there's no way you're getting any of it back. Is that right? Am I wrong?

**0:54:04 BB:** But it's not gambling. The gambling isn't... If you look at the statutory provision, it's not how much money you could spend on an amusement, to be regulated as gambling you look at that definition of course, of the gambling, but then it refers you to thing of value. And when you look at thing of value, it talks about property, money, or extension of play without charge, it's something that has a real world value. That's what the gambling structure, because this provision would criminalize these things. That there's been this reliance for years that everyone understands that this isn't something that is subject, because this is the same definition that applies to all of the provisions in the Gambling Act that would have...

**0:54:47 EC:** But I'm understanding those answers, but what you're talking about, possibly, and I don't know if it's right, it'd still have real world consequences with people with gambling issues. It could have real world large amounts of money going just in one direction. I think that we need to do a lot more education on this and learn more about it.

**0:55:08 BB:** All we're asking for is a declaratory order of the current statute, and what the words of that statute mean and the words of that statute is very clear. It has to have that kind of real world value. There may be, certainly, other social issues. I know that the Commission has given great concern to addiction and all kinds of social issues that are very important. But the question here is whether this is gambling and a thing of value under the words of the statute, and it's not. I mean, you look at the purpose and I think the common understanding is really well reflected in that brochure when you talk to the idea of these virtual items that cannot be monetized in the real world. I mean, there were... The problems you suggest are just other problems, they're not regulating it as gambling and subjecting it to the criminal and other provisions that would arise if that were really what the breadth of that term meant.

**0:56:02 EC:** What would happen if this commission, I'm not saying it is, if we studied it and did a declaration that we believe that it is gambling?

**0:56:11 BB:** Then that would change, we believe, the meaning of what the statute says under the terms of what gambling and a thing of value is. So, we're just asking...

**0:56:20 EC:** But this is probably something the court should figure out.

**0:56:23 BB:** But you are charged as a law enforcement agency to...

**0:56:25 EC:** Well that's... I'm only saying maybe you should be careful what you ask for, because if it goes the other way, I don't think it's gonna do anybody any good. And I myself would like to learn a lot more about this before we do anything. I'd like to take a couple of months and educate myself more before we went one way or another on something that's this big.

**0:56:42 MS:** Okay. Commissioner Stearns?

[background conversation]

0:56:54 Chris Stearns, Commissioner: Hello, okay. [laughter] Wow. Thank you. Can you just maybe talk a little bit about how long games like this have been in existence, and have any other jurisdictions had any issues with this at all?

**0:57:13 BB:** I have to say, can't go back. I just know it's been for years. The brochure and the hearing before the commission was back in 2013, so five years ago these social gamings were already out there. There's this whole social component with friends and all kinds of things. So that was a hearing back in 2013 and they were well established and it wasn't just Big Fish Casino Games, Candy Crush, there were lots of other games that were there. And I think the commission had a great hearing about it and realized amusement games, that's one thing the legislature didn't need to... Gambling and where you're trying to get more, you can try and do this to get more real money and all, that's gambling, that's not this case. You might spend a lot, but you're not gambling, trying to get more money, something of value.

**0:57:52 BB:** That's what gambling is. So, at least since 2013, and I can tell you there have been several cases having to do with other states that have comparable statutes. None of them have found this gambling. We didn't go into all of that because when the Ninth Circuit looked at this, each statute is worded a little differently, but all of them when you get down to it, they come back to this thing, "Is this about real world, like you're doing this to try and win more money? No." Then that's not gambling.

**0:58:21 BB:** I'm over simplifying, I'm moving out of my lawyer language there but... So these other states have also said that it's not. I just want to be fair that they're slightly differently worded statutes, but it's the question about whether it's gambling, not whether there are other issues that wanna be addressed, a policy or whatever, but it doesn't constitute gambling. So they've been around a long time, they haven't been viewed as gambling. And I have to say when I saw the brochure, when I was looking at this brochure, was quite good because what it actually did was, it cited the statute, it talked about what exactly could get you, raise questions for you, because it was... The thing that I think is so funny about the federal court, they said it was too informal, and yet, it did exactly what you wanted it to do. You were talking to everyday people to understand this and it wasn't written in legalese. So they talk about the three elements and they explain it's just not a prize when you can't resell or redeem anything for the item for real money or a prize.

**0:59:28 BB:** Down there on it, it has a little date that says 3/14. So I assume that was issued in March 2014. It's GC5-027, and that would have been less than a year after the hearings, so it's

been years and years. And my client certainly, and other owners of games rely on it, our employees that we employ in the state, certainly players, and the law enforcement approach that the commission has taken consistent with this. And again, I think that's different than the other areas where you have looked, with skin gambling, where it really is about trying to get and wager for real money.

**1:00:07 MS:** Are there any other questions for Ms. Brinkmann? Senator?

**1:00:20 S?:** I assume you are aware that we did have loot box legislation in front of the legislature this last session.

**1:00:25 BB:** Mm-hmm.

**1:00:25 S?:** And so, the legislature has been looking at this issue, not taken action, but you're aware of it, right?

**1:00:31 BB:** Yes, but I would say this is a different issue, that's what I... Those issues having to do with something that can ultimately be monetized... I mean, here the terms of use expressly and unequivocally prohibit any type of transfer or exchange for financial gain. And I think these social games generally do. I can't represent that, they're not my client, but that's different than these situations where I think there was a concern about facilitating the transferability of items, for example, that they can be turned into real money. That is not this situation. And we do have a declaration from the valid declaration that attest to that.

**1:01:16 S?:** And for my information, I would like to know what other states. You may say other states have looked at this issue and taken action. What other states?

**1:01:24 BB:** I don't... There are a couple of District Court Act cases that I don't have before me, but we can certainly provide you with that.

**1:01:31 S?:** Good. I'd like to know what other states have taken any kind of action on this as a legislator.

**1:01:38 BB:** Sure.

**1:01:39 S?:** And I'm a little confused because when I read the other letter here that you've made reference to, I see that the client lost money, feels that she lost money. What is your explanation of that? If you read her letter she says she was unable to recover the thousands of dollars she lost.

**1:02:01 BB:** I think that is allegations and actually, first, I'd say that highlights exactly why whatever this declaratory order doesn't resolve that, because that's what would be adjudicated before the court. Also I think, although certainly an interpretation of state law would be highly relevant. Someone might feel they lost money because they went to a... They paid a lot of money to go to a big, big boxing match, and somebody got knocked out in a minute. Did they really get what they paid for? They could feel that they got gypped out of the \$1,000 they paid for the seat. You pay for amusement, you might not think that you get what you paid for, but that's very

differently than gambling where under the statutory definition and what law enforcement regulates is, you have something of consideration and you're paying for this chance and then you're hoping to get something of value that's greater than that in the real world monetized.

**1:02:54 BB:** That's gambling, that's not... That's different than being, perhaps, dissatisfied with the amusement you got. But that's very important, I think, because the reach of the law enforcement of gambling in the state involves very significant criminal penalties. And so, I do think that the legislature was careful when they did that and said, "This is to go to that kind of gambling, it's not for amusements."

**1:03:20 S?:** Of course, I think you recognize that we're living in a very interesting age. [chuckle]

**1:03:25 BB:** Yes.

**1:03:29 S?:** The statutes... We're living in an age where there's an awful lot of new kinds of electronic interaction, and that's probably what's happening with loot boxes, [chuckle] and so, it's a really... I don't know... Well, I'll just leave it at that.

**1:03:46 BB:** I think we very much respect the fact that there are a lot of other policy issues and all about things that are down the road, but right now, this is not skins, this is not loot boxes, this is this very long standing group of social games that involve virtual tokens that have no real world value. That's all we're asking for. It's a very... And it is just adhering to the law, adhering to the reliance that has been for at least five years, probably much longer than that.

**1:04:20 S?:** But it's still poker on the back end. You're spending money to play poker, and poker is gambling. So that's why I think we need to take a look at this more.

**1:04:31 BB:** But poker is not gambling if it's not for real money.

**1:04:35 S?:** It is, if somebody's losing thousands of dollars and it's causing problems and it's an issue. All of a sudden the socialness and the fun-ness comes out of it.

**1:04:45 BB:** That may be a different issue but it doesn't make it gambling. It's like candy themed games also that... People play the games for various... But nobody's walking away with real money.

**1:04:57 S?:** But it's not poker. That's known as gambling, you can go really gamble and get addicted to poker and you could probably get addicted to gambling.

**1:05:03 BB:** But you're not gambling to get any money.

**1:05:05 S?:** We can agree to disagree, but I'm just saying I'd like to learn more about this.

**1:05:09 BB:** I totally respect that. I would just...

**1:05:11 S?:** Before somebody can talk me into saying that people... You've created a game where

you just continually pay money and never get it back to play poker, and you have the ability to spend a \$1,000 a month doing it.

**1:05:22 S?:** That's what Amazon.com is.

**1:05:24 BB:** Yeah. I definitely respect that. I just wouldn't... I guess the question is, it pre-decides the issue to call it gambling.

**1:05:29 S?:** You play poker on Amazon?

**1:05:31 S?:** Yeah. You spend money...

[overlapping conversation]

**1:05:33 S?:** And stuff comes to your porch.

[chuckle]

**1:05:33 MS:** We seem to be re-hashing a little bit here, so Brian, you have a comment or... So my comment just for your education, I guess is, certainly four of the five of the current commissioners have felt burned in the past, due to a lot of unintended consequences that have occurred when we've authorized something, when we've made a decision. So I think that we are going to generally be quite deliberate as we face issues like this. And I know that you have laid out the case and it's pretty clear cut in your mind, but as we deliberate these sorts of things, certainly in the last couple of years, we are a pretty deliberative body before we venture out into this fresh territory.

**1:06:43 BB:** We appreciate that. We think this is... Well, it is, it's maintaining the status quo that people have relied on. But we nonetheless absolutely appreciate it. And I have to say, I think that this is very impressive to have this kind of civic involvement and commission considering this. We appreciate that and we appreciate the quickness with which we were allowed to come and just present our petition. We do think it's confirming the status quo and that everybody has been relying on it for years here. But we very much respect that and do appreciate that and anything we can provide, we would be happy to do. We offered, we can demonstrate the game, whatever you might like.

**1:07:21 S?:** Mr. Commissioner, I'd like to make a motion.

[overlapping conversation]

**1:07:24 MS:** I'd like to have some public comments.

**1:07:25 S?:** Oh more... Oh, I thought I saw her put up the minute sign a while ago. [chuckle]

**1:07:31 MS:** No, I was just gonna remind... I believe there are other people here in the public who would like to speak to this. So thank you, and Brian, if you don't mind staying there just in



case we need you.

**1:07:41 BC:** Certainly, yup.

**1:07:43 MS:** Certainly, Cheryl Kater's representative is here, and I'd certainly... If that's you...

**1:07:51 S?:** It's me.

**1:07:51 MS:** I'd certainly allow you first. And then, before we get started, by show of hands are there other folks that would like to participate in public comments related to this topic? Okay. Oh, we've got one, all right, two, maybe? Okay.

**1:08:12 Alexander Tievsky:** I'd like to...

**1:08:13 MS:** Introduce yourself for the record please.

**1:08:15 AT:** My name is Alexander Tievsky, I'm counsel for Cheryl Kater. I'm at Edelson PC in Chicago. I'd like to thank the chair and the commissioners for allowing me to speak today. I do really appreciate it. I will try to keep my remarks very short. Commissioner Troyer, I think you had it exactly right. This is a big deal. We heard a lot about how, well, this isn't really about money, this is just fun games. Big Fish. So the reason we sued Churchill Downs is because they used to own Big Fish. Big Fish has since been sold to an Australian gambling machine manufacturer for \$950 million. My client, Ms. Kater, lost more than \$10,000 playing this game. I have another client Adrian Benson in Spokane who lost \$3,000 playing a similar game. These games are extremely addictive.

**1:09:10 AT:** If the commission is interested in learning more about the science behind it, there's an excellent book by Natasha Dow Schüll called *Addiction by Design*. It explains that people don't play, even slot machines where you can win money, they don't play them to win. They play them for the... They call it getting into the machine zone. It's the psychology of being addicted. And all of the things that the commission does to help mitigate those risks in the casinos of this state are just entirely absent from the unregulated, not even regulated as amusement games, the unregulated gambling games that they have here.

**1:09:54 AT:** As far as the arguments you heard a moment ago, this is not the first time those arguments have been made. Those arguments were made to the United States Court of Appeals for the Ninth Circuit, which disagreed. It also saw the law as very clear. It saw the law as very clear, saying, "Yes, this is in fact a gambling game." If the commission grants the petition that they ask for, I'm not gonna say that it's definitely going to cause my client to lose because obviously you know I'm a lawyer, I've got a hedge for everything, right. So I'll be able to make my argument to the court that, "Oh, you shouldn't listen to it." But at the end of the day, it will severely, severely impact her pending case.

**1:10:35 AT:** That's certainly why they're here asking for it. There were some technicalities discussed regarding who the defendant in the case is. The case, as Mr. Considine cogently explained, just got back to the trial court. So we haven't had a chance. You get a chance to amend

your complaint to add more parties. We haven't gotten any discovery, we haven't gotten any information from the defendants. We think it's likely that Big Fish Games Inc will be added as a defendant. Just haven't gotten there yet. As I said, this is still all going on. It's in the... Despite the fact that the case has been pending for years, it's still going on.

**1:11:17 AT:** And then the last thing regarding the ability of the commission to enter this declaratory ruling, there was a discussion of a... There was just two factors that say whether someone has to give consent before a ruling is issued. It's is there prejudice? Well there's prejudice here, she'd lose her case. And it's is she a necessary party? And there was some discussion of that being a high standard. The Washington Supreme Court hasn't said that, they said it's a low standard. It's might my client be affected by it? Is there a possibility? And I say, yeah, speaking very candidly, there's a very strong possibility that her case would be affected by a decision here and not that I don't trust this commission to do the right thing. Actually, I very much do, but just think it's in her best interest now respectively to decline to consent to that. And with that, I'm happy to answer any questions the commission has. I'm happy to submit more detailed written submission if the commission wants me to, happy to come back to another month.

**1:12:24 MS:** So yeah, I would certainly have expected for you to be able to make the case for your client to be a necessary party. I don't know if you wanna take a little more time...

**1:12:45 AT:** Sure.

**1:12:47 MS:** Right now to really state that case so that I can evaluate that, because I think that is a pretty important aspect and something that you can speak to that's related to the matter before us, not the case back at the District Court.

**1:13:06 AT:** Sure, so the necessary party rule and your rules and then the administrative code hasn't been, as far as I can tell, directly interpreted by a Washington Court. So, kinda have to look to other times when the same phrase is used. And that's why we cited the civil rules. We figured, well, if there's absolutely no cases talking about this, then an explanation of the phrase by the Washington Supreme Court in a similar context, would really, I think, speak to what it means. And what the Washington Supreme Court has said is, someone is a necessary party if their interests might be affected by the outcome of the case there, and that doesn't necessarily mean you're on the other side of a contract, because when you have a lawsuit, that's also considered a valuable interest, right? And in this case, she has a lawsuit, she says that she's entitled to a certain amount of money under the law of Washington.

**1:14:08 AT:** If this Commission decides in the way that Big Fish has asked, then that severely impacts her ability to get that money that she says she is owed. And the Washington Supreme Court says you don't even have to have a... It doesn't have to necessarily... Necessary party is kind of this term that, it makes it sound much more strict than it is. What it means is, is there a possibility that she could be affected? And if there is, then she's got to be a part of this. And your rules say that if she doesn't want to be a part of it, if she doesn't consent in writing, then that's the end of that matter. I hope that helped explain it.

**1:14:51 MS:** She wouldn't consent.

**1:14:52 AT:** She does not consent, no.

**1:14:56 MS:** Further questions? Commissioner Stearns?

**1:15:02 CC:** Okay. So did you say that your opinion is that the game manufacturer designed this game to be addictive?

**1:15:13 AT:** Yes, absolutely. They designed these intentionally. There was some discussion of the free chips that they give you. These are basically free samples in just a little bit, in just the right amounts to make you keep playing again. They give you just enough to get you going again, and then they pop up in big letters, "Buy more," and they give you sometimes what they call a special discount. They also have the numbers really big, so you buy 20 million chips and this helps you, "Oh, I'm... " It makes you feel like you're getting a lot of value. So it also helps addiction.

**1:15:51 CC:** So, would I be right then in assuming that you would also say that if the same manufacturer, if they were making a slot machine that that would also be designed to be addictive?

**1:16:02 AT:** Yes. Yes, those slot machines are designed to do... The company that owns Big Fish Casino makes slot machines. It's the same. Same people, same science.

**1:16:18 MS:** Commissioner Patterson.

**1:16:19 JV:** Could you refer us to some literature on the matter, maybe through staff, so that that they could send that to us?

**1:16:25 AT:** Sure, absolutely. As I said, the best book is that Schüll book, and I can send Mr. Considine the link. It's outstanding, it explains it in great detail. And Professor Schüll, she's at NYU, she's quoted in the newspapers relatively frequently about this topic, she's very knowledgeable.

**1:16:44 MS:** Okay. Any other further questions? Any further? All right.

**1:16:49 AT:** Thank you very much, I really do appreciate your time.

**1:16:52 MS:** Thank you sir. Please come forward. Could we get one more chair up there?

[background conversation]

**1:17:13 MS:** And please, if you could identify yourself for the record, please.

**1:17:18 Cyrus Ansari:** Mr. Chair, Commissioners, my name is Cyrus Ansari. I am with Davis Wright Tremaine, and I'm here with our client, Mr. Joe Sigrist, who is the General Manager of DoubleDown Interactive, that is a video game development company, headquartered and

incorporated in this state, that makes social online games similar to the Big Fish games at issue in the Big Fish petition. You should have received... I hope you've received our letter, which we wrote in support of the petition. And I'd like to introduce Mr. Sigrist to make just a few brief comments, if you'll allow it.

1:17:52 Mr. Sigrist: Thank you very much, commissioners. We really appreciate the opportunity to speak today, I'll be very brief. As was mentioned, we submitted a letter in support, strong support of Big Fish's petition, and we believe that their arguments as stated in their petition are quite strong and quite compelling. We have been offering... DoubleDown Casino, is a similar type entertainment activity for almost 10 years, and are obviously very familiar with the business and with players associated with this game, our game, and similar games.

1:18:34 MS: And I'll simply say that as the commission continues to look at this, we wanna offer ourself as a resource, we're right up the road. We're Washington-based, as mentioned Seattle-based, have a number of employees and players in the state of Washington who are quite interested in the outcome of these proceedings. And so, we'll again, make ourself available at any time to support you in your discussions and deliberations.

1:19:04 MS: Questions? I guess I have one. I don't know if it's appropriate, so stop me if it's inappropriate. Are you... Is your company a party to litigation similar to what Big Fish is facing?

1:19:23 MS: Yes, we are.

1:19:25 MS: Okay. Troyer.

1:19:30 EC: When you say games, DoubleDown Casino, what would the games be on the backend?

1:19:36 MS: Well, our games are casino-style games, so we offer through DoubleDown Casino. We have other applications but through DoubleDown Casino, we offer casino-style games, so poker, video poker, blackjack, and slots. As is the case with this industry, slots is the predominantly played game within the category worldwide. As you may know, it's a \$4 billion category, mobile and online gaming category worldwide, and a large percentage of that comes through the play of slots which seem to be exciting for players to play online.

1:20:20 EC: Are there limits to how much somebody could spend a month?

1:20:25 MS: There are no specific limits, at least in our game. We obviously monitor activity, as I get good stewards of our player base and our consumers, but we don't have any specific limits to purchases.

1:20:43 MS: All right.

1:20:43 MS: Thank you very much.

1:20:44 MS: Yeah. Thank you. Is there anyone else that would like to add to the public record on

this? Brian, do you have any final thoughts? Summary?

**1:21:00 BC:** Yes. Mr. Chair. I'd just do a quick summary, to help bring this home. Is you don't have to make a decision on anything you've been asked to do today. You're welcome to, but you don't need to. From what I'm hearing, it sounds like we would like that you may want more information which we can certainly do on anything. We've looked at the calendar, we have clearly our August meeting is two days in Pasco. There is definitely things on for that meeting, but we have space if you wanna dedicate an hour plus, I'm pretty sure we can accommodate to that. We also have two days in September in Spokane.

**1:21:38 BC:** Right now, what we've kind of slotted is gonna be a pretty full agenda at that point, but we can clearly move stuff around to put stuff on there, because we only are meeting a couple times at most a month. Amy can disagree with me and say it, but I think it's probably a good idea to set something for August, and then that way, we're talking about this in August, we're talking about it in September if you wanna go that far. And then if you wanna move it past September, you're going to probably have the ability to do that. And if you want briefing on necessary party or something like that, these parties have clearly good legal minds that have come before you, they have a system that they can provide that information to you, and sometimes having it in writing is better than trying to do it on the spot verbally. So that is something we can also ask them for if that is something you want to be able to have for the August meeting. And so, in reading the room, it sounds like we probably want to push this to our August meeting. You're welcome to do that.

**1:22:40 MS:** Well, I believe our rules allow us to deliberate in a closed session.

**1:22:46 BC:** Right.

**1:22:47 MS:** And I think that we probably ought to do that, and maybe shoot for a 10, 15 minute deliberation and then come back.

**1:22:55 BC:** Okay.

**1:22:56 MS:** So is that... Any opposition to that? All right. Well, we will allow you another trip to the restrooms and we'll go have this conversation. So we'll be back in about 15 minutes.

[background conversation]

**1:23:36 MS:** All right. Sorry for the delay. I appreciate everyone's patience. So in the matter of the petition of Big Fish Games Inc for a declaratory order, we will be signing an order continuing review of petition for declaratory order. So this petition came on for review before the undersigned commissioners of the State Gambling Commission at the commission's regular scheduled meeting on July 12th in Tacoma, Washington. The commission reviewed and considered the petition, comments by the petitioner and staff, and any written or oral comments by the public. The commission finds that it needs additional time to review the petition and allow for additional public comment, therefore, it is ordered that review of the petition for a declaratory order in this matter be continued and scheduled for further review and consideration at the

commission's August 9th and 10th, 2018 commission meeting in Pasco.

**1:24:29 MS:** So, I have signed it and the rest of the commission shall as well. If all interested parties could provide any additional information to the commission a week before, so maybe by August 2nd or 3rd, that would be... Give us a little time to be able to review that. Some specific areas of interest by the commission are further discussion on thing of value, and also on the term "necessary party" as it relates to this matter, or any other factors that you would like to send in writing ahead of time, and then there will also be opportunity to have more oral communication at that meeting in Pasco. So Brian?

**1:25:30 BC:** I was just gonna say anyone who wants to submit something can submit it to me at [brian.considine@wsgc.wa.gov](mailto:brian.considine@wsgc.wa.gov). And if you received the notice, you have my contact information. Otherwise, come find me after we adjourn today.

**1:25:50 MS:** Oh, and yeah, I guess another area was other states that have dealt with this matter, if there's any similar law that we can review.

**1:26:07 BC:** And Mr. Chair, what I'll do to kinda help with this is, we'll post this on our website so that folks know what's going on. The two parties that at least spoke today, or their attorneys will... We have a record of this, so I'll distill it into writing, and I'll ask them for this information along with sending out an additional notice to parties, if they want us to provide information related to those topics that they can do so. And we'll give them a date. I think you said a week before the commission meeting, but we'll have a date set for that as well.

**1:26:39 MS:** Okay, perfect, thank you. Any further input from the rest of the commission on that? Okay. Excellent. So, we will move on. Now we get some presentations. I noticed Chairman Bill Iyall in the crowd, I'd like to invite him forward, or certainly introduce him. And we were going to have a presentation on the Cowlitz Ilani Casino Resort Phase II review. So welcome.

**August 9, 2018**  
**Washington State Gambling Commission Meeting Transcript for**  
**Big Fish Games, Inc. Petition for Declaratory Order**

**0:43:20 Sizemore:** Without objection it's in, so, if we can get that somewhere in the future. That brings us to tab 4, which Brian gets to stick around. We have Big Fish Games Incorporated Petition for Declaratory Order, and this is continued from our July meeting, and I know that we made request for additional information at that July meeting and we had a lot, and some of it was just in the last few days. So I'll let you, Brian, kind of run this, steer us through this process, and we'll work through it.

**0:44:17 Considine:** Thank you, Mr. Chair. And for the record, again, Brian Considine, Legal and Legislative Manager. I figure I'll give a brief overview of what I see is maybe the best way to do this, especially to create a helpful record moving forward. But you're right, we had our July meeting, and at the July meeting, Mr. Chair, you came out and you asked three things, but really two very specific things, was for information related to a thing of value and what it means under Washington State Law based on the parties reading of it and, two, what constitutes a necessary party in our law and the rule. And then I quote the rule in the memo and I'm not gonna go through all of that, unless you want me to, and then any other factors you believe the Commission should receive. And so then based off of that, I think it's quickly just read into the record, but what I figure, we'll go through the documents that we have, see if there's any questions related to that, then we'll take the, what I'm calling, the procedural issue first, the necessary party, because of the way that the law is written, if somebody is a necessary party, you are prevented from moving forward with a declaratory order.

**0:45:30 Considine:** And so I'll quickly brief that, we'll have any parties... Ms. Brinkman could not make it today, but another attorney in her firm, Emily Hahn, is here and she'll be presenting on behalf of the petitioner. Mr. Tievsky is still here for Ms. Kater and then, only specifically talk about necessary party. Anybody else after those two individuals wanna talk, clearly you have public comment. Kinda close the comment on necessary party, and then move to thing of value, that's the more substantive meat of the issue. Have the same sort of thing. The petitioner will go first, Mr. Tievsky, anybody else, and then see if there's any other topics that you want some extra comment on. And of course, you all know how to ask questions and all that, and the parties are ready to answer your questions as best as possible. So, that's kind of my plan for today.

**0:46:24 Considine:** And then after you feel you've received everything that you need, you've asked all the

questions, you will be able to go into closed session just like last time with our AEG, Mr. Kernit, and be able to have your conversation, and come out and announce how you would like to move forward, or if you wanna make a decision. And I'm happy to save the procedural posture at the end, but just upfront, the same options that were before you last month are the same options before you this month, and I'm happy to run through them before you break for your closed session.

**0:46:58 Sizemore:** Brian, before you move on to the next, I'd just informally, I guess, I would like to ask those that will be coming forward on this topic, do you anticipate needing more than 10 minutes?

**0:47:16 Emily Henn:** No, I think that would be adequate time to address the issues...

**0:47:22 Sizemore:** Okay, okay. Mr. Tievsky?

**0:47:25 Alexander Tievsky:** It depends on how many questions. But for my initial recommendation no, certainly not.

**0:47:27 Sizemore:** Okay.

**0:47:27 Considine:** Thank you. So I can put on the record, both representatives said that 10 minutes should be sufficient, but it depends on questions and how it goes.

**0:47:38 Sizemore:** Sure.

**0:47:40 Considine:** So, quickly running through what's in your packet, because there was a lot of things that came in. Tab A, I believe, should be the transcript. Felt it was probably helpful to have the transcript from just... It's not the full meeting, it's just the portion that dealt with the petition. Tab B is all of the documents that you had before you at the July meeting. So that would be the petition from Big Fish and the letters from DoubleDown Incorporated and, I think, Huge Incorporated in favor of the petition, and then Miss Kater's comments as well. Tab C should be a citizen. She has identified that she lives in Texas. She submitted a consumer protection complaint with the Attorney General's Office. And then after that was completed, I believe the AG's office let her know that we had this petition going on. So she wanted to submit all of the documents under Tab C as her comment, but she's not expected to appear today or I don't think at all. D. Tab D should be the petitioner's response to your questions related to necessary party and thing of value. Tab E should be Miss Kater's response on... Mr. Tievsky's response on behalf of Miss Kater, that also deals with thing of value and necessary party.

**0:49:25 Considine:** Tab F should be a statement from a woman named Suzie Kelly relating to her customer experience with, I believe, Big Fish Casino. Tab G should be a letter submitted by the Entertainment Software Association. And as a frame of reference, I know Commissioner Stearns is very familiar with ESA 'cause they are the trade association for Nintendo, and Microsoft, and other software video game companies who we have had lots of conversations with, good conversations. They've been very, very good at being available on the skins and loot box issues that we dealt with last year. So they submitted a letter, I believe, in support of Big Fish's petition. And then two more documents that came in that I put at your place this morning. The first one is a letter from an individual who wished to remain anonymous on the record because of fear of just being outed on the record for, I think, her work, or her family, or something like that, the embarrassment. And so anyways, this was submitted through Mr. Tievsky. And so he might be able to answer any questions



related to the letter, but it's the one-page double-sided that starts with, "Dear Commissioners".

**0:51:03 Patterson:** I was just puzzled about the letter because it was anonymously provided, but in the letter I read that this individual said that they look forward to telling us more about their experience next week. How would that happen?

**0:51:17 Considine:** Yes. So Mr. Tievsky... This was submitted through Mr. Tievsky, so he probably has a better ability to tell you about this individual. I know she wanted to appear by... Actually appear in person today. I believe she's a Washington resident, and something came up so she couldn't make her way to Pasco. The second letter that you received has an NYU watermark at the top, multi-page from Dr. Schull. Dr. Schull is the person that Mr. Tievsky had mentioned that wrote the book that you had inquired to get a reference from. So she submitted comments as well. And as of... I haven't checked this morning, but as of yesterday, those are all the comments that I believe we received so far, based off of either your questions or knowing that there was still a comment period on the petition.

[pause]

**0:52:24 Considine:** So moving forward. Unless there's any questions about the documents, I think we'll get into the necessary party topic. Yes.

**0:52:38 Stearns:** So just quickly, when you're talking about the RCW 34.05.240 where it says that the agency may not enter a declaratory that's under... I don't know, I believe that's Section seven, where the agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party.

**0:53:06 Considine:** Correct.

**0:53:06 Stearns:** So just as you go along, just keep in mind that I'd also like to know more about the first part that says, "Prejudice the Rights." So if you could just also explain to us what that means?

**0:53:16 Considine:** Right. And I think that it's a little bit unique position for me 'cause I love to try and explain things based off of my... Because staff's not really kind of a party to this. I think that is a question, and I think the attorneys probably heard that as well, that that first part is something that they should be focused on when they're telling you what they think it should be.

**0:53:42 Patterson:** For non-attorneys, could you talk about what you're talking about in a little bit different way?

**0:53:49 Considine:** Sure. This is the same issue as to whether or not the commission... Whether or not somebody is a necessary party to the action and consents to you making the decision. So what you've heard previously is that Ms. Kater believes she's a necessary party because she is a plaintiff in lawsuits against a Big Fish petitioner, and that this will negatively impact her case if you issue a declaratory order as the Petitioner has requested, which is to say what they do is not gambling, which would, in some ways though, that was Federal Court. This is... We're clearly a state agency related to kinda state court issues, but if you say it's not gambling, would be argued. Mr. Tievsky can talk more about it, but what he had said at the July meeting was it would undercut what the Ninth Circuit said.

**0:54:42 Considine:** And so they still have a case. This could potentially make their case go away, because the intent would be for any party that this commission is set to interpret state law would say, "The Gambling Commission says this is not gambling, so you can disregard what the Ninth Circuit said, because we'll get into the facts and this is what you can apply." And that's a really generic summary.

**0:55:08 Patterson:** That's good. I got it. Thank you.

**0:55:09 Stearns:** And that's what I was getting at, those three things there.

**0:55:09 Considine:** Right.

**0:55:09 Stearns:** Those stands for rights, necessary party consent rights.

**0:55:09 Considine:** Right. Yeah. And that was some of the conversations that I know Ms. Brinkman and Mr. Tievsky had with you before is, are they substantially prejudiced and what does that mean? And my expectation is that both Ms. Fenn for Big Fish and Mr. Kievsky should be able to go into that a little bit.

**0:55:36 Commissioner Troyer:** They're a lot of lawyers who work there. I only know enough to be dangerous, but as we're taking a look at this, instead of trying to regulate it to just this particular case, this particular incident, these people, I think we have a way bigger overall picture to take a look at. And there's a lot more to this than who wins or loses between these two people in court. I think the decision that we make and what we look at here could have long lasting effects on everybody for a long time to come, and I understand that you are kind of looking at this as a legal issue or legal motion, but I think that we have ability to do some type of investigation.

**0:56:20 Troyer:** There's people on our staff that know more than we know and understand it and take a bigger overall look at this whole entire problem and not make a decision based on hierarchies, because this is gonna effect a lot of people, a lot of money. It's a lot to contemplate. Well, I just don't want to keep it narrowed down to just this. I wanna take a bigger role on the overall picture. The problem with gambling, the issues on the backend of all of this and what does the legislators think of this, the Governor's office, what do they think of this? Is this extension gambling or not extension gambling? And millions of dollars in numbers that I've been reading about. But yeah, we're taking around with paper pull-tabs and everything else. And if anybody brings up the word video monitor for a pull tab game and lobbyists and everybody goes crazy. But just hanging this over without really thinking through and looking at it in an overall view despite this case I think [0:57:24]\_\_.

**0:57:25 Considine:** And Commissioner Troyer, you're correct that Big Fish is brought before you just a petition related to their game. And we know just based off of litigation that there's four or five at least, and probably more companies that would at least tangentially be affected by that. So I think that that is something that is incredibly... It's something that you talk with AEG Kernit when you're in close session, but I think it's something that is appropriate to have that discussion as to whether or not you want to do this kind of a company by company basis or whether or not you want to take a larger kind of view of this, and you can use that as how you determine how you want to move forward.

**0:58:07 Patterson:** How we want to move forward versus how we would recommend the legislature move forward?

**0:58:12 Considine:** I would say how you want to move forward. It can be how you think we should advise a legislature to move forward. That's part of it. And I guess going back to the procedural, which I should probably have started with, you can say you can agree with the petition. It's not kind of like the rules petition where you say, "Yes, we'll agree to do what you... To engage in that specific rule-making." This is left to you to say, they want you to say, "It's not gambling." You could go the other way. And we talked about that in July. You could determine that it is gambling. You can also have that third option that says, "We, for these good reasons, don't feel that we're going to issue... We don't feel it's a good idea to issue a declaratory order." And then part of that is just because you don't issue a declaratory order doesn't mean that you as Commissioners can direct me or others to have these conversations with legislators, to reach out to ex-officio and our committees, much like we did with Skins and Loot Boxes last year and other topics that have come before us where we think there needs to be some education with the legislature and some exploration on the issue.

**0:59:12 Patterson:** Mr. Chair?

**0:59:13 Sizemore:** Yes.

**0:59:14 Patterson:** I think this is a great example of how our commission could provide a great service to the legislature. This is an area where we could give advice on this topic. So I know that this is one of our goals and our strategic plans to improve our relationship with the state legislature and to interact more meaningfully with them. So I just wanted to say that this potentially could be one of those topics.

**0:59:47 Sizemore:** No, I was just gonna say that... I mean, we are being asked to make a declaratory order. I think certainly the discussions that we have and ultimately the decision that is made will spare a lot of next steps, whether it is with the legislature or some other avenues. So, at this point, we are being asked to act and we have the option to act the way they want us to, act the opposite way they want us to or not act at all, for a good cause. So those are our options.

**1:00:42 Patterson:** I guess what I'm thinking is if... Let's all wait to see what we're gonna do.

**1:00:48 Considine:** What my recommendation is... Sorry, go ahead, Senator.

**1:00:52 Conway:** Can I just have a question here as we bring in the legislature here. What would be helpful is to understand what other states have been doing around these issues as well. And I'm hoping that maybe you can provide that to me.

**1:01:07 Considine:** Yeah, I'm happy to find the time to do that offline. What I was gonna say is my recommendation is, I think this is valuable discussion for you to have, but I think it is good to start off the way that we said, 'cause those are the topics that you asked for and this is a much broader conversation that I think we can have at the end. I think it's good to have that good open public dialogue on what you're kind of struggling with, what you're trying to figure out, how the best way to do that. It also allows the public to add additional comment onto that. But because from really technical legal part is if you all get enough information and with discussions amongst yourselves, and you decide that you don't feel that you can legally move forward, because at least you know,

and I get the substantial prejudice part, Commissioner Stearns, but we know they haven't consented Mr. Tievsky wanted to make, and he'll say it I'm sure, again, that they want to engage, they want to be as helpful as possible. But by no way are they waiving that argument, which is why we're having more conversation about it today. But that's the procedural hurdle. So, if you all feel that they are a necessary party who has substantial right, then you can't move forward in getting into all the other stuff. While maybe is important yet isn't necessarily part of the petition, it's something you can take up on a different path.

**1:02:31 Sizemore:** Okay. Get us back on track.

**1:02:34 Considine:** Thank you. And Senator Conway, I did hear you and I'm happy to try and provide that information, certainly. So, I think we've teed it up pretty well. I don't know if you need to hear from me anymore on unnecessary party, because Commissioner Stearns did a good job of breaking down the three parts. I'll ask Miss Henn come up. I'll stay here in case there's any questions of me, but I'll let Miss Henn come up and give her part on... I'm guessing what they're gonna say that they're not a necessary part just like they did last time.

**1:03:05 Sizemore:** Okay. Welcome.

**1:03:09 Henn** Thank you very much.

**1:03:14 Sizemore:** And if you could identify yourself for the record when you're ready.

**1:03:17 Henn:** My name is Emily Henn. I'm here on behalf of the petitioner, Big Fish Games. Thank you Mr. Considine and thank you all for allowing us to be here today and address you about our petition for declaratory order. We're happy to take these issues in the order that Mr. Considine has described and, as he explained last month, my partner Ms. Brinkmann touched on these issues, but our understanding was that the Commission had asked some questions. We did submit a letter on the necessary party issue, which I'd be happy to address today and answer any questions you may have. This Commission has regulations and as Commissioner Stearn's indicated the revised code of Washington also has a provision under the Administrative Procedure Act that provides that an agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be unnecessary party and who does not consent in writing. Whatever our position is that whatever interest Ms. Kater may have in the legal arguments that are at issue here about the definition of gambling, she does not qualify as a necessary party within the meaning of the regulations or the code.

**1:04:47 Henn:** And that's because, if the ruling that she is urging and the interpretation of necessary party that she is urging would mean that anybody with an interest in the meaning of state law could prevent this commission from carrying out its responsibility that the legislature has given it to interpret and enforce the Washington Gambling Act. She, of course, has an interest in her claims that she is pursuing in federal court and those claims will be resolved by that court or an arbitrator. But the meaning of state law, she doesn't take the position that that's a matter that the federal court should decide. Because that's not how our Federal system works. It's for the legislature of this state and this commission to interpret the laws that are currently in effect. And of course, state courts can review those determinations and will to make a final determination of what state law means. That's not the job of the Federal court, which can, of course, make a judgement about what state law means. But really that job is for the state legislature and which has delegated authority to this

Commission.

**1:06:06 Henn:** The necessary party provision, what that does is protect a third-party from having an agency directly adjudicate its rights. And that's why that the language in the provision is very important, it refers to rights. And what the necessary party provision prevents is a declaratory order preceding, for example, in a matter where a contract is being interpreted, and we cited a case where there is a collective bargaining agreement, one party asked an agency to interpret it, and the holding was that the other party, the employer, to that contract was a necessary party. That's because any determination about that contract, that collective bargaining agreement, would affect the rights of that other party.

**1:06:55 Henn:** But here, we're not asking the Commission to enter an order denying relief to Ms. Kater on her claims. Again, those claims will be resolved by the federal court, or the arbitrator. And the necessary party provision doesn't prevent agency action from occurring merely because a third-party is interested in the meaning of state law. That's such a broad standard, that it would really mean that any time someone had an interest in the meaning of the state law that this Commission interprets and enforces, they could stop the Commission from entering a declaratory order merely by filing suit in court, and that's not the rule. You can't sort of artificially create this situation and assert that your rights are at issue when really what your interest in the matter is merely an interpretation of what law means.

**1:07:53 Henn:** And of course, Ms. Kater and her... Ms. Kater is a Michigan resident represented by a Chicago lawyer who, in that lawsuit, is seeking to represent a nationwide class. So under the ruling or the necessary party interpretation that Ms. Kater is urging, any of those people could potentially come here and say, "No. I understand this is the state commission, that's charged by the legislature with interpreting and enforcing law. But I don't consent to you doing that." And that's just too broad of a reading of that statute.

**1:08:30 Henn:** The submission by Ms. Kater talks a lot about the necessary party standard that applies in civil cases, and that's just a very different standard. That's a determination that courts make about whether a party can come into a case, and it's a much lower standard. It also just has different words and that's why I'm pleased that the Commission is focusing on the words in the regulation and in the code that apply here, that rights of an individual, a third-party, must be substantially prejudiced. We don't think Ms. Kater has rights at issue here, more than simply an interest in how this commission interprets state law, and we don't believe that Ms. Kater's interest would be substantially prejudiced regardless of how the declaratory order petition is resolved. She has her case and the proper place to resolve that case is in Federal court, or with an arbitrator, and that's yet to be decided.

**1:09:35 Henn:** We also have argued in our letter, and the arguments are there, so I won't spend a lot of time on them here, that we don't think Ms. Kater, would even qualify as a necessary party under the Civil Court standard, because really what she's asserting is an interest in a monetary recovery and courts, as we've mentioned in the letter, have held that that's not enough. But we don't think that's the key issue. The key issue here is to apply the regulation and the code provision that only someone with rights that would be substantially affected by the Declaratory order is a necessary party under that provision that must consent to this Commission acting on the petition. So I'd be happy to answer any questions or yield to others.

**1:10:30 Stearns:** So maybe you could just flip it around, just for my sake. So could you explain what... Further two things, what would make her a necessary party and what would be a right?

**1:10:46 Henn:** Absolutely. I think the best way to explain what would be a right and what would make her a necessary party is to look at other cases decided by agencies or state courts interpreting that very language. And I gave one example which is, if your specific right is being adjudicated through the declaratory order, for example, that employer's rights in the collective bargaining agreement. The agency there decided we can't decide this issue, because it would determine rights of an employer who's not here, and who doesn't consent. So, that's one example.

**1:11:28 Henn:** Another example is the Department of Ecology case. I think it was the Boeing company versus the Department of Ecology. There, the agency held that another agency which had promulgated a rule, was a necessary party when Boeing came to a separate agency and said, "Please rule that that other agency's rule doesn't apply to us or should be interpreted in a particular way."

**1:11:54 Henn:** So there the other agency, since its regulation and the interpretation of its regulation was at issue. That agency was determined to be a necessary party without which the order couldn't proceed. So it has to be a specific right, and the petition... Here, our petition seeks a ruling as to... That Big Fish Casino games are not gambling. That determination would have to determine a right of Ms. Kater. And while she clearly has an interest in how you interpret state law, because she has a separate case about that. Our position is that that's just not enough, and if it were enough, that it would just be way too broad a standard that would really mean that the agency charged with interpreting and enforcing the Washington Gambling Act, couldn't ever act. It would be very easy for a party to say, "Well, I have a lawsuit over here, so you can't act." That's our position...

**1:12:55 Stearns:** So, like a contractual right or a property, right? Is that what you're going?

**1:12:58 Henn:** Correct.

**1:13:00 Stearns:** Okay.

**1:13:01 Henn:** Exactly.

**1:13:03 Sizemore:** Okay. Is there any questions? Alright. Thank you.

**1:13:10 Henn:** Thank you very much.

[background conversation]

[pause]

**1:13:26 Sizemore:** Good morning.

**1:13:27 Tievsky:** Good morning, I'm Alexander Tievsky, I represent Cheryl Kater in the lawsuit against Churchill Downs, involving Big Fish Games. I thank the Commission for having me back. It's great to be here. So what I'd like to do is go through very briefly, talk about sort of our affirmative case on necessary party and then I can address some of the arguments you heard. As you've heard a couple of times, if in a declaratory order proceeding, if the Commission's going to adjudicate... If

the Commission's order's going to substantially prejudice a necessary party, they require written consent. I know that I am here, but Miss Kater has not provided the written consent. So, that element is established and the question is about the other two. So as far as necessary party is concerned. The term "necessary party" is well-established in law. And there's no cases, no authority to suggest that it means anything different in the context that it's used in your rules and the statute that regulates this Commission than in any other case. The Washington Supreme Court's answered this question numerous times. It's a pretty low standard. It's a question of, "Could someone's rights, legal rights, be affected?"

**1:14:44 Tievsky:** They're right. If you have a thought about how the law works, and you come and you say, "I have a thought about this and I disagree and I don't consent." That's not enough. You've gotta have something more than that. And in this case Miss Kater has a lawsuit. She's got a cause of action that she is given by a Washington statute. I haven't heard any explanation about how that's any different from a legal right you get from a contract. In this case her right doesn't come up from contract, it comes from a law of this state that says that she's got a certain right to recover money that she'd lost at illegal gambling. If you enter the order that they asked for, that makes it more difficult for her to exercise that right. And that's all you need here. The Washington Supreme Court's made pretty clear that it is the claim that it will affect you, that is required. It's not... The Commission doesn't have to decide for sure that it's going to affect them or that the law means a certain thing in order to determine that someone is a necessary party. As far as the second part, substantial prejudice, I think that's clearly met here.

**1:15:50 Tievsky:** The reason they're here and asking you for this is because they would like to go back to the court and say, "Look, look, the Gambling Commission said this wasn't gambling and therefore you should listen to them. The Ninth Circuit got it wrong. They misunderstood the law. We know now the law is clear." The Gambling Commission has said, "We're fine." And so Ms. Kater needs to lose. I guarantee you that's what they do, because they've already tried with the pamphlet that your staff put together years ago. They told the court, "The Gambling Commission has already decided this. You have to listen to them." If it is done in a formal way as Miss Brinkman talked about last time, that will be a much stronger position for them, and that will... It is not a sure thing, but it will likely cause Miss Kater to lose. And that would be substantial prejudice. She's spent years litigating this case. She'd lost in the District Court, she had to appeal it. It takes a long time, it takes a lot of resources. And courts have recognized that when a defendant litigates something in one court, in one forum, doesn't like the answer they get and go somewhere else, that's prejudicial. That hurts the person who won, 'cause it negates their victory.

**1:17:04 Tievsky:** I'd like to address a comment that was made a couple of times in the previous testimony, that somehow Ms. Kater or somebody else could come in here and prevent the Commission from acting on this matter, that is not true. It is simply a procedural question. It is, "Can you do it this way?" And so, the declaratory order proceeding you're deciding, based on what Big Fish has submitted, right? Their petition. Not based on the investigation of your staff, there is not public notice and comment. The Commission has procedures, formal rulemaking under the Administrative Procedures Act, an interpretive statement, lots of ways you can interpret the law that Miss Kater had no say in whether or not you do it. But the Declaratory Order is a special type of proceeding and it's a little bit streamlined, it doesn't have the same procedural protections, you don't have to publish your proposed rules, all of those, all of those protections aren't there. And I... Look, no court has interpreted it and says this, but it appears to me as though that's why this consent requirement is here, to make sure that if you're gonna do this, it's done in a fair and open way, like

Commissioner Troyer was suggesting earlier. So, we, Ms. Kater would not come here and if you were doing rulemaking or an interpretive statement and say, "No, you can't do this." It is the way that is being done that causes the problem. Any questions I can answer for the Commission?

**1:18:31 Sizemore:** Any questions there? So my question might be to Brian just to affirm what I just heard there. So what he's saying is that a Declaratory Order then the necessary party aspect does apply, but if we, as a commission had saw the Ninth Circuit decision and said, "Oh we wanna do a rule that clarifies that it is gambling or clarifies that it isn't gambling." If we initiated that, then neither Big Fish, or Ms. Kater or any other individual would be... Have this necessary party or that way of not consenting.

**1:19:27 Considine:** That is correct, without going through the entire Administrative Procedures Act to see if there's another, but the way that it's been positioned, yes. I've spent a lot of time in the APA and clearly AAG Kernit can correct me if he thinks I'm going to misspeak and I encourage him to do so, if I do. But, yes, necessary party is very unique to this specific action. It's not in rulemaking. They can come and give comment, and you've gone through a lot of rulemaking but they couldn't come and say, "This is going to really harm us and you can't do the rule-making or you can't do an interpretive statement or you can't do some other action that you are able to do."

**1:20:11 AAG Kernit:** You accurately summarized the issue. So I have no corrections.

**1:20:19 Sen. Conway:** This may be in terms of, I don't think we've covered what's happened in other states and one of the letters referenced on the actions of Maryland, California, Delaware, Michigan [1:20:36].

**1:20:40 Tievsky:** Yeah. I litigated the Maryland case, and one of the Illinois cases, so I can speak to that a little bit. Those states have very different laws than Washington does.

**1:20:50 ?:** [1:20:52] That happened to the same client?

**1:20:53 Tievsky:** No, they're different clients, different games, many of them that work in different ways, but most importantly, the statutes are really different. So Washington statute says that people can recover if they lose money or a thing of value. In Maryland, you have to lose money, period. There's not a thing of value there. And so the courts said, "Well you didn't lose money, you maybe lost this thing of value, but that doesn't matter." But in Washington, that's not the law. And the Ninth Circuit made the same comment. Those are very different laws. In Illinois there is a requirement that you can only sue the winner of a gambling game and the courts have said, "Well, these people aren't... Running these games aren't winners because they don't put anything at risk."

**1:21:39 Tievsky:** I don't know how true that is, but in Washington, the law allows you to recover from a winner or a proprietor. Those are... Proprietor is a much broader comment, so it doesn't really apply. So these gambling laws are real old and states develop them in different ways, and I would say that Washington regulates gambling more tightly than a lot of states do. You know, the work that you do here and the degree of oversight that this commission has is far more than you see, certainly, in places like Nevada, but even in places like Illinois or Maryland. And so that's why you see different results in different states. Hawaii is a really interesting example. Hawaii's law is almost exactly the same as Washington's, except that it lacks the thing of value definition, at the very end, lacks the phrase "play at a game without charge." And there's actually a lot of discussion in the Hawaii House



of Representatives about that issue and about potentially changing that. I hope that helps.

**1:22:46 ?:** Yeah. Thanks.

**1:22:47 Considine:** I just note, we have not, I have not, I don't believe staff has spent a lot of time yet, looking at those cases, just based on the posture of this, I would guess that these other cases are all civil cases between non-governmental entities. So it's manufacturers, proprietors and customers or citizens. So those cases are all going to be very different. The way in which they're set up, is gonna be different because, much like Mr. Tievsky just talked about, they're coming under... Well they're not consumer protection laws, they were laws that were put into place to try and provide a remedy for someone who felt that they were being taken advantage of by someone doing an illegal activity. Whereas this clearly is coming before the regulatory body of the Gambling Act and asking for you all to interpret something related to their games, and it can be taken in other places. The facts may be the same, but the procedural posture, how it gets before you, how you look at it, and what happens from here is going to be a little bit different than those states. So while those cases very well could be informative, and I'm sure it would have be, whether its staff or asking the parties to kinda provide some summary of that or counsel. We can do that, but I don't... I'm sure it's helpful, but I don't know if it's going to provide a great answer.

**1:24:19 Sizemore:** Okay, perfect. So...

**1:24:20 Considine:** Sorry.

**1:24:23 Tievsky:** Oh, I didn't have one.

**1:24:24 Sizemore:** You're good?

**1:24:24 Considine:** I was just going to say, because we talked about these other states, I was going to recommend that we invite at least Ms. Henn on behalf of Big Fish, if she wants some comments specifically on what have other states done with this, since we've given Mr. Tievsky the ability to talk about that. Short, brief, just gives them both... You hear from both.

**1:24:41 Sizemore:** Sure. Yeah.

**1:24:43 Considine:** Okay.

**1:24:43 Sizemore:** Absolutely.

**1:24:44 Considine:** And then she can stay up for the next part.

**1:24:46 Sizemore:** Okay. And I'm gonna actually give us about a five-minute recess.

**1:24:49 Considine:** Fair enough. But for the record purposes, if we can kind of finish the state part, then we break.

**1:24:53 Sizemore:** Yeah. Yup.

**1:24:54 Considine:** Okay. Awesome.

**1:24:56 Tievsky:** Thank you.

**1:25:03 Henn:** I'll make this brief and I appreciate the opportunity to comment. I think these other state cases probably get into the next issue, we're gonna talk about thing of value, and how other states have interpreted gambling. I will recommend to you the ESA letter, which... ESA is uniquely positioned, having members as they do who operate all over the country. And they have followed these cases very closely, while these other states were interpreting different laws. And of course, that's critical when you're interpreting a statute, to pay attention to the language. I think it's worthwhile to note that many of those cases it was Mr. Tievsky's firm representing different clients, but really out suing, bringing cases that are an attempt to expand the definition of gambling under all these different state laws. And as you heard, he's very familiar with them, because he's been through that process.

**1:26:02 Henn:** And as far as I'm aware, all of the states rejected these attempts to expand gambling to encompass the types of games that we are here today to talk to you about, Big Fish Casino, where there's no possibility of getting money back. Once you buy a virtual item, your money is spent regardless of the outcome of any games that you play. But I think that discussion is probably better held for the thing of value discussion. But it is, I think, that ESA letter is very helpful to walk you through just exactly what those courts held and why they determined under those laws that these types of games are not gambling.

**1:26:46 Sizemore:** Alright. Any... Okay. Just to close this out, I did want to offer or ask if there are any other parties in the public or in the audience that wish to add something to the record regarding a necessary party. So is there anyone? Not seeing anyone. If we can, I'd like to do just like a five-minute recess and then we'll come back and take it up right where we are.

**1:27:25 Henn:** Thank you very much.

**1:27:26 Sizemore:** Okay. Thanks.

**1:27:28 Sizemore:** Start coming back.

[background conversation]

[pause]

**1:28:47 Sizemore:** Alright, I will call us back from recess and we will return to the petition for declaratory order as proposed by Big Fish Games. And Brian, I'll put you back in command.

**1:29:04 Considine:** Thank you, Mr. Chair. The next topic will be related to thing of value, which is really the substantive part of this. To try and help frame it clearly, our gambling laws, we're very good at summarizing it shortly as you have to have prize consideration in a game of chance. I think to simplify it as this, based off of what is in the record, and there's not a lot other than conversations with questions as to what are the games that are being played, I think everyone can agree they're casino style games. So I think [chuckle] they're at least games of chance under our... Under Washington State law. And so that thing of value, which has its own definition... So this gets into the legal weeds, but unfortunately that's a little unavoidable here, that thing of value a... Always

attaches to that consideration which is, what do you pay, what do you give for a gambling activity when we're talking about gambling, and then the prize, what do you receive, it all centers around thing of value, which is where the Ninth Circuit opined on and really, where really the crux of what you'll hear from Ms Henn, Mr. Tievsky and anybody else will relate it to... Is there a thing of value that they're either giving or that they're receiving as a prize? And under our definition, whether it meets that.

**1:30:39 Considine:** That's why thing of value, one, why I'm... I believe you came back and you wanted to know that, 'cause that's what it centers around and that's really what the Ninth... That's what the civil case centers around, that's what the petition centers around. And I will let Ms Henn summarize how they feel it fits or doesn't fit within their operational model. But just wanted to talk about... To set that up real quick.

**1:31:05 Sizemore:** Got any questions for Brian before Ms Henn...

**1:31:07 Conway:** I have a question.

**1:31:07 Sizemore:** Yes.

**1:31:08 Conway:** Is thing of... There we are. Get away from it. Is thing of value defined in law or defined through court decisions?

**1:31:18 Considine:** Thing of value is defined in our gambling act.

**1:31:19 Conway:** Okay. Is there a court interpretation of that thing of value, what's... Is this part of the discussion here? Sometimes, I know law... You have a law in the books, and then you have administrative decisions that are made around that law. And I guess, to me, I'd like to know a little bit more of that history, because it's not the first time this commission's had the thing of value before. [chuckle] And so I guess that would be a request for information on it.

**1:31:54 Considine:** Certainly, and I think this may be helpful, is, the Ninth Circuit issued a decision interpreting our statute related to the civil claims that Miss Kater was bringing. You are determining it, based off of your regulatory authority, based off the information that you're receiving. And it may just be best if I read the statute into the record. That way, maybe that's a little helpful. "Thing of value, as used in this chapter, which is the gambling act, means any money or property, any token, object or article, exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge." And it was, I think, without remembering directly and looking at the citation, that while it says 1987, I think that's the original definition from 1974 or 1973. I think they reorganized the statute in '87. I don't believe it really has changed since it was first created. And written only the way the legislature could do in the '80s, in a long paragraph like that, I know it can be a little bit hard to follow, and that's why we have Miss Henn and Mr. Tievsky to let you know their thoughts on that.

**1:33:25 Considine:** But this is the definition... The definition I just read is what we're talking about, when it relates to, if what you're paying is a thing of value, and I think more on this end, based on conversations that I've heard several representatives from these companies talk about, it's that there's no prize. Their argument is, and she can talk about, there's no prize. And so, even if there is

consideration, there may or may not be, because you can play these games for free, but you can also spend money to upgrade the product. There's no prize. And that's been the argument that we've heard, and that's where thing of value comes in, and it has come in on other conversations that we've had over the last year, related to other types of activities, and whether or not a virtual object the way in which is being used. Is there a marketplace, those sorts of things. Is there a thing of value? And you've been struggling... We've been really discussing this and getting into it in great depth for the last year or so.

**1:34:22 Patterson:** There is no prize, but the definition also includes the words "or involving extension of entertainment?"

**1:34:31 Considine:** Correct.

**1:34:31 Patterson:** So, it's more than just... The definition includes more than a prize.

**1:34:36 Considine:** Correct. And it's more than just getting money back. We've talked...

**1:34:40 Patterson:** Right. The definition includes the extension of service, entertainment or the privilege of playing the game without charge.

**1:34:46 Considine:** And that's where the Ninth Circuit seized... Of what I remember, the Ninth Circuit seized on that a little bit, too, that there was an extension of play and therefore the games were gambling. And that's where the Ninth Circuit came. And I'm sure the attorneys will correct me, if I've misremembered the case.

**1:35:06 Trujillo:** Right, and what you just read is... I think what it also comes down to the last part is "without charge," and that seems to be key, if there's an actual charge.

**1:35:15 Considine:** Right. And I think that's a very good question and a good segue to give it over to Ms Henn and let her kinda talk about that from Big Fish's perspective.

**1:35:26 Henn:** Thank you very much and thank you again. May it please the commission, I'd be happy to address thing of value, because I do think that's kind of where we're all focused. Just a note, I think you're all familiar, the petition that we filed is seeking a declaratory order on a narrow issue and it's essentially under existing law, which we'll get into on thing of value, whether Big Fish Casino games constitute gambling. Some of the procedures that Mr. Tievsky was talking about, making new rules or potentially the legislature making new law, that may happen. But what we're here today to talk about is existing law and whether this game is gambling. Our position is that Big Fish Casino games, virtual tokens, are not things of value because they can't be sold, they can't be redeemed, and they can't be cashed out for money or for a prize. And furthermore, they're prohibited by the game's terms of use from being transferred for commercial gain, excuse me, and have no real world value.

**1:36:32 Patterson:** Can I ask you a question?

**1:36:33 Henn:** Please.

**1:36:33 Sizemore:** Yes. Go ahead.

**1:36:33 Patterson:** So you just gave me your opinion of what a thing of value is. But we have the words in black and white right here, and what it is that the State of Washington defines as a thing of value.

**1:36:45 Henn:** Absolutely and...

**1:36:47 Patterson:** You're expressing your opinion that it is not a thing of value because of your definition of a thing of value. What about as it relates to the state of Washington's definition?

**1:36:58 Henn:** Yes. And that's... And our argument is very much tied to the statute so I'd be happy to jump right in there.

**1:37:03 Patterson:** I apologize if I jumped ahead.

**1:37:04 Henn:** Not at all. I wanna make sure I address the questions that are important to you. So under RCW 9.46.0237, that statute defines gambling as requiring the opportunity to win something of value. RCW 9.46.0285 defines thing of value and that's the statute you were looking at. And it could be broken down into four possible things that could be a thing of value. Money or property, a token or object or article exchangeable for money or property, a form of credit that contemplates transfer of money or property, and then the fourth one, which is where your question, Commissioner Patterson, is focused, and where the Ninth Circuit was focused, is "any form of credit or promise, directly or indirectly," I'm skipping a few words to get to the relevant part, "involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge." And we believe that under many established principles of how statutes are interpreted, that I don't think there's any dispute our game's tokens don't fall in those first three categories. The dispute is whether it falls under the fourth. And we think you have to read that fourth and the language "without charge" to recognize that if a game, as our game is, is free to play, that a token that would extend play that's already free does not qualify under that definition as a thing of value.

**1:38:45 Henn:** That's essentially the argument we make. We think it's very key that the statute when it talks about extension of a privilege of playing without charge. Big Fish Casino games are free to play. The vast majority, pardon me, of people who play never spend money at all. We've detailed in a declaration that was submitted with our petition. Free tokens are awarded to players every day when they sign on to the game, as well as every 30 minutes during game play, that's in the Vela declaration. And the problem with the logic of Ms Kater and her attorneys is that... And the ESA letter talks about this too, if in a free game, a token that extends game play is considered a thing of value, even playing with chips or tokens that the user acquired for free, would be gambling. And it's just inconceivable that the Gambling Act was intended to find gambling where a player risks no money, and has no chance to make a profit. And if this result were adopted again, the ESA letter points out, it would sweep a vast number of games into the definition of gambling that we would submit were never intended to be there. Essentially, what our declaratory order petition is seeking is a confirmation, a reaffirmation that what the commission guidance brochure from 2014 said is right.

**1:40:28 Henn:** And that's what everyone in this industry, everyone who works in this industry and plays these games has been relying on for many years now. And Mr. Considine referenced this. What that brochure describes is that there are basically three elements when you break them down to gambling, prize, consideration and chance. And whereas a game that's free to play, but that offers these in-game tokens that may involve consideration and may involve chance, it does not offer any

prize. And so it falls outside the definition. And that was very clearly stated in the brochure back in 2014. And regardless of whether that was a formal act by the Commission of passing, of publishing that brochure and providing that guidance, that has been the rule that everyone has understood and has relied on for all these years. So that's really kind of the narrow focus of our petition. Of course, Ms Kater is seeking... Her claim in the federal lawsuit is under a different statute, the recovery of money lost at gambling act. And so, she's portraying that as a right that's at issue here. Really what's at issue here is just whether that guidance is accurate, that everyone's relied on, whether that prize element is required, and whether extending a game that's already free to play could constitute a thing of value under the statute. Please.

**1:42:13 Patterson:** It's free to play, free... Monetarily free, but it's not... But when you extend it without charge, you are providing entertainment.

**1:42:28 Henn:** Absolutely, we think that... Again the game is free to play. Most people never spend any money in the game. A vast, vast majority. And we do believe our games provide entertainment value, that that's the value people get out of them. When people choose to purchase in-game tokens, that's what they're getting in exchange. If they buy tokens, that money is spent. There's no expectation or... That that money ever would possibly come back to that person. So then when they take those tokens and play games with them, they're not playing with a thing of value because there's no possibility that any money could come back in the form of a prize or otherwise. Those tokens have no real world value.

**1:43:16 Trujillo:** Okay. Can you... I think this will be helpful, Julia. Can you explain why the legislature would write "without charge," what that means?

**1:43:27 Henn:** Yes, we think the statute is very purposefully written in that way with those four different categories, each of which references money or property. And in that fourth category that, "without charge," brings it back to that same idea that, in order to be gambling, you have to not only have consideration and chance, but you have to have a prize, something of value, something of real world value. And so when you read the statute and you read all those elements or categories of thing of value, in conjunction, you read them together, you should read them consistently with each other. And the language, "without charge," is critical, because it's a different thing if you're extending game play without charge when you normally would charge someone \$10, that's value you're getting. But when you're extending game play that's always free, that's something differently entirely, and again the prize element is missing. And that's been the understanding of the industry again, and hundreds of thousands, maybe a million people who play these games in the state.

[pause]

**1:44:41 Henn:** We also, in our petition and in our letter that we submitted after last month's hearing, we've talked about some other statutory... Some other Washington law about how to interpret statutes. We've talked about the idea that if there are things are in a group, they should be interpreted consistently. There's also a principle that if there's a general term, it should be interpreted consistently with specific... Specifically identified items. And again here you've got money or property reference repeatedly and the idea of things having a real world value. And we also think it's very important, and this is recognized under Washington law, that you interpret a statute consistent with its purpose, and the Washington Gambling Act's express purpose was to keep the criminal element out of gambling, without restricting participation by individuals in activities

and social pastimes, which are more for amusement rather than profit. And these games, like many others, are unmistakably social pastimes that are played for entertainment, they can never be played for profit or real world value. So that idea of a criminal element, it's just not something that's even an issue with these games.

**1:46:04 Henn:** Another principle of interpreting Washington law is that it must be interpreted in accordance with The Rule of Lenity. And that's because the Gambling Act, as you all well know, imposes criminal penalties in certain circumstances. And the Rule of Lenity requires that if there are any ambiguities in construing a statute, they should be construed in a manner that limits rather than expands criminal liability. And this again gets back to sort of the limited purpose of this petition, which is just to ask this commission to settle this uncertainty and clarify that existing law, as written and as explained in the brochure and in place for many years, does not include this type of virtual token that can never be redeemed for anything of real world value. Does not include it as a thing of value that would fall within the gambling statute.

**1:47:02 Sizemore:** We've gone a little bit long and really haven't really paid...

**1:47:09 Henn:** I apologize.

**1:47:09 Sizemore:** Much attention to the clock. But I think I'll kinda let you know you probably have about three minutes left after... Not including Commissioner Troyer's question. So you can either use that now or after Mr. Tievsky. So that'll be your option. Thank you.

**1:47:29 Henn:** Alright, thank you very much. Please.

**1:47:34 Troyer:** Is it called for amusement, and you said there's very few people that actually buy the chips? Compared to how many people play?

**1:47:43 Henn:** That's correct.

**1:47:43 Troyer:** The ones that are buying the chips. Why would somebody buy chips? I get chips for 15 to 20 bucks a month or whatever. Why are we reading letters and stories and that stuff about a lot of people being thousands and thousands of dollars in debt, playing free, free... I mean it's probably not very amusing for them, at the end of the month somebody's got a problem, and ends up paying thousands of dollars. Why don't you have caps on them? Why is it their 29.95 monthly subscription never run out? It doesn't... But basically, it kind of sounds to me that you've created a way to gamble without ever winning for sure. So you know going in that you're not gonna win, no matter how much money you pump into it. But who does that? Obviously, people that have issues. And it seems kind of predatory to me. Without... Being a weird analogy, 'cause I've worked in law enforcement, what happens when a crack dealer gives somebody free pieces of crack? "Here's your first weeks for free." Then they come back and buy it? Really I mean, then they come back and buy it. "Well, if you want more. It's gonna cost you." Because you're looking at a small percentage of the people that are buying the money. Who in their right mind would pay chips for free unless they've got an issue?

**1:48:54 Troyer:** That's why I'm having a hard time explaining, anybody who actually sits down and plays this for fun, for hundreds and hundreds of dollars a month and they're actually having fun and aren't distressed about money, aren't hooked on gambling or something's wrong. Because anybody

with any common sense, you know? My 5-year-old granddaughter won't go stick a quarter in a machine unless it gives out a ticket and she gets stuffed animals. She says, "I can put the money in there and watch the thingy go around." But I mean, it's just this, I just have... That's really where I'm locked up at. People on the back end of this thing.

**1:49:25 Henn:** Yeah, well I very much appreciate that question and the comments, 'cause as I said, I want to be sure and get right to the heart of what you're concerned about and thinking about. And I know that the types of issues you're talking about are of great concern to this Commission and laudably so. A couple of responses, I think, first, it's not true to say, and I know Ms Kater's comments say this, that it's not free to play. And the evidence in the record is uncontroverted as Mr Vela explains. You do get free chips every single day that you log on and every 30 minutes, so it is possible to play for free. It's not the case that you have to buy tokens. So then your other question then, why would people do it? And I think the answer is, this is a common model for games and the reason people pay money to get additional tokens, or other in-game virtual items is the entertainment value.

**1:50:22 Henn:** And that's not to take away from your concern, which is not about somebody spending \$2, but somebody spending more, but that's the value they get in. You're absolutely right, that once they spend the money, that money is gone, it's not... That's why it falls outside of the longstanding understanding of gambling, which is when you put something at risk, you pay consideration, you play a game of chance and something is at risk that you could get back or you could lose. Here, once that... Once you buy those tokens, everyone knows that money is gone. You're not... So when you go on to use those tokens, you're seeking the entertainment value, not to get any money back and that's why this is really different under existing law. And whether some new kind of law might come into place if, addressing concerns like yours, is not really at issue in this petition, it may be for the legislature, it may be for other bodies to make those sorts of decisions. But what we're looking at, is just under existing law and again, as it's been interpreted and explained for since... Long... For many, many years, whether this model...

**1:51:35 Troyer:** Technology's changed. For many, many years, the law has been... A lot of this stuff, the technology and things that are out there didn't exist, and they weren't even part of what the law was written for.

**1:51:47 Henn:** I think...

**1:51:48 Troyer:** Do it on your phone, a lot of these laws....

**1:51:50 Henn:** That's undoubtedly true that a lot has changed about our world and it was interesting to hear the discussion of Bingo and pull-tabs this morning, 'cause lots of things are changing. And absolutely, laws, new laws get passed to address different things and may well... That could happen. But this game, the Big Fish Casino games were around, for example, when this brochure was published. And as I understand it, there was a discussion and a demonstration of how it worked and the guidance that was put out and has been in place since 2014 was that buying virtual prizes, if a player spends real money for a virtual prize and these items cannot be sold or redeemed for real value or a prize, it's not gambling. And that's kind of what everyone's understood. Now the law could change, but again, we're here just asking for this narrow petition to be decided, which is: Does this game fall outside of the definition of gambling? And I'd be happy to reserve my time or answer questions.



**1:52:58 Trujillo:** I just wanted to just quickly follow-up on what Ed was saying, is that... There is definitely... We're moving towards a confluence where, between video gaming, which I think is almost an archaic term now, and gambling, there are a lot of activities out there that do have, or that pose risks for a certain sector of our population that will suffer from gambling disorder on the gaming side and gaming disorder on the video side. And then there's some excellent work, like Cam Adair does great work with young people who are addicted to video gaming. And definitely that's something I think the legislature could take a look at, as things become more and more used on mobile, or consoles, or even PCs, just to see how we can help people who suffer from a disorder. So I just wanted to put that as something for us to think about. And it... No it's just more of a comment. Thank you.

**1:54:03 S?:** [1:54:03] [inaudible].

**1:54:05 Henn:** I'd like to reserve my time. I'm happy to answer any other questions, but I appreciate everyone's time, thank you.

**1:54:12 Sizemore:** Well, we're not keeping super close time but we will certainly extend similar time to Mr. Tievsky. We might be going [inaudible]. I don't know.

**1:54:27 Henn:** Thank you very much.

[laughter]

**1:54:28 Sizemore:** That's not true. You have the right to the same amount of time.

**1:54:29 Tievsky:** I appreciate that.

**1:54:32 Sizemore:** Going around about 10 minutes, just let you have an idea, don't worry about it.

**1:54:39 Tievsky:** Thank you, that's helpful. So I think that Commissioner Patterson, when we started out this discussion, I think you identified the exact flaw in Big Fish's argument here, which is that they're basing it... And the phrase "common understanding of gambling" was said over, and over, and over again. That just means what they think gambling is. We have... In Washington, there is a law that defines what thing of value is, and they cannot explain why this isn't. Why their chips aren't something that allows you to play a game or a scheme without charge. Their only response to that is, "Our game is free." It isn't free. It isn't free. And the way you know that is because they used to be owned by Churchill Downs, which is a public American company. Public companies have to put out investor reports, they're public. The federal government puts them out on the website. And here's what they say about how they're gonna make money. "Our business depends on developing and publishing free-to-play, and premium paid casual and mobile games that consumers will download and spend time and money on consistently." I don't understand how you can possibly spend money on a game that is always free. And the language changed there somewhat. At the beginning she said you can always play it for free. And then in response Commissioner Troyer's question, "It is possible to play it for free."

**1:56:09 Tievsky:** Here's how it actually works. They give you some free chips. They give you a bunch when you start, and they do, they give you a limited amount at certain intervals. You run through

those real fast. They get you through... Depending on what games you play, they get you through 15 minutes, it's not very long. And then it pops up with a screen and it says, "Continue the fun, \$9.99." And that gets you a little bit more. Now when they notice that you start spending a lot of money, like Miss Kelly, who submitted the letter, they start reaching out to you and they say, "Hey, you're in our VIP tiers. What can we do to help you out?" They start sending personal notes. They start telling you things like, "Well, we can give you some more free chips, but the amount of free chips we can give you depends on how much you've spent recently." "Recent spend" is what they call it. Until you get to the point where you're like Miss Kelly, you've spent more than the \$300,000 on the game and you start asking your personal VIP representative, "Hey, can I have some more chips." And they say things like, "Well, I'm not really allowed to give you any more free ones right now because we have to base how many free chips we can give you on certain factors like recent spend, but just this one time I'll give you a few."

**1:57:26 Tievsky:** And this is in response to Miss Kelly saying things like, "I just went through \$400 worth of chips in an hour." "\$1000 worth of chips in an hour." So to say that this game is free, is just a gross, gross, mis-statement. I don't think there's anything more real world than cashing out your husband's retirement account and running up huge Hela loans just to play this game. That's real world. So yes, they give away some free play. So does 7 Cedars, so does Ilani so does probably every casino in the state, to get you in the door. And look, when you're regulated, when the Commission approves these things, that's fine. But this is totally unregulated. They operate not under your oversight in any possible way. I'd like to discuss a little bit common understanding of gambling. So there's a case from a few years ago that the Commission was involved in called Bulls Eye. Bulls Eye involved a machine that you got to play for free every day. Everyone got a free play. But then if you wanted to play more after that, you had to put in money. And the Commission argued to the court, "Hey, it doesn't matter that you can play for free every day. It's still gambling." And the Court of Appeals agreed with the Commission.

**1:58:43 Tievsky:** And that's what the Ninth Circuit relied upon when it said, "You know, it doesn't matter that you can't cash out, it doesn't matter that they give you free chips sometimes, that's not relevant. The point is they have value because people have to buy them to keep playing the game, they extend the privilege of playing the game for free."

**1:59:02 Patterson:** But continuing to play for some is more valuable than actually winning money.

**1:59:08 Tievsky:** That's correct. And that's what Professor Schüll explains in her book and in the letter she kindly submitted, that, yes, for people who are... Particularly people who are addicted to machine gambling, that what they're looking for is to be in what's called... They call it the machine zone. It's sort of this dissociative state that people get addicted to, that they're just sucked into the game and that's what you see with problem slot machine gamblers and you see exactly the same thing here. And Professor Schüll explains that this is exactly, exactly the same thing. Let's see, with respect to... Oh, I'm sorry.

**2:00:01 Patterson:** So I guess... You were making the point that there is a difference between gambling addiction and gaming addiction. With a gaming addiction, there's never a point where the game will compensate for 99 cents.

**2:00:24 Trujillo:** Well [inaudible], I mean [inaudible] points it out, I mean there are plenty of console games and PC games, you know Overwatch, you can spend lots of money. But the question

is, is that gambling or is that not gambling? But the same addictive qualities are there. I mean I think Schüll's work is excellent there, but that also applies to definitely things that are not gambling, as well as things that are gambling.

**2:00:54 Tievsky:** Anything... Oh. I'll let Commissioner Troyer go ahead.

**2:00:55 Troyer:** Okay, real quick, just 'cause I want to ask you guys, you said something that, you can spend up to \$400 an hour, \$250 or \$400 an hour, is that actually possible? If you're the worst poker player or the worst [inaudible] player can you actually put \$400 into this and make it disappear in an hour?

**2:01:14 Sizemore:** Well she'll come back, if you wanna ask her that.

**2:01:17 Troyer:** Okay, alright. He said that, I just wanna make sure, you know that's a pretty big statement...

**2:01:23 Sizemore:** Right.

**2:01:23 Troyer:** I just wanna make sure that that's actually a real thing.

**2:01:28 Tievsky:** Yeah, it's a real thing. Maybe even more than that, there's no limits on how much folks can spend. It is an awful lot of money. As far as the video game question, I think part of the reason that this is gambling as opposed to some of the video games and other things you're talking about is that you have to... First of all it's completely a game of chance, which is part of the gambling rules here in the state. There's no... These are slot machines. There's nothing the players can do to affect the outcome, that's part of it. The other part of it is that you have to pay to continue, so it's not a matter of paying to enhance your gameplay, to get a better soccer player or to... To get something that looks cool. It's either you pay or you stop. And that's the really psychologically powerful part that Professor Schüll talks about in her research.

**2:02:24 Sizemore:** About two minutes.

**2:02:29 Tievsky:** Thank you, in my end of my time, I'd like to address the pamphlet that the commission put out a few years ago. So when I say the Commission put it out, it is a two-page, like tri-fold pamphlet that director Troyer and his staff put together several years ago. There's no indication, I asked for records about this. There's no indication that any commissioner ever saw it, that there was ever a vote on it. It's something that staff put together to have in the lobby, basically, based on their understanding, but the staff does great work here, every staff member I've interacted with has been outstanding, but it's the commission that sets the policy here and I don't think, I think it would be a mistake for the commission to feel hamstrung by something that that staff put together based on their understanding. And if you look at documents from around that time in 2013, this was brought... Big Fish in fact, in particular, was brought to the Commission and the chair of the commission at the time, Mr. Ellis questioned said, "Well, wait a minute, this kind of sounds like gambling to me."

**2:03:30 Tievsky:** So the idea that this has been some sort of... That, "we're just confirming what the Commission has always said," is not accurate. The Commission has never come to a consensus that "well obviously Big Fish Games isn't gambling." That is very, very much as commissioner Troyer

mentioned earlier, an open question. And let's see, I will end with this. If this game is free, I do not understand how the company is worth almost a billion dollars and how they've made one year, publicly reported profit on just the casino portion of the game \$180 million, I don't understand how you can do that with a game that as their counsel said, is always free. Those things don't add up. I'm happy to answer any other questions. Thank you.

[pause]

[background conversation]

**2:04:45 Henn:** You have all been very patient and generous with your time so I'll keep this brief, but I do appreciate just a few minutes to address, to respond a little bit. I think what you've just heard and what you see in the comments that have been submitted, several of them is an argument about expanding or changing existing law, and perhaps regulating things that are not currently regulated under Washington's Gambling Act. What you didn't hear was an argument about why the staffs' brochure that was in place starting in 2014 is wrong, based on the three traditional requirements for something to be gambling, the consideration, chance and prize. And that's really the key reason we think under existing law that it's pretty clear that our games don't fall within that statute and that is what this petition, the narrow question this petition is raising, is whether Big Fish Casino games are gambling under existing law, not what future law might look like or how, if one were going to regulate these games, how one might do it.

**2:06:04 Henn:** Just to respond to the points Mr. Tievsky made about how this game could possibly be free. The facts are very plain that free tokens are given every day, given every 30 minutes, that the vast majority, I think it's over 90%, and we could submit evidence on that if you prefer it in a sworn declaration, of people never pay money. So it's just not correct for Mr. Tievsky to claim otherwise. These games are free-to-play, and most people play them that way. Others choose to buy virtual coins for their entertainment value, to extend game time, to allow them to make bigger different kinds of bets in games. And again, the thing that's key about this is, once people purchase those tokens, their money is spent, then they go and play the game, and if they consume chips, they're doing that as part of the entertainment of the game. There's never any real world value to those coins.

**2:07:14 Henn:** Arguments about revenues that Big Fish Games takes in just aren't... I would submit that they're sort of to divert attention from the narrow legal issue here, because that's not at all relevant under the statute to whether this is gambling. We've talked through the elements, and I appreciated the focus on the statutory language, which is extending game time without charge. When this game is free-to-play, we submit that it just doesn't fall under the statute that it's been clear for many years and many have relied on that interpretation, and playing, and making these games.

**2:07:53 Patterson:** So, that profit that the company is making is substantial. And you just said that that profit is being provided by 10% of the people who play.

**2:08:06 Henn:** I don't have the exact percentage here, but it's definitely true. And as I said, we can submit evidence about it if the Commission wants more information that over 90% never spend money.

**2:08:20 Patterson:** Okay, so the 10% then are spending a heck of a lot of money. The 10% might have a

problem.

**2:08:25 Sizemore:** Is there ad revenue?

**2:08:29 Patterson:** Pardon me.

**2:08:29 Sizemore:** I'm just curious if there's ad revenue.

**2:08:32 Patterson:** I mean, where else do you get revenue from?

**2:08:36 Henn:** I don't wanna mis-state anything because I didn't study up on this and ask my client. So if the Commission would like to know that, I can definitely find out more, but again...

**2:08:45 Patterson:** I guess, my point, or my question is that if 10% of your players are generating an enormous amount of money, that sounded like an enormous amount of money to me, I would think that that 10% is spending an enormous amount of money. Maybe that 10% has a problem. Maybe they're getting something of value that would result in them providing enormous profits, enormous profits to that company. That's just what I'm thinking right now.

**2:09:13 Henn:** No, and I appreciate that. And I think Commissioner Troyer made comments that were similar about focus on that concern. I do think this is a quite common model of freemium games, where there are in-app purchases available and Electronic Software Association makes that argument as well in its submission. But again, getting to the statute and how gambling is defined under Washington State Law, I would submit that those issues, that I know the Commission is very concerned about, with responsible play, is really about if this were gambling or if the law changed so that it was regulated, how you might do that. Whereas under existing law, it's pretty clear that that third element of the prize is missing here, because nothing of real world value is at stake when people play these games. Nothing. The tokens can never be converted into cash or money or anything of real world value. And that's really what the brochure described and explained. And again, there are many, many games, that, kind of, do the same model, where it's free or you can choose to buy things. And the value you get from those purchases is the entertainment value, not a thing of value as defined under the law to require... As required under the law to make it gambling.

**2:10:41 Sizemore:** Alright, I think your time is just about expired, but Commissioner Troyer has a question.

**2:10:48 Troyer:** I just wanted to come back to the same thing I asked before, can you spend \$250-400 an hour playing?

**2:10:52 Henn:** I'm not aware that... I think that that may well be true. I don't think there's a limit that I'm aware of in terms of what you can play or what... How many tokens you can put...

**2:11:06 Troyer:** Is it possible that the machine and the program would let you spend that much money in an hour playing, yes or no?

**2:11:12 Henn:** I would want... Before I answer a factual question like that, I think I would wanna double check with my client, but again, I think... And I'd be happy to do that if the Commission would like, but I think the key part, again, is while there is consideration and while there's a game

of chance here, there's no money ever coming out, there's nothing of value, these things can't be converted to a thing of value, so... Prize or a thing of...

**2:11:38 Troyer:** I'd like to, actually, know that. And just putting it into perspective, if you had a elderly parent that was spending \$500 a day doing this, what would you do about it? Just think about that, we wanna know that question, we want protections for somebody, that gets... Like, casinos can tell people are gambling a lot of money, and they consult. They can ban people, they can recognize problem gambling. Do you have a mechanism in place when somebody spends \$500 a day playing free cards to stop that? I'd like to know that, if that's a possibility. And then also, it started to sound like your arguments boiling down to technicality that's in a piece of paperwork or an old law, or somewhere in a brochure, and not what's really happening. And so I guess we're gonna have to take a look at that.

**2:12:27 Sizemore:** Yeah. Okay.

**2:12:29 Troyer:** You know where I come from on the whole thing. It seems like every time we talk and the more I get to know about this, the worse it sounds. Just being honest with you.

**2:12:38 Sizemore:** Alright.

**2:12:39 Henn:** I think just in response, the entire industry relies on knowing what the law is, and being able to read the law and understand it. And this Commission plays an important role in interpreting the law.

**2:12:50 Troyer:** Right. But, you guys are the ones who came and brought this up to us.

**2:12:53 Henn:** Because of the uncertainty. That's correct. And we're just asking the Commission to interpret the law that's on the books.

**2:13:02 Sizemore:** Alright. So thank you. Senator Conway.

**2:13:08 Conway:** From the legislative side here, how many Washingtonians play Big Fish?

**2:13:12 Sizemore:** Hold on a second. Senator Conway.

**2:13:16 Henn:** That is in the Vella declaration, and I believe it's upwards of 700,000 who have downloaded the game that's with a geo-location in Washington State. Let me double check that, so I'm sure that I gave you the right number though. More than 865,000 installations of this game have come from an IP address geo-located in the state of Washington.

**2:13:47 Conway:** And am I right in assuming that 10% of those people are paying for chips?

**2:13:53 Henn:** I don't know that number. What I came here knowing was that over 90% play for free, but if you want the precise number...

**2:14:01 Conway:** Alright, I do. I am a legislator here. I think that we'd like some facts, okay. Thank you.

**2:14:06 Henn:** Yes, absolutely. We'd be happy to submit that.

**2:14:11 Sizemore:** Commissioner Patterson, you had another...

**2:14:13 Patterson:** I don't know. I'm just really struck by the fact that 10% of the players are making that much money for your company. What is it about the 10%? Why would they spend all that money? Why isn't the money coming equally from 100% of your players? That's all.

**2:14:36 Sizemore:** Okay. Alright.

**2:14:38 Considine:** And I think those are information that they are clearly willing to try and give you. And that might be best formulated when you go into closed session; if you want more information how to do that. I would just say, Mr. Chair to give anyone else that's here today a chance to comment, or see if anyone wants to comment before we break for a closed session, since we're running up to the noon hour.

**2:15:01 Sizemore:** Yep. So, thank you.

**2:15:02 Henn:** Thank you very much Mr. Chairman.

**2:15:03 Sizemore:** So I am offering the opportunity for any other interested party in this petition for declaratory order, in regards to the thing of value component of this matter. If there is anyone else that would like to come add something to the record. Does not appear that there is. So I would propose... Maybe we got two commissioners already decided to go to closed session early.

**2:15:39 Considine:** I would.

**2:15:40 Sizemore:** Not a quorum, mind you, just two. We have a space? Okay.

**2:15:50 Considine:** We do, I would just see, just so that we can close this down before you go, is there anybody from the public that wants to provide any more comments on Big Fish petition in general? That way, if there was anything else, now's the time.

**2:16:04 Sizemore:** Okay. I will extend that offer, if you didn't hear, if there's anyone from the audience that would like to add something to the record on this Big Fish petition. Doesn't appear that that we have anyone. So, we are going to go into closed session. Estimated 15 to 20 minutes. And then we'll return and let you know what we are gonna do next.

**2:16:35 Sizemore:** We're coming back again.

[pause]

**2:17:03 Considine:** Like thirty minutes ago. [laughter] It's okay.

[background conversation]

**2:17:36 Sizemore:** Alright. We are back in open session, and on the matter of Big Fish Games petition for declaratory order, we will be siding this matter over until our October commission meeting for further consideration and decision. The comments submitted so far require serious thought and

consideration and deal with complex issues of statutory interpretation. For these reasons good cause exists to extend the statutory limits set forth in RCW 340.05.240. So, the Commission has signed an order to that effect, and we will not be having any further oral arguments on the matter. Any additional information that people would like to include in the record would need to be submitted to Brian Considine by September 30th and then we will announce some sort of decision in October. So, it's the closing of additional information. Brian.

**2:18:58 Considine:** Would you like to give a time on that like 5:00 PM?

**2:19:01 Sizemore:** Sure, 5:00 PM Pacific time...

**2:19:07 Considine:** Thank you.

**2:19:07 Sizemore:** On September 13th, to be included in the record. So with that, it completes our work on the petition for declaratory order for this meeting. And so our next act is we will be going into executive session to discuss pending investigations, trial and negotiations and litigation. We anticipate that as lasting about an hour and we will reconvene at 1:45. So, we are at lunch.



**BIG FISH GAMES, INC.**  
**PETITION FOR DECLARATORY**  
**ORDER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE WASHINGTON STATE GAMBLING COMMISSION**

In the Matter of the Petition of Big Fish Games,  
Inc. for a Declaratory Order

Matter No.:

**PETITION**

1           1.     Petitioner Big Fish Games, Inc. is headquartered at 333 Elliott Avenue West, Suite 200,  
2     Seattle, Washington 98119.

3           2.     The statutes brought into issue by this petition are RCW 9.46.0237 and RCW 9.46.0285.

4   **INTRODUCTION AND STATEMENT OF FACTS**

5           3.     Petitioner Big Fish Games, Inc., petitions the Washington State Gambling Commission  
6     for a declaratory order confirming that its Big Fish Casino suite of online video games (“BFC”) does not  
7     constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237, and  
8     therefore is not subject to the Commission’s regulatory or enforcement jurisdiction. As in many video  
9     games, players can play the games for free with virtual tokens that are received at the start of play and  
10    additional virtual tokens that are provided automatically at regular intervals, or can be purchased, for  
11    more play within the games. BFC’s virtual tokens exist, and can be used, only within BFC’s online  
12    games; they cannot be redeemed for money and have no real-world value, *i.e.* there is no usage outside  
13    the BFC virtual online games. That is why Petitioner, the public, the pertinent Commission guidance  
14    (*see* Declaration of Gary Rubman (“Rubman Decl.”) ¶ 2, Exh. A),<sup>1</sup> and judicial precedent have  
15    consistently understood that playing such games is not gambling. Petitioner requests that the  
16    Commission resolve uncertainty that recently has arisen with respect to Washington’s law by issuing a  
17    declaratory order that playing BFC games is not gambling under the Washington Gambling Act.

18          4.     BFC is an online suite of casino-themed video games where virtual tokens are called  
19    “chips.” Declaration of Andy Vella (“Vella Decl.”) ¶ 3. All new players currently receive 100,000  
20    virtual chips automatically when they install BFC for free and create a username. *Id.* Since at least  
21    2013, additional virtual chips are distributed automatically to players at various times within the games.  
22    *Id.* Players can obtain additional virtual chips through playing the game. *Id.* Players receive additional  
23    virtual chips automatically any day that they sign in to play; when they click or press to collect more  
24    after certain periods of time (*e.g.*, 30 minutes); when they join a social club within BFC, as of 2017; and  
25

26 \_\_\_\_\_  
27 <sup>1</sup> This petition hereby incorporates by reference the declarations and their exhibits.  
28

1 when Facebook friends install BFC. *Id.* Players also have the option to purchase additional virtual  
2 chips. *Id.*

3 5. BFC’s virtual chips cannot be exchanged or cashed out for money and they have no value  
4 in the real world. *Id.* ¶ 4. Virtual chips may be used only within the games, including, for example, to  
5 play the games or to acquire a virtual pet, cupcake, flag, or other virtual item. *Id.* BFC’s terms of use  
6 prohibit the sale or transfer “for commercial gain” of virtual chips,<sup>2</sup> and the game does not provide a  
7 means for players to conduct such a transaction.<sup>3</sup> *Id.* ¶¶ 5-6.

8 6. For years, BFC’s owners, players of the game, and state regulators have operated  
9 pursuant to the understanding that BFC games do not constitute gambling within the meaning of the  
10 Washington Gambling Act, consistent with the text, purpose, and history of the statute, and state court  
11 precedent. Recently, however, a federal court issued a ruling at the preliminary phase of a case that set  
12 forth an interpretation that is in tension with that understanding and with the state’s long-standing  
13 application of the state statute. *See* below at ¶ 27 (discussing *Kater v. Churchill Downs Inc.*, 886 F.3d  
14 784, 787 (9th Cir. 2018)).<sup>4</sup> A federal court’s view of Washington state law is not, of course, binding on  
15 the state of Washington, its courts, or agencies, because it is the state that is charged with interpreting  
16 and enforcing state law. *See, e.g., In re Elliott*, 74 Wash. 2d 600, 602 (1968) (“state courts are not  
17 bound by federal court interpretations of state statutes”).

18 7. The Washington legislature has vested this Commission with the responsibility of  
19 enforcing the Washington Gambling Act and interpreting the statute. *Ass’n of Wash. Bus. v. Dep’t of*

20  
21 \_\_\_\_\_  
22 <sup>2</sup> The Terms of Use provide, in relevant part: “Virtual items may not be transferred or resold for  
23 commercial gain in any manner, including, without limitation, by means of any direct sale or auction  
24 service. Virtual items may not be purchased or sold from any individual or other company via cash,  
barter or any other transaction. Virtual items have no monetary value, and cannot be used to purchase or  
use products or services other than within the applicable Big Fish Offering. Virtual items cannot be  
refunded or exchanged for cash or any other tangible value.”

25 <sup>3</sup> Since at least 2013, BFC allows a player to “gift” virtual chips to another player within the games  
26 through use of virtual gold bars that are obtained through play or purchased within the games. Vella  
Decl. ¶ 6. Neither the gifting player nor Big Fish Games receives any financial compensation when  
virtual chips are gifted. *Id.*

27 <sup>4</sup> The *Kater* case is an action against Churchill Downs, Inc., a predecessor owner of Big Fish Games.  
28

1 *Revenue*, 155 Wash. 2d 430, 440 (2005) (Washington state agency has authority to interpret statutes it  
2 enforces). The Washington legislature has charged the Commission with, among other things, the  
3 “power to enforce” the “penal laws of [the] state relating to the conduct of or participation in gambling  
4 activities.” RCW 9.46.210(3). The legislature also charged the Commission with “adopt[ing] such rules  
5 and regulations as are deemed necessary to carry out the purposes and provisions of” the Washington  
6 Gambling Act. RCW 9.46.070(14). This law enforcement authority of the Commission includes the  
7 authority to interpret the scope of Washington’s gambling statute. *See Ass’n of Wash. Bus.*, 155 Wash.  
8 2d at 440.

9 8. Washington State’s governing legal principles of statutory construction, the state  
10 legislature’s purpose in enacting the Washington Gambling Act, and Washington State judicial  
11 precedent compel the conclusion that playing BFC games, and similar online social games, does not  
12 constitute gambling within the meaning of state law. The Commission should enter a declaratory order  
13 to that effect, consistent with the long-standing understanding and application of state law.

14 **THE PETITION SATISFIES THE REQUIREMENTS FOR THE ISSUANCE OF A**  
15 **DECLARATORY ORDER**

16 9. This Petition satisfies the requirements for issuance of a declaratory order. The  
17 Commission’s regulations provide that “[a]ny person may petition the commission for a declaratory  
18 order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable  
19 by the agency.” Wash. Admin. Code § 230-17-180(1). “The petition must . . . show:

- 20 (a) That uncertainty necessitating resolution exists; and
- 21 (b) That there is actual controversy arising from the uncertainty such that a declaratory order  
22 will not be merely an advisory option; and
- 23 (c) That the uncertainty adversely affects the petitioner; and
- 24 (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on  
25 others or on the general public that may likely arise from the order requested.”

26 *Id.*

27 10. Uncertainty exists necessitating resolution as to whether playing BFC games constitutes  
28 gambling within the meaning of the Washington Gambling Act. Until recently, game owners and

1 players relied on the long-standing understanding, consistent with the enforcement practices and public  
2 guidance of the Commission (including in a publication issued in 2014, *see* Rubman Decl. ¶ 2, Exh. A),  
3 that BFC games and similar online games, *i.e.*, games where virtual tokens that are received by players  
4 have no real-world value and cannot be cashed out, do not constitute gambling under Washington law.  
5 In March 2018, however, a federal court, in attempting to interpret Washington state law, set forth a  
6 reading of state law that creates uncertainty necessitating resolution for Petitioner concerning its BFC  
7 games. *See* [https://www.wsgc.wa.gov/news/press-releases/directors-statement-regarding-ninth-circuit-](https://www.wsgc.wa.gov/news/press-releases/directors-statement-regarding-ninth-circuit-court-appeals-published-decision)  
8 *court-appeals-published-decision* (describing uncertainty and confusion created by federal court  
9 opinion).

10 11. An actual controversy arises from this uncertainty such that the declaratory order  
11 Petitioner seeks will not be merely an advisory opinion. The actual controversy over whether BFC  
12 games, owned by Petitioner, constitute gambling under the Washington Gambling Act, in light of the  
13 specific factual circumstances that the BFC games present, can be addressed through a declaratory order  
14 that applies to these specific factual circumstances.<sup>5</sup>

15 12. The uncertainty adversely affects Petitioner Big Fish Games, which must determine steps  
16 necessary for regulatory compliance associated with BFC games, as the owner of BFC.<sup>6</sup>

17 13. The adverse effect of the uncertainty on Big Fish Games far outweighs any adverse  
18 effects on others or on the general public that could arise from the order requested. The public will

19  
20 <sup>5</sup> *See*, in the context of the Washington Utilities and Transportation Commission applying its  
21 comparable regulations, *In re Sea Breeze Pac. Juan De Fuca Cable, LP*, 2005 WL 3529315 (Wash.  
22 UTC Nov. 3, 2005) (“The petition demonstrates an actual controversy, showing that resolution of the  
23 issue is needed to avoid regulatory confusion . . . .”); *compare In re Seatac Shuttle, LLC*, 2012 WL  
24 6513392, at \*2 (Wash. UTC Dec. 11, 2012) (petitioner’s “request that we disregard [specific] facts and  
25 provide only generic guidance on [statutory] terms . . . seeks an advisory opinion” and fails actual  
26 controversy requirement).

27 <sup>6</sup> *See In the Matter of Petition of Microsoft Corp. for Declaratory Order* (Wash. State Gambling  
28 Comm’n) (Nov. 14, 2014) (declaratory order entered to resolve uncertainty that adversely affected  
petitioner by preventing sale of certain online advertising); *see also*, in the context of the Washington  
Utilities and Transportation Commission applying its comparable regulations, *In re Bonneville Power  
Admin.*, 2007 WL 1472218 (Wash. UTC May 16, 2007) (“The uncertainty has an adverse effect on  
Bonneville by presenting a potential barrier to completion of the facilities.”); *In re Pac. Power & Light  
Co.*, 2014 WL 345665, at \*3 (Wash. UTC Jan. 29, 2014) (“the resulting uncertainty adversely affects the  
Company in the form of a potential enforcement action”).

1 benefit from the requested declaratory order. It is in the public's interest to have uncertainty resolved as  
2 to BFC games, which are widely enjoyed by many players as a form of entertainment. More than  
3 865,000 installations of BFC have come from an IP address geo-located in the state of Washington, and  
4 there have been more than 100,000 such installations in the past twelve months. Vella Decl. ¶ 7. A  
5 stated purpose of the Washington Gambling Act is to "avoid restricting participation by individuals in  
6 activities and social pastimes, which . . . are more for amusement rather than for profit, do not  
7 maliciously affect the public, and do not breach the peace." RCW 9.46.010. Throughout the state of  
8 Washington, the social games industry (which includes a variety of online free-to-play video games with  
9 various virtual items of no real-world value) is estimated by the Entertainment Software Association to  
10 employ more than 6,000 people in Washington. See Entertainment Software Association, *Video Games*  
11 *in the 21st Century, The 2017 Report*, at p. 13, Table C-3: "U.S. Game Company Employment by State;  
12 Top Seven States", [http://www.theesa.com/wp-content/uploads/2017/02/](http://www.theesa.com/wp-content/uploads/2017/02/ESA_EconomicImpactReport_Design_V3.pdf)  
13 [ESA\\_EconomicImpactReport\\_Design\\_V3.pdf](http://www.theesa.com/wp-content/uploads/2017/02/ESA_EconomicImpactReport_Design_V3.pdf). (excerpt attached as Exh. B to Rubman Decl. ¶ 3)

14 **THE COMMISSION SHOULD ENTER A DECLARATORY ORDER THAT BIG FISH**  
15 **CASINO GAMES DO NOT CONSTITUTE GAMBLING WITHIN THE MEANING OF THE**  
16 **WASHINGTON GAMBLING ACT**

17 14. The Commission should enter a declaratory order that BFC games do not constitute  
18 gambling within the meaning of Washington law because BFC games can be played for free, the virtual  
19 tokens provided within the games cannot be redeemed for cash and have no real-world value and, thus,  
20 BFC games are not played for profit. BFC games are a quintessential example of games played for  
entertainment.

21 15. The Washington Gambling Act defines "gambling" to mean "staking or risking  
22 something of value upon the outcome of a contest of chance or a future contingent event not under the  
23 person's control or influence, upon an agreement or understanding that the person or someone else will  
24 *receive something of value* in the event of a certain outcome." RCW 9.46.0237 (emphasis added). The  
25 Act defines thing "of value" to mean "any money or property, any token, object or article exchangeable  
26 for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of  
27 money or property or of any interest therein, or involving extension of a service, entertainment or a  
28 privilege of playing at a game or scheme without charge." RCW 9.46.0285.

1           16.     That statutory definition of thing “of value” includes four categories that are separately  
2 described as follows: (1) “any money or property”; (2) “any token, object or article exchangeable for  
3 money or property”; and (3) “any form of credit or promise, directly or indirectly, contemplating  
4 transfer of money or property or any interest therein” or (4) “any form of credit or promise, directly or  
5 indirectly, . . . involving extension of a service, entertainment or a privilege of playing at a game or  
6 scheme without charge.” RCW 9.46.0285.

7           17.     The virtual tokens in BFC games do not fall within any of the four categories of that  
8 statutory definition of thing “of value.” First, they are not “money or property.” Second, they are not  
9 “exchangeable for money or property.” BFC’s terms of use, to which game players must agree,  
10 explicitly state that “[v]irtual items cannot be refunded or exchanged for cash or any other tangible  
11 value.” *See*, note 2, *supra* (setting out other relevant terms of use); note 1, *supra* (incorporating by  
12 reference). Third, the virtual tokens are not a form of credit “contemplating transfer of money or  
13 property or any interest therein.” The BFC terms of use explain that “[v]irtual items may not be  
14 transferred or resold for commercial gain in any manner, including, without limitation, by means of any  
15 direct sale or auction service.” *Id.* The terms of use further specify that “[v]irtual items may not be  
16 purchased or sold from any individual or other company via cash, barter or any other transaction.” *Id.*  
17 And the terms unequivocally state that “[v]irtual items have no monetary value, and cannot be used to  
18 purchase or use products or services other than within the applicable Big Fish Offering.” *Id.*

19           18.     Fourth, BFC virtual tokens are not a “form of credit” involving “extension of . . .  
20 entertainment or a privilege of playing at a game or scheme without charge.” That textual qualification  
21 of “without charge” means that a “form of credit” is a thing of value *only if* it is a credit for playing at a  
22 game for which there would *otherwise be a “charge”* to play. But BFC games are free to play, they  
23 automatically provide virtual tokens at the commencement of play, they provide additional virtual  
24 tokens automatically at frequent, regular intervals, and the virtual tokens cannot be cashed out and they  
25 have no real-world value. Thus, virtual tokens in BFC cannot somehow constitute an extension of  
26 entertainment or privilege of playing a game “without charge,” because there is no “charge” required to  
27 play the games. Virtual tokens in BFC therefore do not constitute a thing “of value” within the meaning  
28 of the Washington Gambling Act, RCW 9.46.0285, RCW 9.46.0237.



1           19.     Petitioner’s understanding of the plain meaning of the statutory text is required by  
2 Washington state law’s fundamental principles of statutory interpretation. Washington statutory  
3 provisions must be interpreted according to the principle of *noscitur a sociis*, which means that one term  
4 in a group must be interpreted within the context of the other terms in the group and precludes  
5 interpretation of one of the terms in such a broad manner that it is inconsistent with the other terms. *See*  
6 *Wright v. Jeckle*, 158 Wash. 2d 375, 381 (2006) (“[A] word is known by the company it keeps.”)  
7 (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995)); *State v. Roggenkamp*, 153 Wash. 2d 614,  
8 623 (2005) (“[T]he meaning of words may be indicated or controlled by those with which they are  
9 associated.”) (citation omitted).

10           20.     This statutory interpretation doctrine means that the fourth category in the definition of  
11 thing “of value” in RCW 9.46.0285 cannot be construed so broadly as to be inconsistent with the other  
12 three categories. The first three categories expressly include only things that are monetized in the real  
13 world, *i.e.*, things that are, or may be exchanged or transferred for, “money,” “property,” or a property  
14 interest. Those categories all include only things of real-world value—things of worth outside the  
15 virtual game being played. As such, the fourth category, properly interpreted in the context of the first  
16 three categories, is appropriately understood to be limited to things that have real-world value as well,  
17 and not to extend to virtual tokens that cannot be redeemed for cash and have no real-world value, but  
18 are of use only within a virtual game. To extend the fourth category to include such virtual items would  
19 be wholly inconsistent with the limitation to real-world value that underpins the value concept being  
20 defined and would render the thing “of value” limitation meaningless.

21           21.     Washington statutory provisions must also be interpreted according to the principle of  
22 *ejusdem generis*, which requires that general terms in a statute that are connected to specific terms in a  
23 sequence are to be interpreted and given effect only to the extent that the general terms include items  
24 that are similar to those included by the specific terms. *See Davis v. Dep't of Licensing*, 137 Wash. 2d  
25 957, 970, 977 P.2d 554 (1999) (“[S]pecific terms modify or restrict the application of general terms  
26 where both are used in sequence.”) (citation omitted) (quoting *Dean v. McFarland*, 81 Wash. 2d 215,  
27 221 (1972); *see also In re Estate of Jones*, 152 Wash. 2d 1, 11 (2004). Because the first three  
28 categories listed in the statutory definition of thing “of value” are all directed to things of value in the

1 real world, this statutory interpretation doctrine means that the fourth category must be limited in similar  
2 fashion to exclude virtual tokens that are used only for entertainment within the online game itself, but  
3 cannot be cashed in for money and have no real-world value like money, property, or a property interest.

4 22. Petitioner's interpretation of the statute supports "the legislative intent in the context of  
5 the *whole* statute and its general purpose." *City of Seattle v. State*, 136 Wash. 2d 693, 701 (1998)  
6 (citation omitted). The Washington state legislature specified that its intent when enacting the  
7 Washington Gambling Act was "to keep the criminal element out" of gambling, in particular "organized  
8 crime," and to restrain "professional" gambling, but "at the same time," to "avoid restricting  
9 participation by individuals in activities and social pastimes, which . . . are more for amusement rather  
10 than for profit, do not maliciously affect the public, and do not breach the peace." RCW 9.46.010.

11 23. Petitioner's interpretation of the statute is further confirmed by the requirement of  
12 Washington law that any ambiguity in the statute be construed narrowly under the rule of lenity. The  
13 rule of lenity requires that any ambiguity in a Washington statute that imposes penal or criminal  
14 sanctions be interpreted in the manner most favorable to the party that may be accused of violating the  
15 law; in other words, in the manner that limits rather than expands potential criminal liability. *State v.*  
16 *Roberts*, 117 Wash. 2d 576, 586 (1991). The rule applies to any statute imposing penal or criminal  
17 sanctions, including in a case that is "civil in form." *Kahler v. Kernes*, 42 Wash. App. 303, 308 (1985)  
18 ("As it is a penal statute, although civil in form, we *must* adopt the interpretation most favorable to [the  
19 party facing penalty]." (emphasis added)). The statutory definitions of "gambling" and "[t]hing of  
20 value," RCW 9.46.0237, 9.46.0285, which are at issue here, give rise to criminal penalties under  
21 multiple provisions of the Washington Gambling Act that incorporate those definitions. *See, e.g.*, RCW  
22 9.46.160 (prescribing "class B felony"), 9.46.198 (prescribing "gross misdemeanor"). Thus, these  
23 definitions must be interpreted narrowly, as set forth above, such that BFC games do not constitute  
24 gambling under the Washington Gambling Act. The Commission should avoid a broader interpretation  
25 that would greatly expand criminal liability under state law.

26 24. The Washington Court of Appeals' interpretation of the Washington Gambling Act also  
27 supports this interpretation. In *Bullseye Distributing LLC v. State Gambling Commission*, the Court of  
28 Appeals ruled that playing the video slot machine at issue there was "gambling" because "[i]f a person

1 accumulate[d] a predetermined target number of prize points, he . . . won the game *and [could] redeem*  
2 *the prize target for cash or merchandise.*” 127 Wash. App. 231, 236 (2005) (emphasis added). In so  
3 holding, the Court of Appeals affirmed a declaratory order by the Commission that had reached the  
4 same conclusion. *Id.* at 233-34; *In re Bullseye Distributing LLC*, No. 2002-GMB-0028 (Wash. State  
5 Gambling Comm’n 2003). Here, the key fact that a prize be redeemable for cash or real-world  
6 merchandise does not exist. Accordingly, because the virtual tokens in the BFC games cannot be  
7 redeemed for cash and have no real-world value, there is no thing “of value” within the meaning of the  
8 Washington Gambling Act, RCW 9.46.028; RCW 9.46.0237.

9 25. Petitioner’s requested statutory interpretation also is consistent with the long-standing  
10 enforcement practices of the Commission as well as Commission guidance, published in 2014, which  
11 sets forth the interpretation discussed above and makes clear that games like BFC games do not  
12 constitute gambling under Washington law. Since March, 2014, the pertinent brochure, entitled *Online*  
13 *Social Gaming: When is it legal? What to Consider*, has provided the authoritative direction to game  
14 players and owners with respect to permissible conduct under Washington law. *See* Rubman Decl. ¶ 2,  
15 Exh. A. The brochure covers a broad swath and ever-expanding range of online video games, “from  
16 tending a farm to playing a soldier in combat.” The brochure makes clear that games that “give free  
17 virtual money to begin play,” and allow additional virtual items to be purchased to continue or enhance  
18 play, are not gambling under Washington law where such virtual items cannot be cashed in or redeemed  
19 for “‘real’ money or prizes.” *Id.* The brochure states that such games are “OK To Play.” *Id.* The  
20 issuance of the brochure followed a public Commission hearing the previous year where there was a  
21 presentation that reviewed features of several games, including BFC.

22 26. Petitioner Big Fish Games, game players, owners of similar games, and others have relied  
23 for years on the above-described interpretation and enforcement practices by the State.

24 27. The federal court opinion that created the uncertainty here poses no barrier to this petition  
25 because it does not control the interpretation of state law by this Commission. *See In re Elliott*, 74  
26 Wash. 2d at 602. And the interpretation set forth in the opinion, *Kater v. Churchill Downs*, 866 F.3d,  
27 784 (9th Cir. 2018) is, in any event, flawed for the reasons set forth in this petition. That court’s  
28 interpretation was premised on a limited record at the motion to dismiss stage, and the court declined to

1 consider the fact that game users receive additional chips automatically at various points that allow  
2 gameplay without cost; the court viewed the record at that point not to include such an allegation. The  
3 trial court whose dismissal of the complaint was reversed on that basis, had viewed the record  
4 differently and correctly applied state law to conclude that the virtual chips in BFC games are not things  
5 “of value” under the Washington Gambling Act. *Kater v. Churchill Downs*, No. C15-612, 2015 WL  
6 9839755 (W.D. Wash. Nov. 19, 2015).

7 **PRAYER FOR RELIEF**

8 28. For the reasons set forth above, Big Fish Games respectfully requests the Commission  
9 enter a declaratory order confirming that BFC games do not constitute gambling within the meaning of  
10 the Washington Gambling Act, RCW 9.46.0237, because virtual tokens in the games cannot be  
11 redeemed for cash and have no value in the real world, and thus the games are not subject to the  
12 Commission’s regulation or enforcement jurisdiction.<sup>7</sup>

13  
14 Respectfully submitted, this 3rd day of July 2018.

15  
16 By: /s/ Matthew R. Berry

17  
18 Beth Brinkmann (DC Bar No. 477771)<sup>8</sup>  
19 Gary M. Rubman (DC Bar No. 474964)  
20 COVINGTON & BURLING LLP  
21 One CityCenter  
22 850 10th Street, NW  
23 Washington, DC 20001-4956  
24 bbrinkmann@cov.com  
25 grubman@cov.com

26 Matthew R. Berry (WSB No. 37364)  
27 SUSMAN GODFREY LLP  
28 1201 Third Avenue, Suite 8300  
Seattle, WA 98101  
mberry@susmangodfrey.com  
Tel (206) 373-7394  
Fax (206) 516-3883

29 \_\_\_\_\_  
30 <sup>7</sup>Alternatively, if the Commission is not prepared to issue a declaratory order based on the petition at this  
31 time, Petitioner requests a hearing and opportunity for briefing on the matter. Petitioner can make itself  
32 available, at the Commission’s request, to present a demonstration of BFC games.

33 <sup>8</sup> Ms. Brinkmann and Mr. Rubman are appearing pursuant to WAC 230-17-045(3) (allowing  
34 appearances by attorneys “entitled to practice before the highest court of record of any other state, if  
35 Washington attorneys are permitted to appear before administrative agencies of the other state, and if not  
36 otherwise prohibited by our state law”).

1 Tel (202) 662-5312  
2 Fax (202) 778-5312

*Counsel for* BIG FISH GAMES, INC.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **VERIFICATION**

2 1. I am counsel for Petitioner Big Fish Games, Inc. in this matter.

3 2. I have reviewed the foregoing petition and on my own personal knowledge, except those  
4 facts set forth in the accompanying Declaration of Andy Vella, I know that the facts therein are true.

5 I certify that the foregoing statements made by me are true. I certify that if any of the foregoing  
6 statements made by me are willfully false, I am subject to punishment.

7  
8 **COVINGTON & BURLING LLP**

9  
10 By: /s/ Beth Brinkmann

11 Beth Brinkmann  
12 One CityCenter  
13 850 10th Street, NW  
14 Washington, DC 20001-4956  
15 bbrinkmann@cov.com  
16 Tel (202) 662-5312  
17 Fax (202) 778-5312

18 *Counsel for*  
19 **BIG FISH GAMES, INC.**

20 Dated: July 3, 2018

1 **BEFORE THE WASHINGTON STATE GAMBLING COMMISSION**

2  
3 In the Matter of the Petition of Big Fish Games,  
4 Inc. for a Declaratory Order

Matter No.:

5 **DECLARATION OF GARY RUBMAN IN**  
6 **SUPPORT OF BIG FISH GAMES, INC.'S**  
7 **PETITION FOR A DECLARATORY**  
8 **ORDER**


9 I, Gary Rubman, hereby declare as follows:

10 1. I am a partner at the law firm of Covington & Burling LLP, counsel to Big Fish  
11 Games, Inc. ("BFG"). I make this declaration based on my personal knowledge.

12 2. Attached as Exhibit A is a true and correct copy of a brochure published by the  
13 Washington State Gambling Commission, entitled *Online Social Gaming: When is it legal, What to*  
14 *Consider*. The brochure bears the mark "GC5-027 (3/14)" and my understanding is that it was  
15 published in 2014 and was available on the website of the Washington State Gambling Commission  
16 until recently.

17 3. Attached as Exhibit B is a true and correct copy of an excerpt of a report  
18 published by the Entertainment Software Association ("ESA"), entitled *Video Games in the 21st*  
19 *Century, The 2017 Report*. The full report is available on the ESA's website at  
20 [http://www.theesa.com/wp-content/uploads/2017/02/ESA\\_EconomicImpactReport\\_Design\\_V3.pdf](http://www.theesa.com/wp-content/uploads/2017/02/ESA_EconomicImpactReport_Design_V3.pdf) (last  
21 accessed July 3, 2018).

22  
23 I declare under the penalty of perjury under the laws of the United States that the  
24 foregoing is true and correct. This declaration is executed this 3rd day of July, 2018, in Washington,  
25 DC.

26  
27   
28 Gary Rubman

# **Exhibit A**





**Get the facts to know the way to go.**  
Warning signs you may be playing on, or operating, an illegal Social Gaming website in Washington State.

- There is no way to play for free.
- The prize can be sold or redeemed for "real" money.
- Players must:
  - Pay "real" money to play.
  - Give banking information to collect a prize.
  - Call to start play.
- Disclose personal information, such as a credit card number, social security number, etc.



### Washington State Gambling Commission

#### Who We Are

- The Commission was created in 1973 to regulate and control authorized and illegal gambling activities (RCW 9.46).
- We are a law enforcement, regulatory and licensing agency.

#### What We Do

- We license and regulate all authorized gambling in the state, except for horse racing and the State Lottery.
- We investigate and control unauthorized and illegal gambling activities.

#### Our Mission

Protect the Public By Ensuring That Gambling is Legal and Honest.

Learn more about us at [wsqc.wa.gov](http://wsqc.wa.gov)



*This brochure gives general guidance. You should contact an attorney if you have questions or are unsure whether a game has the 3 elements of gambling.*

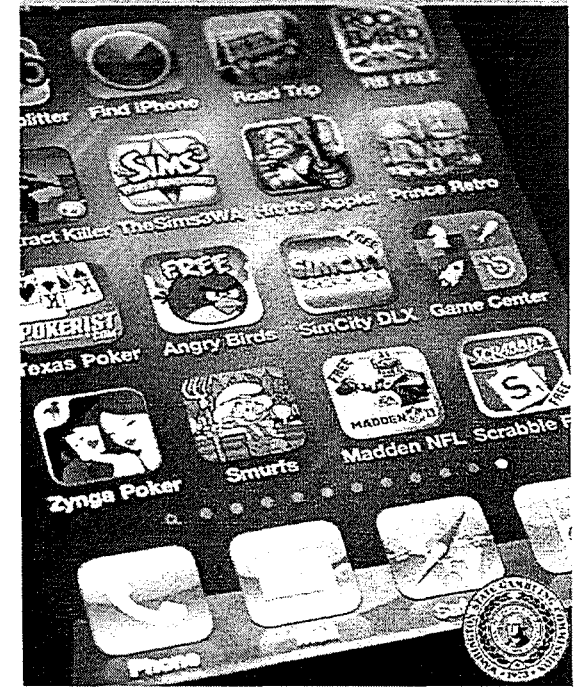
You may also contact us at:  
(360) 486-3463  
(800) 345-2529, ext. 3463  
FAX (360) 486-3631  
E-mail: [AskUs@wsqc.wa.gov](mailto:AskUs@wsqc.wa.gov)  
Mail: P.O. Box 42400, Olympia, WA 98504-2400

Photos are ©iStockphoto by the following artists: Cover MerveKarahan / Laptop user gremlin, / blindfolded man DNY59, / @coin geopaul, / no cash value coin DNY59, / treasure chest bphillips.

# Online Social Gaming

When is it legal?  
What to Consider

Let's play a game



## What is Social Gaming?

The Oxford dictionary defines **Social Gaming** as the activity or practice of playing an online game on a social media platform, with a major emphasis on friends and community involvement.

Social Gaming ranges from tending a farm to playing a soldier in combat. Ideas for new games are constantly thought up. Some popular social games involve:

- Role playing;
- Adventure;
- Arcade style games; and
- Casino style games.

Social Gaming is growing at an unprecedented rate and with it comes questions. This brochure gives general guidance to help you determine if you are playing on, or operating, a legal Social Gaming website in Washington State.

"Real" money = Legal tender, U.S. Currency.



## Is Social Gaming Legal in Washington?

Social Gaming is legal in Washington State if no gambling takes place.

### What is Gambling?

Gambling involves **3 elements**:

1. Prize;
2. Consideration (something of value, wager, fee to play); and
3. Chance.

**Legal:** If one of the **3 elements** of gambling is removed, the game is not gambling.

Things to keep in mind, to keep it legal:

- There must be a way to play for free.
- If "real" money can be used to enhance or extend play, there must be no prize.

**Illegal:** If a Social Game has the **3 elements** of gambling, it is illegal and cannot be played, or operated, in Washington State. It is illegal to solicit Washington residents to play illegal Social Games.

### Website's Rules of Play:

- If you are thinking about participating in a Social Game, read the website's Rules or Terms of Use to determine if one of the **3 elements** of gambling is removed.
- Website operators should clearly state in their Rules that virtual money, points, and other items cannot be sold or redeemed for "real" money or prizes.

Washington State law defines gambling as:

"staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome." (RCW 9.46.0237)



## No Prize = No Gambling = OK To Play

### Buying virtual money:

Many Social Gaming websites give free virtual money to begin play, with an option to buy more virtual money with "real" money to continue play. All play uses this virtual money.



Legal Social Gaming websites will not let players cash in their virtual winnings or points for "real" money or prizes.



Because there is no prize, these games are **not** gambling. However, if the virtual money can be sold or redeemed for "real" money or a prize, the game is illegal.

### Buying virtual prizes, avatars & tools:

If a player spends "real" money for a virtual prize, avatar or tool to assist with game play and these items cannot be sold or redeemed for "real" money or a prize, it's **not** gambling.



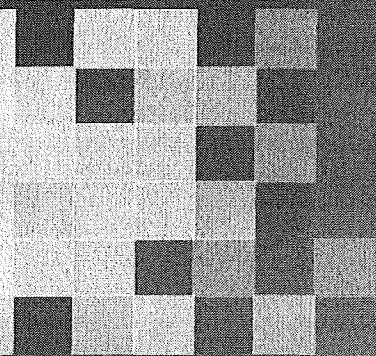
For example, let's say a player uses "real" money to purchase a key to open a chest containing a rare item that the player's character can use to advance their position in the game.

Even though "real" money is used to buy a key to get a rare item, neither the key or rare item have any real-world value because they cannot be sold or redeemed for "real" money. Because there is no prize, it's **not** gambling.

## **Exhibit B**



entertainment  
software  
association



# VIDEO GAMES IN THE 21<sup>ST</sup> CENTURY

THE 2017 REPORT

BY STEPHEN E. SIWEK



# EXECUTIVE SUMMARY

*Video Games in the 21st Century: The 2017 Report* measures the economic contributions made by the U.S. entertainment software industry to the American economy. *The 2017 Report* updates and expands upon earlier studies that quantified the economic benefits provided by the entertainment software industry to the U.S. economy as a whole<sup>12</sup>. *The 2017 Report* concludes that:

- ◆ Total video game software sales exceeded **\$24.5 billion in 2016**.
- ◆ In 2015, there were **2,457 video game companies operating at 2,858 locations in all 50 states**.
- ◆ The total direct employment by the U.S. game industry now exceeds **65,000 employees**.
- ◆ The total employment that depends on the game software industry **now exceeds 220,000**.
- ◆ Between 2012 and 2014, the number of game company locations **grew at an annual rate of 14.1%**.
- ◆ Between 2013 and 2015, direct employment in the U.S. game company industry **grew at an annual rate of 2.9%**.
- ◆ In 2015, the average annual compensation per employee (wages, salaries and employer contributions for pensions, insurance and government social insurance) **was about \$97,000**.
- ◆ The U.S. game company industry's value added to U.S. GDP was more than **\$11.7 billion in 2015**.
- ◆ The real annual growth rate of the U.S. game software industry's **value added was 3.7%** for the period 2013-2015.

---

<sup>1</sup> Siwek, Stephen E., *Video Games in the 21st Century: Economic Contributions of the U.S. Entertainment Software Industry*, Entertainment Software Association (2007).

<sup>2</sup> Siwek, Stephen E., *Video Games in the 21st Century: The 2010 Report*, Entertainment Software Association (2010).



# INTRODUCTION

The U.S. industry that develops and publishes video game software continues to create wholly new forms of entertainment for consumers worldwide. The industry also generates sales in the billions of dollars and creates thousands of American jobs.

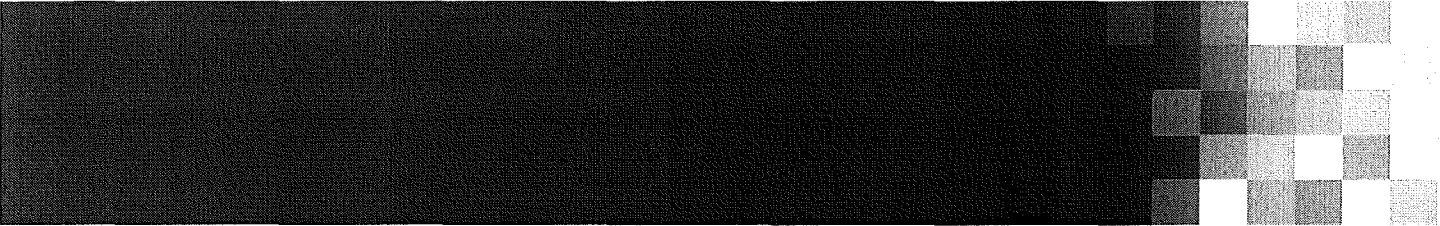
This publication, *Video Games in the 21st Century: The 2017 Report*, presents a number of statistical measures that quantify the economic contributions of the video game industry. This report is the third economic impact study prepared for the Entertainment Software Association (“ESA”), the trade association that represents the U.S. video game industry.<sup>3</sup> The basic methods used in this report were originally described in one or both of the previous ESA studies. In this study however, there is a significant change in the underlying data used to measure the economic impact of the video game industry. Unlike previous ESA studies, the source references used in this analysis were compiled directly from game company data bases and social media websites. While the basic structure of the economic impact study has not materially changed, the inclusion of data from the ESA Geographic Impact Report has had more dramatic effects on the overall estimates presented here. ESA obtained this information from multiple different data bases/websites, including Steam, Kickstarter, International Game Developers Association, Giant Bomb, and LinkedIn.

ESA’s reliance on multiple research sources is commendable. Since its origin, the video game industry has not been subject to extensive regulation of its companies or its employees. With less regulation, there have been fewer demands for the industry to gather and publish industry data and studies. For these reasons, neither the federal government nor the industry itself has invested in creating a comprehensive data base of video game companies. However, with the publication of the ESA’s Geographic Impact Report, that condition has changed.

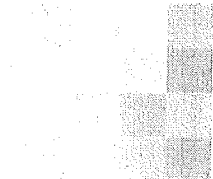
ESA’s Geographic Impact Report quantifies industry statistics on geographic volume, employment and growth. The study identifies 2,457 game companies that function at 2,858 locations. Approximately 80% of these companies were game developers while nearly 95% were founded in the United States. Significantly, video game companies are located in all 50 states.

---

<sup>3</sup> The previous studies were: Siwek, Stephen E., *Video Games in the 21st Century: Economic Contributions of the U.S. Entertainment Software Industry*, Entertainment Software Association (2007) and Siwek, Stephen E., *Video Games in the 21st Century: The 2010 Report*, Entertainment Software Association.



In addition to the data collected by ESA, many of the statistical measures included in this report either were taken directly from U.S. government sources, such as the U.S. Census Bureau or Bureau of Economic Analysis, or were derived using public data from those sources. A basic difficulty that continues to arise when using U.S. government data is that many (but not all) of the most relevant statistics measure only aggregated industry groupings such as software publishing. Largely for this reason, certain estimates presented in this report were derived using statistical data for broader industry groupings than video game publishing. Subsequently, where possible, these broader measures were adjusted to better reflect the known characteristics of the video game industry.



### III. U.S. EMPLOYMENT IN GAME PUBLISHING AND DEVELOPMENT

Employees in the U.S. video game industry may work in small game developer shops or in large game publishing companies with thousands of employees. They may be employed as programmers, arts and animation specialists, game designers, game production experts, quality assurance personnel, audio specialists, legal staff members or business and marketing personnel. Developers may specialize in games for specific types of platforms including mobile, handheld and online media.

In the video game industry, online company data bases and social media sites are available to researchers seeking to access or create their own data compilations. In this analysis, ESA used a variety of such tools to compile its own data base of video game companies. Within that data base, ESA collected data that focused on industry companies and employment. ESA's video game statistics were also collected at the levels of U.S. states, congressional districts and Metropolitan Statistical Areas ("MSAs").

The video game data compiled in the ESA Geographic Impact Report proved to be an important resource for the measurement of video game contributions to the U.S. economy. Data on U.S.-based publisher and developer locations from ESA's Geographic Impact Report data bases were used to estimate the number of workers now employed in the industry.

As shown in Table C-1, in the United States, there are at least 2,332 game developer locations across all 50 states plus the District of Columbia. There are also 526 publisher locations across 44 states. In total, there are at least 2,858 game company locations.

TABLE C-1: U.S. GAME COMPANY DEVELOPERS AND PUBLISHERS

TYPE OF COMPANY	LOCATIONS	STATES
DEVELOPER	2,322	51
PUBLISHER*	526	44
ALL COMPANIES	2,858	51

\* Publishers also include Hardware/Software Manufacturers, Service Providers, and Distributors.

Source: ESA Mapping Project Data.



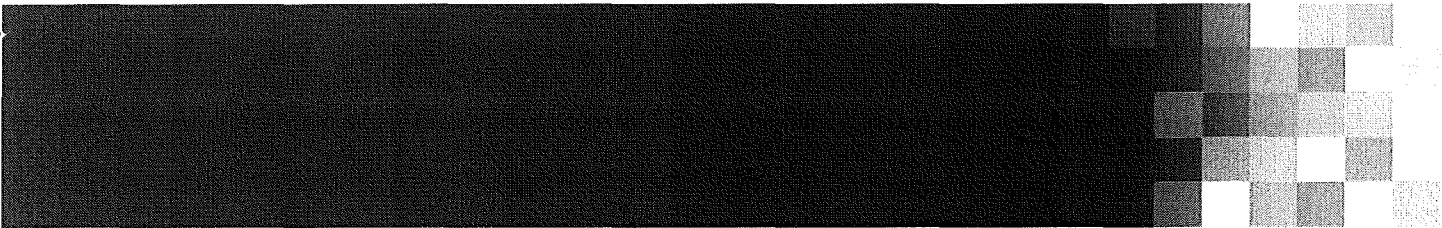


Table C-2 shows the number of workers employed by these companies. As reported in Table C-2, there are now at least 65,678 workers directly employed at game software publisher and developer locations in the United States.<sup>5</sup> Of this total, 28,556 workers are directly employed at game publishing companies while 37,122 people now work directly for U.S.-located game developer firms.

**TABLE C-2: U.S. GAME COMPANY DIRECT EMPLOYMENT  
BY TYPE OF COMPANY**

TYPE OF COMPANY	LOCATIONS	STATES
DEVELOPER	37,122	1,331
PUBLISHER**	28,556	351
ALL COMPANIES	65,678	1,682

\* 1,176 locations do not report employment data.

\*\* Publishers also include Hardware/Software Manufacturers, Service Providers, and Distributors.

Source: ESA Mapping Project Data.

The employee data shown in Table C-2 can also be disaggregated on a state-by-state basis. The total number of workers directly employed at game software publisher and developer firms in the industries' top seven states are shown in Table C-3. The states of California, Washington, Texas, New York, Illinois, Florida, and Massachusetts collectively employ 55,915 workers, or 85% of the total direct employment for the U.S. game software industry as a whole.

<sup>5</sup> Of the 2,858 game company locations included in the ESA data reported in Table C-1, 1,176 locations do not report employment data. This leaves 1,682 locations, as reported in Table C-2.



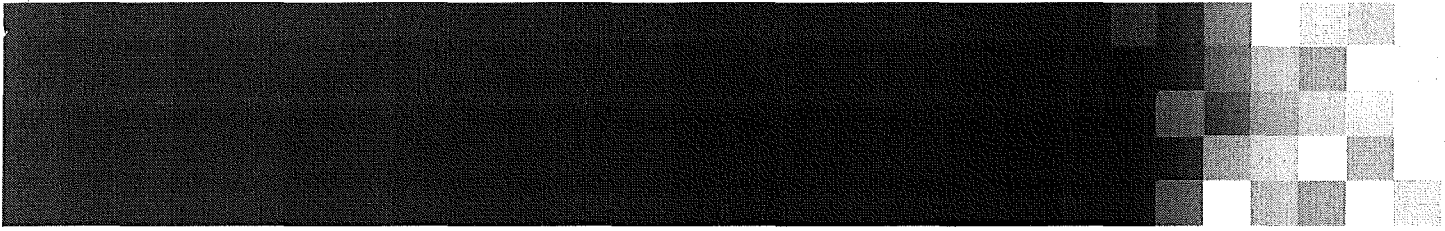
**TABLE C-3: U.S. GAME COMPANY EMPLOYMENT BY STATE  
TOP SEVEN STATES**

STATE	REPORTED EMPLOYMENT*	PERCENTAGE OF ALL EMPLOYEES
CALIFORNIA	35,325	54%
WASHINGTON	6,166	9%
TEXAS	4,883	7%
NEW YORK	4,675	7%
ILLINOIS	1,727	3%
FLORIDA	1,676	3%
MASSACHUSETTS	1,463	2%
TOP 7 STATES	55,915	85%
ALL OTHER STATES	9,763	15%
ALL STATES	65,678	100%

\*1,176 locations do not report employment data.

Source: ESA Mapping Project Data.

The employment figures presented in these tables refer to employees who work *directly* for entertainment software developers and publishers. However, any estimate of the number of workers who are directly employed in a given industry will not capture the full impact of that industry on the economy as a whole. The U.S. economy functions as an interlocking system where changes in supply and demand for one industry affect supply and demand in other industries as well.



The U.S. video game industry creates products that combine the skills of the industry's employees with other inputs of goods and services purchased from other industries. For example, a game developer may need to acquire a specific type of graphic design software from another firm in order to produce the game under development. Revenue from that purchase can be used to compensate employees at the firm that makes the graphic design software product. There would also be similar linkages to suppliers of the graphic design software firm and further linkages to those suppliers and on through the economy.

The U.S. government has developed a widely accepted mathematical model, known as the Regional Input-Output Modeling System ("RIMS II") that uses input-output relationships throughout the economy to capture these interlocking affects. The input-output relationships are industry specific and take the form of "multipliers." In this analysis, employment multipliers for the software publishing industry were obtained from the U.S. Bureau of Economic Analysis ("BEA") for all states where game software publishing employment had been located. These multipliers were applied to the direct game industry employee counts on a state-by-state basis. The weighted average multiplier across all states was 3.355. As shown in Table C-4, in 2015 the total direct and indirect employment for the U.S. video game industry as a whole was 220,332 people. 190,706 of these people were located in the top seven states shown in Table C-4, including 123,408 employees in California alone.



**TABLE C-4: U.S. GAME COMPANY DIRECT AND INDIRECT EMPLOYMENT BY STATE**

<b>STATE</b>	<b>REPORTED DEVELOPER EMPLOYMENT</b>	<b>REPORTED PUBLISHER EMPLOYMENT**</b>	<b>REPORTED DIRECT EMPLOYMENT*</b>	<b>DIRECT + INDIRECT EMPLOYMENT</b>
CALIFORNIA	16,719	18,606	35,325	123,408
WASHINGTON	3,960	2,206	6,166	19,815
TEXAS	4,159	724	4,883	17,867
NEW YORK	1,916	2,759	4,675	13,522
ILLINOIS	1,547	180	1,727	5,917
FLORIDA	646	1,030	1,676	5,607
MASSACHUSETTS	1,270	193	1,463	4,570
<b>TOP 7 STATES</b>	<b>30,217</b>	<b>25,698</b>	<b>55,915</b>	<b>190,706</b>
<b>ALL OTHER STATES</b>	<b>6,905</b>	<b>2,858</b>	<b>9,763</b>	<b>29,626</b>
<b>ALL STATES</b>	<b>37,122</b>	<b>28,556</b>	<b>65,678</b>	<b>220,332</b>

\* 1,176 locations do not report employment data.

\*\* Publishers also include Hardware/Software Manufacturers, Service Providers, and Distributors.

Source: ESA Mapping Project Data.

1 **BEFORE THE WASHINGTON STATE GAMBLING COMMISSION**

2  
3 In the Matter of the Petition of Big Fish Games,  
4 Inc. for a Declaratory Order

Matter No.:

5 **DECLARATION OF ANDY VELLA IN**  
6 **SUPPORT OF BIG FISH GAMES, INC.'S**  
7 **PETITION FOR A DECLARATORY**  
8 **ORDER**

9 I, Andy Vella, hereby declare as follows:

10 1. I am a Vice President and General Manager at Big Fish Games, Inc. ("BFG").

11 My responsibilities as General Manager include running all business and development operations for the  
12 video game Big Fish Casino ("BFC"). Prior to BFG, I worked as a Lead Engineer at Self Aware Games,  
13 the studio that created the suite of online video games that today make up BFC. For the past 6 years, my  
14 work has been dedicated to developing and enhancing BFC. I have extensive knowledge about BFC's  
15 engineering and operations, and I am deeply familiar with gameplay protocols and player user data. I  
16 make this declaration based on my personal knowledge and review of business records maintained in the  
17 ordinary course of my employment at BFG.

18 2. BFC contains a suite of online video games that are casino-themed including, for  
19 example, virtual blackjack, poker, and roulette.

20 3. Players use virtual tokens to play BFC, which are termed "chips" per the casino  
21 theme. Players may accumulate virtual chips in various ways. All new players currently receive  
22 100,000 virtual chips automatically when they install BFC for free and create a username. Since at least  
23 2013, additional virtual chips are distributed automatically to players at various times within the games.  
24 For example, players can obtain additional virtual chips through playing the game. Players receive  
25 additional virtual chips automatically on any day that they sign in to play. They receive additional  
26 virtual chips after they are logged into BFC for certain periods of time (e.g., 30 minutes) and click or  
27 press to collect more virtual chips automatically. Players also receive additional virtual chips when their  
28

1 Facebook friends install BFC, or, as of 2017, by joining a social club within BFC. Players may also  
2 purchase additional virtual chips.

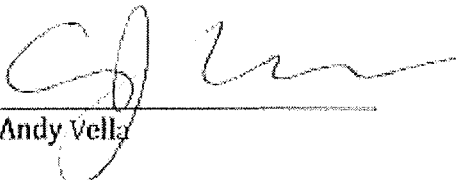
3 4. Players cannot, and have never been able to, exchange or cash out BFC virtual  
4 chips for money, and the virtual chips have no value in the real world. Virtual chips can be used only  
5 within the games, such as to play the games or to obtain a virtual pet, cupcake, flag, or other virtual  
6 item.

7 5. Attached as Exhibit A is a true and correct copy of the Terms of Use that  
8 currently govern the use of BFC, dated November 30, 2017. The Terms of Use expressly forbid any  
9 transfer or sale of virtual items, including virtual chips, "for commercial gain."

10 6. BFC does not provide any mechanism for players to sell virtual chips to each  
11 other. Since at least 2013, BFC allows a player to "gift" virtual chips to another player within the game  
12 through the use of virtual "gold bars" that are obtained through play or purchased within the games.  
13 Neither the gifting player nor BFG receives any financial compensation when virtual chips are gifted.

14 7. BFG is headquartered in Seattle, Washington. More than 865,000 installations of  
15 BFC have come from an IP address geo-located in the State of Washington, and there have been more  
16 than 100,000 such installations in the past twelve months.

17  
18 I declare under the penalty of perjury under the laws of the United States that the  
19 foregoing is true and correct. This declaration is executed this 3rd day of July, 2018, in Oakland,  
20 California.

21  
22  
23   
24 Andy Vella  
25  
26  
27  
28

# EXHIBIT A

# Big Fish Terms of Use

Last modified: November 30, 2017

## AGREEMENT AND SERVICES

PLEASE READ THESE TERMS OF USE CAREFULLY, INCLUDING THE MANDATORY ARBITRATION PROVISION IN THE SECTION TITLED "DISPUTE RESOLUTION BY BINDING ARBITRATION," WHICH REQUIRES THAT DISPUTES ARE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL AND NOT A CLASS-WIDE OR CONSOLIDATED BASIS. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED AT THE END OF THE SECTION TITLED "DISPUTE RESOLUTION BY BINDING ARBITRATION."

BY ACCESSING OR USING ANY BIG FISH OFFERING, YOU AGREE TO BE BOUND BY THESE TERMS OF USE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO THESE TERMS OF USE IN THEIR ENTIRETY, DO NOT USE ANY BIG FISH OFFERINGS.

Big Fish Games, Inc. and/or its Affiliates provide access to the Big Fish Offerings subject to the conditions set forth in these Terms of Use. For purposes of these Terms of Use, the term "**Affiliates**" means, with respect to any party, any person or entity which controls, is controlled by, or is under common control with, such party, and the term "**Big Fish Offerings**" means the web sites of Big Fish, including [www.bigfishgames.com](http://www.bigfishgames.com), any other sites on which these Terms of Use are posted, and any other Big Fish application, service or product licensed, downloaded or otherwise accessed by you through third party sites or sources, including the products and services available through any of the foregoing.

THESE TERMS OF USE ARE ENTERED INTO BETWEEN YOU AND BIG FISH GAMES, INC. THE TERM "**BIG FISH**" MEANS BIG FISH GAMES, INC. ALONG WITH ITS AFFILIATES. Your use of the Big Fish Offerings constitutes your express acceptance without reservation of these Terms of Use.

Use of the Big Fish Offerings is also governed by our [Privacy Policy](#) and any other terms of use applicable to services you register to use within a Big Fish Offering, including any amendments or updates thereto.

Use of the Big Fish Software, as hereafter defined, is governed by the [Big Fish Games, Inc. End User license](#).

Without limiting the foregoing, each of your Big Fish Offering account(s) (each a "Big Fish account"), if applicable, and participation in any Big Fish Offerings are governed by these Terms of Use. The Big Fish Offerings are always evolving, so it is important that you periodically check these Terms of Use, as well as the specific rules for any games or activities in which you



choose to participate, for updates. Big Fish reserves the right to change or modify these Terms of Use at any time and in our sole discretion. If Big Fish makes changes to these Terms of Use, we will provide notice of such changes, such as (by way of example only) by providing notice through the Big Fish Offerings or updating the "Last Modified" date at the top of these Terms of Use. If we revise these Terms of Use, such revision(s) will take effect immediately such notice. Your continued access or use of any Big Fish Offering constitutes your acceptance of the revised Terms of Use. We encourage you to frequently review these Terms of Use to ensure that you understand the terms and conditions that apply to your use of the Big Fish Offerings. If you do not agree to any of these Terms of Use, you should discontinue using or participating in any and all Big Fish Offerings. If there is a conflict between these Terms of Use and any other rules or instructions posted within a Big Fish Offering, these Terms of Use will control.

## **ACCOUNT REGISTRATION**

If you create a Big Fish account within any Big Fish Offering, you must provide truthful and accurate information to us in creating such account. If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access a Big Fish Offering, and refuse any and all current or future use of or access to any or all Big Fish Offerings (or any portion thereof).

Big Fish requires all users to be over the age of thirteen (13). If you are between the ages of thirteen (13) and eighteen (18), you may create a Big Fish account or use the Big Fish Offerings only under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Use.

Big Fish reserves the right to limit the number of accounts a user can establish. This limit may change over time in our sole discretion.

You are solely responsible for all activity on any and all of your Big Fish account(s) and for the security of your computer system. You should not reveal your username or password to any other person. Big Fish will not ask you to reveal your password. If you forget your password, you can request to have a new password sent to your registered e-mail address. You agree to indemnify and hold Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers harmless for any improper or illegal use of any of your Big Fish account(s). This includes illegal or improper use by someone to whom you have given permission to use your Big Fish account(s) or whom you have negligently allowed to access your Big Fish account(s). Big Fish reserves the right to terminate your Big Fish account(s) if any activity that occurs with respect to such account(s) violates these Terms of Use.

## **ELECTRONIC COMMUNICATIONS**

When you access a Big Fish Offering, send e-mails or electronically chat with Big Fish, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices in the Big Fish

Offerings. You agree that all agreements, notices, disclosures and other communications that Big Fish provides to you electronically satisfy any legal requirement that such communications be in writing.

## **VIRTUAL ITEMS**

Certain Big Fish Offerings may provide you with the opportunity to license a variety of virtual items such as virtual currency, virtual goods, additional levels and content packs ("virtual items") that can be used while playing the Big Fish Offering. You may be required to pay a fee to obtain virtual items. When you use virtual items within a Big Fish Offering, any virtual items that you have purchased will be deemed used before any virtual items that you have earned.

You have no property interest in any virtual items. Any purchase of virtual items, and virtual items accumulated through any applicable Big Fish Offering membership benefits, are purchases of a limited, non-transferable, revocable license to use those virtual items within the applicable Big Fish Offering. Virtual items may not be transferred or resold for commercial gain in any manner, including, without limitation, by means of any direct sale or auction service. Virtual Items may not be purchased or sold from any individual or other company via cash, barter or any other transaction. Virtual items have no monetary value, and cannot be used to purchase or use products or services other than within the applicable Big Fish Offering. Virtual items cannot be refunded or exchanged for cash or any other tangible value.

Big Fish may manage, regulate, control, modify or eliminate your virtual items in our sole discretion, and Big Fish will have no liability to you or anyone for exercising those rights. In addition, all virtual items are unconditionally forfeited if your Big Fish Offering account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering or any portion or feature of any Big Fish Offering.

Big Fish has no liability for hacking or loss of your virtual items. Big Fish has no obligation to, and will not, reimburse you for any virtual items lost due to your violation of these Terms of Use. Big Fish reserves the right, without prior notification, to limit the order quantity on any virtual items and/or to refuse to provide you with any virtual items. Price and availability of virtual items are subject to change without notice.

## **SOCIAL NETWORK SITES**

If you access a Big Fish Offering via a third party social networking site (a "**Social Game**"), you should be aware that Social Games are only available to individuals who have registered with the social networking site through which s/he accesses Social Games. You agree that your social networking site account information is accurate, current and complete.

If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access Social Games and refuse any and all current or future use of or access to Social Games (or any portion thereof).

# REVIEWS, COMMUNICATIONS AND SUBMISSIONS

## Generally

Without limiting the scope of these Terms of Use, you agree to comply with our [Forum FAQ](#) and [Review Guidelines](#) when you submit reviews, forum posts and other content via any Big Fish Offering. Inappropriate, obscene, defamatory, offensive language, crude or explicit sexual content, discussions of any matters which are explicitly or by inference illegal in any way, discussions of illegal or any other drugs, and racially and ethnically offensive speech are examples of unsuitable content that are not permitted within the Big Fish Offerings. Content standards may vary depending on where you are within a Big Fish Offering and the expectations of the relevant game community. Some game play may involve use of stronger language than others, including mild expletives. You should always use your best and most respectful and conservative judgment in interacting as part of any game play, and submitting any content, such as a review or post to any forums or message boards, within a Big Fish Offering.

We expressly reserve the right, but have no obligation, to: (a) monitor any communications within the Big Fish Offerings, including, without limitation, to ensure that appropriate standards of online conduct are being observed, and (b) immediately or at any time remove any content that we deem objectionable or unsuitable in our sole discretion. Big Fish does not endorse, approve, or prescreen any content that you or other users post or communicate on or through any Big Fish Offerings. Big Fish does not assume any responsibility or liability for any content that is generated, posted or communicated by any user on or through the Big Fish Offerings. You agree to indemnify Big Fish and each of their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from any liability or damages arising out of or resulting from any content you post or communicate on or through the Big Fish Offerings.

Without limiting the generality of these policies and standards, the following actions are examples of behavior that violate these Terms of Use and may result in any or all of your Big Fish account(s) being immediately suspended or terminated:

- Posting, transmitting, promoting, or distributing any content that is illegal
- Harassing or threatening any other user of a Big Fish Offering or any employee or contractor of Big Fish
- Impersonating another person, indicating that you are a Big Fish employee or a representative of Big Fish (if you are not), or attempting to mislead users by indicating that you represent Big Fish in any way
- Attempting to obtain a password, other account information, or other private information from any other user of a Big Fish Offering
- Uploading any software, files, photos, images or any other content to a Big Fish Offering that you do not own or have the legal right to freely distribute, or that contain a virus or corrupted data, or any other malicious or invasive code or program
- Posting messages for any purpose other than personal communication, including without limitation advertising, promotional materials, chain letters, pyramid schemes, political

campaigning, soliciting funds, mass mailings and sending "spam", or making any commercial use of any Big Fish Offering.

- Disrupting the normal flow of dialogue, or otherwise acting in a manner that negatively affects or disrupts other users.
- Improperly using any game support functions or complaint buttons, or making false complaints or other reports to Big Fish representatives.
- Posting or communicating any player's real-world personal information within a Big Fish Offering or by or through a Big Fish Offering or any related bulletin board.
- Uploading or transmitting, or attempting to upload or transmit, any material that acts as a passive or active information collection or transmission mechanism, including, without limitation, gifs, 1x1 pixels, web bugs, and other similar devices.
- Using or launching any automated system, including, without limitation, any spider, bot, cheat utility, scraper or offline reader that accesses a Big Fish Offering, or using or launching any unauthorized script or other software.
- Using a false e-mail address or otherwise disguising the source of any content that you submit within a Big Fish Offering, or using tools which anonymize your internet protocol address.
- Interfering or circumventing any Big Fish Offering security feature or any feature that restricts or enforces limitations on use of or access to a Big Fish Offering.
- Attempting to sell any part of a Big Fish Offering, including, without limitation, any virtual items (if applicable), Big Fish accounts and access to them in exchange for real currency or items of monetary or other value.
- Engaging in cheating or any other activity that Big Fish deems to be in conflict with the spirit of a Big Fish Offering.

### **Public Nature of Communications**

You acknowledge and agree that your submitted content, including your reviews and your communications with other users via online messaging, private messaging, forums or bulletin boards, and any other similar types of communications and submissions on or through any Big Fish Offering, are non-confidential, public communications, and you have no expectation of privacy concerning your use of or participation in any Big Fish Offerings (other than with respect to the information you provide to us in establishing your Big Fish account(s), if applicable). You acknowledge that personal information that you communicate publicly within any Big Fish Offering may be seen and used by others and may result in unsolicited communications. Big Fish is not liable for any information that you choose to submit or communicate to other users on or through any Big Fish Offerings, or for the actions of any other users of any Big Fish Offering.

You represent and warrant that you have all necessary rights in and to any materials that you post within any Big Fish Offering, that such materials do not infringe any proprietary or other rights of third parties, that all such content is accurate and will not cause injury to any person or entity, and that you will indemnify Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers for all claims resulting from your submitted and posted content. If any such materials incorporate the name, voice, likeness and/or image of any individual, you represent and warrant that you have the right

to grant Big Fish permission to use any such name, voice, likeness and/or image of such individual appearing in the materials you post throughout the world in perpetuity. Once you post or communicate any content or materials on or through a Big Fish Offering, you expressly grant Big Fish the complete, worldwide, fully sublicensable and irrevocable right to quote, re-post, use, reproduce, modify, adapt, publish, translate, create derivative works from, display, distribute, transmit, and broadcast such content or materials, including without limitation the name you submit in connection with such content or materials, in any form, with or without attribution to you, and without any notice or compensation to you of any kind. We reserve the right to immediately remove any content that may be considered, in our sole discretion, in violation of the rights of any third party.

### **Commercial Activity and Unsolicited E-mail**

You may not use any portion of the Big Fish Offerings to collect information, including login names, about other users, and use of such information to send unsolicited e-mail or for any other purpose is strictly prohibited. You may not advertise any goods or services on any Big Fish Offerings, or otherwise exploit your participation on or through any Big Fish Offerings for any commercial purpose.

### **Customer Reviews**

You may submit reviews of certain Big Fish Offerings. Use of the reviews feature is for your personal, non-commercial use and is at your own option and risk, and you must comply with the policies set forth in these Terms of Use and the [Review Guidelines](#).

When you post a review, we will display your rating of the Big Fish Offering, along with your user name and certain other information you may provide, such as your city and state location, skill level, favorite game and favorite genres. By submitting a review, you are consenting to the release of all information that you provide in that review to a public forum. If you do not want any such information to be shared in a public forum, do not use the review feature.

### **BIG FISH SOFTWARE**

We may require that you download certain software from Big Fish, its principals or its licensors onto your computer ("**Big Fish Software**"). Subject to your compliance with these Terms of Use, Big Fish grants to you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Big Fish Software to participate in the Big Fish Offerings. The Big Fish Software is for your personal use, and may not be reproduced, duplicated, copied, resold, sublicensed, or otherwise used in whole or in part by you for commercial purposes. You may not modify, translate, reverse-engineer, reverse-compile or decompile, disassemble or create derivative works from any of the Big Fish Software.

NEITHER BIG FISH GAMES, INC. NOR ITS LICENSORS IS LIABLE FOR ANY DAMAGES IN CONNECTION WITH YOUR USE OF ANY BIG FISH SOFTWARE (INCLUDING LIABILITY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE), AND THE ENTIRE

RISK OF USE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE, RESULTING FROM ANY USE OF THE BIG FISH SOFTWARE, RESIDES WITH YOU.

## **THIRD PARTY LINKS and THIRD PARTY CONTENT AND SERVICES**

Any and all software, content and services (including advertising) within a Big Fish Offering that are not owned by Big Fish are "**third party content and services.**" Big Fish acts merely as an intermediary service provider of, and accepts no responsibility or liability for, third party content and services. In addition and without limiting the generality of the foregoing, certain Big Fish Offerings may include links to sites operated by third parties, including advertisers and other content providers. Those sites may collect data or solicit personal information from you. Big Fish does not control such sites, and is not responsible for their content, policies, or collection, use or disclosure of any information those sites may collect.

## **VIOLATION OF THESE TERMS OF USE**

If you violate our Terms of Use, Big Fish reserves the right, in its sole discretion, to immediately terminate your participation in any or all Big Fish Offerings, including any and all Big Fish accounts you have established. You acknowledge that Big Fish is not required to notify you prior to terminating any such account.

## **TERMINATION OF ANY BIG FISH ACCOUNT**

Big Fish and you each have the right to terminate or cancel any of your Big Fish account(s), if applicable, at any time for any reason. You understand and agree that cancellation of your Big Fish account(s) and/or ceasing use of any and all Big Fish Offerings are your sole right and remedy with respect to any dispute with Big Fish. This includes, but is not limited to, any dispute arising out of or directly or indirectly related to: (a) any provision contained in these Terms of Use or any other agreement between you and Big Fish, including, without limitation, the Privacy Policy, or Big Fish's enforcement or application of these Terms of Use or any other such agreement, including, without limitation, the Privacy Policy, (b) the content available on or through the Big Fish Offerings, or any change in or to such content, (c) your ability to access and/or use any Big Fish Offerings, or (d) the amount or type of any fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods, in each case imposed or implemented by Big Fish on or through any Big Fish Offering.

Big Fish reserves the right to collect fees, surcharges or costs incurred before you cancel your Big Fish account(s) or a particular subscription. In the event that your Big Fish account or a particular subscription is terminated or cancelled, no refund will be granted, no online time or other credits (e.g., points in an online game) will be credited to you or converted to cash or other form of reimbursement, and you will have no further access to your account or anything associated with it (such as points, tokens or in-game items). Any delinquent or unpaid accounts

must be settled before Big Fish may allow you to create any new or additional accounts. All virtual items are unconditionally forfeited if your Big Fish account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering that includes virtual items.

Without limiting the foregoing provisions, if you violate these Terms of Use, Big Fish may issue you a warning regarding the violation, or, in Big Fish's sole discretion, immediately terminate any and all Big Fish accounts that you have established with any Big Fish Offering, with or without notice.

## **INTELLECTUAL PROPERTY RIGHTS**

The names and logos, and other graphics, logos, icons, and service names associated with the Big Fish Offerings are trademarks, registered trademarks or trade dress of Big Fish or its licensors or principals in the United States and/or other countries. Big Fish's trademarks and trade dress may not be used in connection with any product or service that is not owned or operated by or on behalf of Big Fish, or in any manner that is likely to cause confusion among consumers or that disparages or discredits Big Fish or any Big Fish Offering. The compilation of all content on the Big Fish Offerings is the exclusive property of Big Fish and is protected by United States and international copyright laws. You may not use, copy, transmit, modify, distribute, or create any derivative works from any content from the Big Fish Offerings unless we have expressly authorized you to do so in writing. All other trademarks not owned by Big Fish that appear on the Big Fish Offerings are the property of their respective owners, who may or may not be affiliated with or connected to Big Fish. If you fail to adhere to these Terms of Use, other content owners may take criminal or civil action against you. In the event legal action is taken against you for your acts and/or omissions with regard to any content on the Big Fish Offerings, you agree to indemnify and hold harmless Big Fish and its employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers.

## **LIMITATIONS ON WARRANTIES AND LIABILITY**

YOU EXPRESSLY AGREE THAT THE USE OF ANY BIG FISH OFFERING, BIG FISH SOFTWARE AND THE INTERNET IS AT YOUR SOLE RISK. ALL BIG FISH OFFERINGS AND BIG FISH SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BIG FISH DOES NOT GUARANTEE THAT YOU WILL BE ABLE TO ACCESS OR USE THE BIG FISH OFFERINGS OR BIG FISH SOFTWARE AT ANY PARTICULAR TIMES OR LOCATIONS, OR THAT THE BIG FISH OFFERINGS, BIG FISH SOFTWARE, NEWSLETTERS, E-MAILS OR OTHER COMMUNICATIONS SENT FROM BIG FISH ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH BIG FISH IS TO STOP USING THE BIG FISH OFFERINGS AND BIG FISH SOFTWARE, AND TO CANCEL ANY AND ALL OF YOUR BIG FISH ACCOUNTS, IF APPLICABLE. YOU ACKNOWLEDGE AND AGREE THAT BIG FISH IS NOT LIABLE FOR ANY ACT OR FAILURE TO ACT ON ITS OWN PART, OR FOR ANY CONDUCT OF, OR COMMUNICATION OR CONTENT POSTED WITHIN A BIG FISH OFFERING BY, ANY BIG FISH OFFERING USER. IN NO EVENT SHALL BIG FISH'S OR ITS EMPLOYEES', CONTRACTORS', OFFICERS', DIRECTORS' OR SHAREHOLDERS' LIABILITY TO YOU EXCEED THE AMOUNT THAT YOU PAID TO BIG FISH FOR YOUR PARTICIPATION IN ANY BIG FISH OFFERING. IN NO CASE SHALL BIG FISH OR ITS EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS OR SHAREHOLDERS BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY BIG FISH OFFERING OR BIG FISH SOFTWARE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, SUCH LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT BIG FISH IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD BIG FISH LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF BIG FISH OFFERINGS AND OPERATORS OF SOCIAL NETWORKING AND OTHER EXTERNAL SITES, AND THAT THE RISK OF USING OR ACCESSING BIG FISH OFFERINGS AND BIG FISH SOFTWARE, SOCIAL NETWORKING SITES AND OTHER EXTERNAL SITES, AND OF INJURY FROM THE FOREGOING, RESTS ENTIRELY WITH YOU.

## **INDEMNIFICATION**

You agree to defend, indemnify and hold harmless Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from and against any and all liabilities, claims and expenses, including attorneys' fees, that arise from a breach of these Terms of Use for which you are responsible or in connection with your transmission of any content to, on or through any Big Fish Offering. Without limiting your indemnification obligations described herein, Big Fish reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

## **IMPORT TAXES AND FEES**

When you buy physical goods (e.g. CD-ROM) through any Big Fish Offering for delivery outside the United States, you are considered an importer and, as between you and Big Fish, you will be responsible for payment of all taxes, duties, fees or other charges that may be applicable to such importation, including VAT, and you must comply with all laws and regulations of the country in which you are receiving the goods. Your privacy is important to us and we know that you care about how information about your order is used and shared. We would like our



international customers and customers dispatching products internationally to be aware that cross-border deliveries are subject to opening and inspection by customs authorities.

## **EXPORT CONTROL LAWS**

Certain Big Fish Offerings may be subject to United States and international export controls. By accessing Big Fish Offerings, you warrant that you are not located in any country, or exporting any Big Fish Offerings, to any person or place to which the United States, European Union or any other jurisdiction has embargoed goods. You agree to abide by all applicable export control laws and further agree not to transfer or upload, by any means electronic or otherwise, any Big Fish Offerings that may be subject to restrictions under such laws to a national destination prohibited by such laws without obtaining and complying with any required governmental authorizations.

## **OTHER LEGAL TERMS**

You agree that these Terms of Use are not intended to confer and do not confer any rights or remedies upon any third party. If any part of these Terms of Use are held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. If any provision of these Terms of Use is found to be illegal or unenforceable, these Terms of Use will be deemed modified to the extent necessary to make them legal and enforceable, and will remain, as modified, in full force and effect. These Terms of Use, including all terms and policies referenced herein, contain the entire understanding, and supersede all prior agreements, between you and Big Fish relating to this subject matter, and cannot be changed or terminated orally.

## **PRIVACY**

Big Fish respects the privacy of Big Fish Offerings users. Please review our [Privacy Policy](#), which also governs your access to and use of the Big Fish Offerings, to understand our policies and practices with respect your personal information.

## **APPLICABLE LAW, JURISDICTION, AND VENUE**

These Terms of Use and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Washington, exclusive of conflict or choice of law rules.

The parties acknowledge that these Terms of Use evidence a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted under these Terms of Use shall be governed by the Federal Arbitration Act (9 U.S.C., §§ 1-16).

You and Big Fish irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in King County, Washington, for all disputes arising out of or relating to these Terms of Use, the subject matter of these Terms of Use, or your access to and use of any Big Fish Offering, that are heard in court (not arbitration).

## **DISPUTE RESOLUTION BY BINDING ARBITRATION**

**PLEASE READ THIS "DISPUTE RESOLUTION BY BINDING ARBITRATION" PROVISION CAREFULLY, BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH BIG FISH AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.**

THIS PROVISION PRECLUDES YOU FROM BRINGING ANY CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH. IT ALSO PRECLUDES YOU FROM PARTICIPATING IN OR RECOVERING RELIEF UNDER ANY CURRENT OR FUTURE CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH BY SOMEONE ELSE. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL.

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT DECISION. IT IS YOUR DECISION TO MAKE AND YOU SHOULD NOT RELY SOLELY ON THE INFORMATION PROVIDED IN THIS AGREEMENT, AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS REGARDING THE CONSEQUENCES OF YOUR DECISION. YOU MAY OPT OUT OF THIS ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS BELOW.

**Scope of Arbitration Provision.** You and Big Fish agree that any dispute, claim or controversy arising out of or relating to your access to or use of any Big Fish Offering or to these Terms of Use (including without limitation any dispute concerning the breach, enforcement, construction, validity, interpretation, enforceability, or arbitrability of these Terms of Use) (a "**Dispute**"), shall be determined by arbitration, except that you and Big Fish are NOT required to arbitrate any Dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents.

**Location of Arbitration and Applicable Rules.** You and Big Fish agree that such arbitration shall occur in King County, Washington. You may request to appear in such proceedings telephonically. You and Big Fish agree that such arbitration shall be conducted by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS"), as modified by these Terms of Use.

**Authority of Arbitrator.** With the exception of class procedures and remedies as discussed below under "Waiver of Class Relief," the arbitrator shall have the authority to grant any remedy that would otherwise be available in court.

**Confidentiality.** You and Big Fish shall maintain the confidential nature of the arbitration proceedings and the arbitration award, including the arbitration hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision

**Allocation of Arbitration Fees.** If you assert a Dispute as a consumer, you will only be required to pay arbitration fees of \$250 of the fees charged by JAMS in connection with any arbitration under this section, and Big Fish will bear all other costs charged by JAMS or the arbitrator, including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services. You will still be responsible for paying your own attorneys' fees.

**WAIVER OF CLASS RELIEF.** WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AGREE THAT YOU AND BIG FISH WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR PROCEEDING. YOU AND BIG FISH ARE EACH WAIVING RESPECTIVE RIGHTS TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

**Procedure to Opt Out of Arbitration Provision.** You may opt out of this arbitration provision only by written Notice via U.S. Mail, or by any nationally recognized delivery service (e.g., UPS, Federal Express, etc.) to Big Fish, Attn: Legal Department, at 333 Elliott Avenue West, Suite 200, Seattle, WA, 98119. **You must send such Notice within thirty (30) days of your acceptance of these Terms of Use.** You must sign and date the Notice, and include in it your name, address, and a clear statement that you do not wish to resolve disputes with Big Fish through arbitration. If you do not follow this procedure by your thirty (30) day deadline to do so, then you and Big Fish shall both be bound by the terms of this section entitled Dispute Resolution by Binding Arbitration.

If any portion of this section entitled "Dispute Resolution by Binding Arbitration" is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

## **STATUTE OF LIMITATIONS**

You and Big Fish agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of a Big Fish Offering, these Terms of Use or the Privacy Policy, must be filed within ONE (1) YEAR after such claim or cause of action arose, and is thereafter forever barred.

## **SEVERABILITY**

If any part of these Terms of Use is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

## **CONTACT US**

Big Fish Games, Inc.  
Attn: Legal Department  
333 Elliott Avenue West, Suite 200  
Seattle, Washington 98119  
USA

## **DIGITAL MILLENNIUM COPYRIGHT ACT**

The Digital Millennium Copyright Act provides recourse to copyright owners who believe that their rights under the United States Copyright Act have been infringed by acts of third parties over the Internet. If you believe that your copyrighted work has been copied without your authorization and is available on or in a Big Fish Offering in a way that may constitute copyright infringement, you may provide notice of your claim to Big Fish's Designated Agent listed below. For your notice to be effective, it must include the following information:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) A description of the copyrighted work that you claim has been infringed upon;
- (iii) A description of where the material that you claim is infringing is located within the Big Fish Offering;
- (iv) Information reasonably sufficient to permit Big Fish to contact you, such as address, telephone number, and, if available, an e-mail address at which you may be contacted;
- (v) A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- (vi) A statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (vii) Big Fish's Designated Agent is:

Big Fish Games, Inc.  
Attn: Legal Department  
333 Elliott Avenue West, Suite 200  
Seattle, Washington 98119  
USA

JULY/AUGUST  
PUBLIC COMMENTS

BIG FISH GAMES, INC.  
PETITION FOR DECLARATORY ORDER

July 10, 2018

[Via Email - rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov) and [brian.considine@wsgc.wa.gov](mailto:brian.considine@wsgc.wa.gov)

Commissioner Bud Sizemore, Chair  
Commissioner Julia Patterson, Vice-Chair  
Commissioner Chris Stearns  
Commissioner Ed Troyer  
Commissioner Alicia Levy  
Brian Considine, Legal and Legislative Manager  
Washington State Gambling Commission  
4565 7th Avenue S.E.  
Lacey, WA 98503

Re: Notice -- Big Fish Games, Inc. Petition for Declaratory Order

Dear Mr. Chairman, Commissioners, and Mr. Considine:

This firm represents Double Down Interactive, LLC (“DDI”), a video game development company incorporated and headquartered in the State of Washington. We write on its behalf in support of the Petition by Big Fish Games, Inc. (“Petitioner”) for a declaratory order confirming that the Big Fish Casino online video games—and similar video games—do not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237, and therefore are not subject to the Commission’s regulatory or enforcement jurisdiction. DDI also supports broader proceedings to determine whether any of the games that have been challenged in federal cases following the federal court decision in *Kater v. Churchill Downs*<sup>1</sup> constitute gambling under the Gambling Act.

The Petition provides compelling support for such a declaratory order. As in many video games, including games distributed by DDI, players can play Petitioner’s games for free with virtual tokens (“chips”) that they receive for free at the start of play and at regular intervals, or with tokens that can be purchased for more play. Petitioner’s chips, like DDI’s chips, exist and can be used only within the online suite of games for which they were designed. They cannot be redeemed for money and have no real-world value. That is why Petitioner, DDI, the public, Commission guidance, and judicial precedent all agree that such games do not constitute gambling, and the new uncertainty introduced by the *Kater* decision establishes a matter of significant public importance.

---

<sup>1</sup> 886 F.3d 784, 787 (9th Cir. 2018).

Like Petitioner, DDI develops a suite of online, casino-themed video games that players realistically and regularly play for free. DDI offers free chips at the start of play, daily allotments of chips for logging into the game and accepting free chips, and frequently distributes additional free chips on a promotional basis. DDI offers free entertainment to the overwhelming majority of players who choose to play for free, and offers the same entertainment to players who choose to buy chips when they prefer not to wait a short period for more free chips. The games offer a social form of entertainment for amusement only, and they bring joy to thousands of players in Washington. According to Petitioner's terms—and DDI's terms<sup>2</sup>—and as a practical matter, nobody can legitimately play DDI's games professionally or for profit.

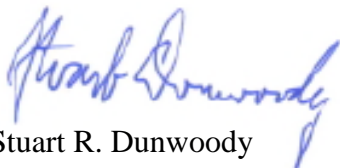
As a matter of federalism, the Washington State Gambling Commission is better situated to interpret Washington state law than a federal appellate court interpreting Washington law on the basis of a complaint's untested allegations on a motion to dismiss. For related reasons, the United States Supreme Court recently affirmed that the federal government cannot commandeer a state's right to regulate gambling in its jurisdiction. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1475 (2018) (“[B]oth the Federal Government and the States wield sovereign powers, and that is why our system of government is said to be one of ‘dual sovereignty.’”). DDI supports the Commission asserting its expertise and authority to interpret the Gambling Act.

For the reasons given above and offered in the Petition, DDI respectfully requests that the Commission enter a declaratory order confirming online video games like those described in the Petition do not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237.<sup>3</sup> DDI also supports broader proceedings, including a hearing with the opportunity to submit substantive comment or amicus briefing, should the Commission find further proceedings necessary. At the Commission's request, DDI would demonstrate DDI's games before the Commission and answer any questions the Commission may have.

DDI thanks the Commission and looks forward to the Commission's action in this matter. If the Commission would like any additional information, please do not hesitate to contact this firm. DDI is willing to cooperate fully to help the Commission reach the right determination.

Very truly yours,

Davis Wright Tremaine LLP



Stuart R. Dunwoody

cc: Mr. Joe Sigrist, General Manager, Double Down Interactive, LLC

---

<sup>2</sup> <http://www.doubledowninteractive.com/terms/>

<sup>3</sup> DDI reserves its rights, including the right to submit a petition before this Commission.

July 11, 2018

**Via Email -** [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov) and [brian.considine@wsgc.wa.gov](mailto:brian.considine@wsgc.wa.gov)

Commissioner Bud Sizemore, Chair  
Commissioner Julia Patterson, Vice-Chair  
Commissioner Chris Stearns  
Commissioner Ed Troyer  
Commissioner Alicia Levy  
Brian Considine, Esq., Legal and Legislative Manager  
Washington State Gambling Commission  
4565 7th Avenue S.E.  
Lacey, WA 98503

Re: Notice -- Big Fish Games, Inc. Petition for Declaratory Order

Dear Mr. Chairman, Commissioners, and Mr. Considine:

This firm represents Huuuge, Inc. and its subsidiaries (collectively, “HI”), which produce and distribute video games available to download in the State of Washington. We write on their behalf in support of the Petition by Big Fish Games, Inc. (“Petitioner”) for a declaratory order confirming that the Big Fish Casino online video games—and similar video games—do not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237, and therefore are not subject to the Commission’s regulatory or enforcement jurisdiction. HI also supports broader proceedings to determine whether any of the games that have been challenged in federal cases following the federal court decision in *Kater v. Churchill Downs*<sup>1</sup> constitute gambling under the Gambling Act.

The Petition provides compelling support for such a declaratory order. As in many video games, including games distributed by HI, players can play Petitioner’s games for free with virtual tokens (“chips”) that they receive for free at the start of play and at regular intervals, or with tokens that can be purchased for more play. Petitioner’s chips, like HI’s chips, exist and can be used only within the online suite of games for which they were designed. They cannot be redeemed for money and have no real-world value. That is why Petitioner, HI, the public, Commission guidance, and judicial precedent all agree that such games do not constitute gambling, and the new uncertainty introduced by the *Kater* decision establishes a matter of significant public importance.

---

<sup>1</sup> 886 F.3d 784, 787 (9th Cir. 2018).



Like Petitioner, HI develops a suite of online, casino-themed video games that players realistically and regularly play for free. HI offers free chips at the start of play, daily allotments of chips for logging into the game and accepting free chips, and frequently distributes additional free chips on a promotional basis. HI offers free entertainment to the overwhelming majority of players who choose to play for free, and offers the same entertainment to players who choose to buy chips when they prefer not to wait a short period for more free chips. The games offer a social form of entertainment for amusement only, and they bring joy to thousands of players in Washington. According to Petitioner's terms—and HI's terms<sup>2</sup>—and as a practical matter, nobody can legitimately play HI's games professionally or for profit.

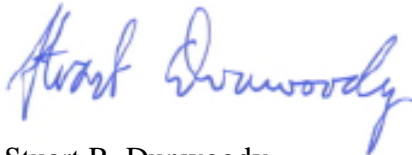
As a matter of federalism, the Washington State Gambling Commission is better situated to interpret Washington state law than a federal appellate court interpreting Washington law on the basis of a complaint's untested allegations on a motion to dismiss. For related reasons, the United States Supreme Court recently affirmed that the federal government cannot commandeer a state's right to regulate gambling in its jurisdiction. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1475 (2018) (“[B]oth the Federal Government and the States wield sovereign powers, and that is why our system of government is said to be one of ‘dual sovereignty.’”). HI supports the Commission asserting its expertise and authority to interpret the Gambling Act.

For the reasons given above and offered in the Petition, HI respectfully requests that the Commission enter a declaratory order confirming online video games like those described in the Petition do not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237.<sup>3</sup> HI also supports broader proceedings, including a hearing with the opportunity to submit substantive comment or amicus briefing, should the Commission find further proceedings necessary. At the Commission's request, HI would demonstrate HI's games before the Commission and answer any questions the Commission may have.

HI thanks the Commission and looks forward to the Commission's action in this matter. If the Commission would like any additional information, please do not hesitate to contact this firm. HI is willing to cooperate fully to help the Commission reach the right determination.

Very truly yours,

Davis Wright Tremaine LLP



Stuart R. Dunwoody

cc: Ms. Audrey Kravets, Esq., General Counsel and Head of Legal for Huuuge Group

---

<sup>2</sup> <http://www.huuugegames.com/terms-of-use/>

<sup>3</sup> HI reserves its rights, including the right to submit a petition before this Commission.

**Edelson PC**

350 North LaSalle Street, 14th Floor, Chicago, Illinois 60654  
t 312.589.6370 | f 312.589.6378 | [www.edelson.com](http://www.edelson.com)

July 11, 2018

**VIA ELECTRONIC MAIL**

Brian Considine  
Washington State Gambling Commission  
[brian.considine@wsgc.wa.gov](mailto:brian.considine@wsgc.wa.gov)

**Re: *Big Fish Games Petition for Declaratory Order***

Dear Mr. Considine:

My firm represents Cheryl Kater, the plaintiff in *Kater v. Churchill Downs, Inc.*, No. 2:15-cv-00612 pending in the United States District Court for the Western District of Washington. On July 9, 2018, I received notice from your office of a petition for declaratory ruling filed by Churchill Downs' attorney, Matthew Berry. The petition asks the Commission to enter a declaratory order reversing the determination of the United States Court of Appeals for the Ninth Circuit that the Big Fish Casino game constitutes gambling under Washington law. *See Kater v. Churchill Downs Inc.*, 886 F.3d 784 (9th Cir. 2018). I write to inform you that Ms. Kater respectfully declines to consent to the determination of this matter by declaratory order proceeding.

Pursuant to WAC 230-17-180, “[t]he commission may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.” *Accord* RCW 34.05.240. Ms. Kater is a necessary party because she “claims an interest relating to the subject of the action and is so situated that the disposition of the action in [her] absence may ... as a practical matter impair or impede [her] ability to protect that interest.” CR 19(a); *see also Burt v. Washington State Dep’t of Corr.*, 168 Wash. 2d 828, 833 (2010) (“Use of the term *may* suggests a low standard that requires a showing of possibility that the failure to join will impair or impede the party’s interest.”). Specifically, Ms. Kater’s case is entirely based on the gambling game that is the subject of the petition. A declaratory order by the Commission relating to that game would potentially be considered authoritative by the federal court hearing her case, meaning that failure to include her in this proceeding has the

strong possibility to impede her ability to protect her interests before the court. *See, e.g., Snoqualmie Indian Tribe v. F.E.R.C.*, 545 F.3d 1207, 1218 n.5 (9th Cir. 2008) (deferring to Washington administrative agency’s interpretation of statute). Further, the declaratory order requested in the petition would substantially prejudice Ms. Kater’s rights because if Big Fish Casino does not constitute gambling, then she will lose her case and be unable to recover the thousands of dollars she lost. *See Children’s Hosp. & Med. Ctr. v. Washington State Dep’t of Health*, 95 Wash. App. 858, 875 (1999) (finding that “economic injury” constituted substantial prejudice).

Ms. Kater is a necessary party who would be substantially prejudiced by the requested declaratory ruling, and because she has not provided written consent to determination of this matter by declaratory order proceeding, we respectfully submit that the Commission cannot grant the relief requested in the petition. If I can provide any further information about this matter, please feel free to contact me by email at [atievsky@edelson.com](mailto:atievsky@edelson.com) or telephone at 312-589-6379. I also plan to attend tomorrow’s Commission meeting, and I will be happy to answer any questions from the Commissioners at that time or at a future meeting.

Sincerely,

EDELSON PC



Alexander G. Tievsky

**From:** Debbie Taylor [ ]  
**Sent:** Thursday, July 12, 2018 11:38 AM  
**To:** Songer, Heather (GMB) <[heather.songer@wsgc.wa.gov](mailto:heather.songer@wsgc.wa.gov)>  
**Subject:** ARISTOCRAT - Big Fish Casino/Jackpot Magic Slots Online Gaming

Good morning Ms. Songer:

I recently filed a False Advertising Complaint against the subject entity who does business in your state. I am attaching a copy of my Original Complaint. With that Complaint I included a copy of a recent Federal Ruling as I alluded to it in my comments. I am also attaching a copy of that. Also attached are the Complaint Acknowledgement letter from the Washington Attorney General's office, and confirmation that the Complaint was being processed indicating that the Attorney General's office was also forwarding a copy to the Washington State Gambling Commission for your review. Then, I am attaching a copy of the Complaint response from BigFish that the Attorney General's office sent to me.

I know this is alot to "wade" through but I would like to take issue with Big Fish response and elaborate on my playing experience with this game, in the hopes that you will keep these issues in mind should Big Fish appeal the recent Federal ruling.

First, Big Fish \*falsely\* claims that all Jackpots are always attainable to \*all\* players at \*all\* times. One need only to play the games to see that this is absolutely false. There was one day recently where I played and I literally "spun" the slots almost one million times without ever hitting a Jackpot. And I had that same experience numerous times while playing. It was nothing to spin hundreds & hundreds of times without winning. So, in my opinion they are not being truthful in their response. And it's curious to me that there apparently is no real oversight of how they operate their games. Big Fish claims their odds are comparable to real casinos (see attached Odds document from their website,) yet they refuse to discuss the odds and/or publish the odds for consumers. I know that with real casinos, by law, in almost every state, they are required to publish their odds. Why is online gaming not subject to this?

Second, Big Fish seemed to be more interested in addressing the Federal Ruling instead of my False Advertising Complaint. In Big Fish response they state the following: ***"The Ninth Circuit explicitly held that it could not consider the argument that players in fact receive free virtual tokens in such numbers and at such regular intervals that it is not necessary to purchase more tokens to continue game play. Nor did the Ninth Circuit consider that the vast majority of consumers who play Big Fish Casino games never purchase any virtual tokens."***

Their response is positively comical. Yes, players receive free virtual tokens each day but players do not win anything with these free tokens. Players constantly lose and it's easy to lose them all within about 10 minutes. The slots are so "tight" it's impossible to win. And Big Fish then spams players about buying more coins to continue playing. I am attaching screen captures of just a sample of the spam ads urging players to buy more coins to keep playing. Furthermore, Big Fish claims that the majority of players never purchase virtual tokens. I don't believe that for a second because since Aristocrat purchased these games from Churchill Downs in November 2017, there are numerous articles (see copies attached) stating that their revenue has \*tripled\* and I can only

conclude that it's due to their greedy game tactics, by not letting players win with free coins and forcing them to buy more coins to continue playing. And I'm not the only player complaining. There are thousands of players complaining about the losses and being forced to "pay to play" - their comments are under their player profiles.

Anyway, I apologize for the length of this email but I hope you will review and forward to the appropriate parties who may be involved in the recent Federal ruling, to give them a player's perspective on Big Fish games and how they are ripping off the consumer.

Thank you,

Debbie Taylor

[Arlington, TX](#)

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

CHERYL KATER, individually and on  
behalf of all others similarly situated,  
*Plaintiff-Appellant,*

v.

CHURCHILL DOWNS INCORPORATED,  
a Kentucky corporation,  
*Defendant-Appellee.*

No. 16-35010

D.C. No.  
2:15-cv-00612-  
MJP

OPINION

Appeal from the United States District Court  
for the Western District of Washington  
Marsha J. Pechman, Senior District Judge, Presiding

Argued and Submitted February 6, 2018  
Seattle, Washington

Filed March 28, 2018

Before: MILAN D. SMITH, JR. and MARY H.  
MURGUIA, Circuit Judges, and EDUARDO C.  
ROBRENO, \* District Judge.

Opinion by Judge Milan D. Smith, Jr.

---

\*The Honorable Eduardo C. Robreno, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

**SUMMARY\*\***

---

**Washington Gambling Law**

The panel reversed the district court's dismissal of a purported class action against Churchill Downs alleging violations of Washington's Recovery of Money Lost at Gambling Act and Consumer Protection Act, and unjust enrichment; and held that Churchill Downs' virtual game platform "Big Fish Casino" constituted illegal gambling under Washington law.

All online or virtual gambling is illegal in Washington. Big Fish Casino's virtual chips have no monetary value and could not be exchanged for cash, but Big Fish Casino did contain a mechanism for transferring chips between users, which could be used to "cash out" winnings.

The panel held that the virtual chips extended the privilege of playing Big Fish Casino, and fell within Wash. Rev. Code § 9.46.0285's definition of a "thing of value." The panel concluded that Big Fish Casino fell within Washington's definition of an illegal gambling game. *See* Wash. Rev. Code § 9.46.0237.

The panel held that plaintiff Cheryl Kater stated a cause of action under Recovery of Money Lost at Gambling Act where she alleged that she lost over \$1,000 worth of virtual chips while playing Big Fish Casino, and she could recover the value of those lost chips from Churchill Downs, as

---

\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

---

proprietor of Big Fish Casino, pursuant to Wash. Rev. Stat. § 4.24.070.

---

### COUNSEL

Alexander G. Tievsky (argued), Roger Perlstadt, and Ryan D. Andrews, Edelson PC, Chicago, Illinois, for Plaintiff-Appellant.

Matthew R. Berry (argued), Susman Godfrey L.L.P, Seattle, Washington; Robert Rivera, Susman Godfrey L.L.P., Houston, Texas; for Defendant-Appellee.

---

### OPINION

M. SMITH, Circuit Judge:

In this appeal, we consider whether the virtual game platform “Big Fish Casino” constitutes illegal gambling under Washington law. Defendant-Appellee Churchill Downs, the game’s owner and operator, has made millions of dollars off of Big Fish Casino. However, despite collecting millions in revenue, Churchill Downs, like Captain Renault in *Casablanca*, purports to be shocked—shocked!—to find that Big Fish Casino could constitute illegal gambling. We are not. We therefore reverse the district court and hold that because Big Fish Casino’s virtual chips are a “thing of value,” Big Fish Casino constitutes illegal gambling under Washington law.

### FACTUAL AND PROCEDURAL BACKGROUND

Big Fish Casino is a game platform that functions as a virtual casino, within which users can play various electronic



casino games, such as blackjack, poker, and slots. Users can download the Big Fish Casino app free of charge, and first-time users receive a set of free chips. They then can play the games for free using the chips that come with the app, and may purchase additional chips to extend gameplay. Users also earn more chips as a reward for winning the games. If a user runs out of chips, he or she must purchase more chips to continue playing. A user can purchase more virtual chips for prices ranging from \$1.99 to nearly \$250.

Big Fish Casino's Terms of Use, which users must accept before playing any games, state that virtual chips have no monetary value and cannot be exchanged "for cash or any other tangible value." But Big Fish Casino does contain a mechanism for transferring chips between users, which can be utilized to "cash out" winnings: Once a user sells her chips on a secondary "black market" outside Big Fish Casino, she can use the app's internal mechanism to transfer them to a purchaser. Plaintiff-Appellant Kater alleges that Churchill Downs profits from such transfers because it charges a transaction fee, priced in virtual gold, for all transfers. In other words, Kater alleges that Churchill Downs "facilitates the process" of players cashing out their winnings.

Kater began playing Big Fish Casino in 2013, eventually buying, and then losing, over \$1,000 worth of chips. In 2015, Kater brought this purported class action against Churchill Downs, alleging: (1) violations of Washington's Recovery of Money Lost at Gambling Act (RMLGA), Wash. Rev. Code § 4.24.070; (2) violations of the Washington Consumer Protection Act, Wash. Rev. Code § 19.86.010; and (3) unjust enrichment. The district court dismissed this case with prejudice, holding that because the virtual chips are not a "thing of value," Big Fish Casino is not illegal

gambling for purposes of the RMLGA.<sup>1</sup> Kater moved for reconsideration, but the district court denied her motion. Kater then timely appealed.

## **JURISDICTION AND STANDARD OF REVIEW**

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We review the dismissal of Kater’s complaint *de novo*. *Petrie v. Elec. Game Card, Inc.*, 761 F.3d 959, 966 (9th Cir. 2014). Our review “is limited to the complaint, materials incorporated into the complaint by reference, and matters of which the court may take judicial notice.” *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).

## **ANALYSIS**

Pursuant to the RMLGA:

All persons losing money or anything of value at or on any illegal gambling games shall have a cause of action to recover from the dealer or player winning, or from the proprietor for whose benefit such game was played or dealt, or such money or things of value won, the amount of the money or the value of the thing so lost.

Wash. Rev. Code § 4.24.070. “Gambling” is defined as the “[1] staking or risking something of value [2] upon the outcome of a contest of chance or a future contingent event not under the person’s control or influence, [3] upon an

---

<sup>1</sup> The parties agree that the viability of Kater’s other claims is contingent on Big Fish Casino constituting illegal gambling.

agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome.” *Id.* § 9.46.0237; see *State ex rel. Evans v. Bhd. of Friends*, 247 P.2d 787, 797 (Wash. 1952) (“[A]ll forms of gambling involve prize, chance, and consideration . . . .” (quoting *State v. Coats*, 74 P.2d 1102, 1106 (Or. 1938))). All online or virtual gambling is illegal in Washington. See *Rousso v. State*, 239 P.3d 1084, 1086 (Wash. 2010).

### **I. Big Fish Casino’s Virtual Chips Are a “Thing of Value” Under Washington Law**

The parties dispute whether Big Fish Casino’s virtual chips are a “thing of value” pursuant to Washington’s definition of gambling. Pursuant to Washington law, a “thing of value” is:

[A]ny money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

Wash. Rev. Code § 9.46.0285. Kater’s primary argument is that the virtual chips are a “thing of value” because they are a “form of credit . . . involving extension of . . . entertainment or a privilege of playing [Big Fish Casino] without charge.” *Id.*

We agree. The virtual chips, as alleged in the complaint, permit a user to play the casino games inside the virtual Big Fish Casino. They are a credit that allows a user to place another wager or re-spin a slot machine. Without virtual

chips, a user is unable to play Big Fish Casino's various games. Thus, if a user runs out of virtual chips and wants to continue playing Big Fish Casino, she must buy more chips to have "the privilege of playing the game." *Id.* Likewise, if a user wins chips, the user wins the privilege of playing Big Fish Casino without charge. In sum, these virtual chips extend the privilege of playing Big Fish Casino.

Churchill Downs contends that the virtual chips do not extend gameplay, but only enhance it, and therefore are not things of value. This argument fails because, as alleged in the complaint, a user needs these virtual chips in order to play the various games that are included within Big Fish Casino. Churchill Downs argues that this does not matter, because users receive free chips throughout gameplay, such that extending gameplay costs them nothing. But because Churchill Downs' allegation is not included in the complaint, we do not further address this contention. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

Notably, the only Washington court to analyze section 9.46.0285 supports our conclusion. In *Bullseye Distributing LLC v. State Gambling Commission*, the Washington Court of Appeals held that an electronic vending machine designed to emulate a video slot machine was a gambling device. 110 P.3d 1162, 1163, 1167 (Wash. Ct. App. 2005). To use the machine, players utilized play points that they obtained by purchase, by redeeming a once-a-day promotional voucher, or by winning a game on the machine. *Id.* at 1163–64. In reviewing an administrative law judge's decision, the court concluded that the game's play points were "things of value" because "they extend[ed] the privilege of playing the game without charge," even though they "lack[ed] pecuniary value on their own." *Id.* at 1166. Because the play points were a "thing of value," the machine fell within the

definition of a gambling device, and therefore was subject to Gambling Commission regulation. *Id.* at 1167.

Contrary to Churchill Downs' assertion, nothing in *Bullseye* conditioned the court's determination that the play points were "thing[s] of value" on a user's ability to redeem those points for money or merchandise. Instead, *Bullseye*'s reasoning was plain—"these points fall within the definition of 'thing of value' because they extend the privilege of playing the game without charge." *Id.* at 1166. Based on the reasoning in *Bullseye*, we conclude that Big Fish Casino's virtual chips also fall within section 9.46.0285's definition of a "thing of value."<sup>2</sup>

Churchill Downs nonetheless argues that Big Fish Casino cannot constitute illegal gambling based on the position of the Washington Gambling Commission and federal district courts that have analyzed similar games. We disagree.

Churchill Downs argues that we should defer to the Gambling Commission's conclusion that Big Fish Casino is not illegal gambling. It cites to a slideshow deck used by two non-Commission members during a presentation to the

---

<sup>2</sup> Kater makes a second argument, which we reject. She argues that the chips are a "thing of value" because users can sell them for money on the "black market." However, Big Fish Casino's Terms of Use prohibit the transfer or sale of virtual chips. As a result, the sale of virtual chips for cash on a secondary market violates the Terms of Use. The virtual chips cannot constitute a "thing of value" based on this prohibited use. See *Mason v. Mach. Zone, Inc.*, 851 F.3d 315, 320 n.3 (4th Cir. 2017).

Commission, and the accompanying meeting minutes,<sup>3</sup> but these documents do not indicate that the Commission adopted a formal position on social gaming platforms, let alone Big Fish Casino specifically. It also cites to a two-page Commission pamphlet discussing online social gaming. But the pamphlet provides only “general guidance,” to which we do not defer because the pamphlet “lacks an official, definitive analysis of the issue in question.” *W. Telepage, Inc. v. City of Tacoma Dep’t of Fin.*, 998 P.2d 884, 891–92 (Wash. 2000) (requiring agency interpretation to be “clear and definitive,” such as a rule, interpretive guideline, or policy statement).

Nor are we persuaded by the reasoning of other federal courts that have held that certain “free to play” games are not illegal gambling. Each case Churchill Downs cites for this proposition involves the analysis of different state statutes, state definitions, and games. See *Mason v. Mach. Zone, Inc.*, 851 F.3d 315 (4th Cir. 2017) (applying Maryland law); *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731 (N.D. Ill. 2016) (applying Illinois law); *Soto v. Sky Union, LLC*, 159 F. Supp. 3d 871 (N.D. Ill. 2016) (applying California law). Our conclusion here turns on Washington statutory law, particularly its broad definition of “thing of value,” so these out of state cases are unpersuasive.

Because the virtual chips are a “thing of value,” we conclude that Big Fish Casino falls within Washington’s

---

<sup>3</sup> We grant Kater’s motion to take judicial notice of the slideshow, meeting minutes, and pamphlet because they are publicly available on the Washington government website, and neither party disputes the authenticity of the website nor the accuracy of the information. See *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (citing Fed. R. Evid. 201).

definition of an illegal gambling game. *See* Wash. Rev. Code § 9.46.0237.

## **II. Kater Can Recover the Value of the Virtual Chips Lost Under the RMLGA**

Since Big Fish Casino, as alleged in the complaint, constitutes an illegal gambling game, Kater can recover “the value of the thing so lost” from Churchill Downs. *See* Wash. Rev. Code § 4.24.070. Citing *Mason*, Churchill Downs argues that Kater did not lose money at gambling because there was no possibility of her winning money. In *Mason*, the plaintiff could not recover money spent on virtual gold in a different game because the Maryland statute limited recovery to individuals who “lose[] money at a gaming device,” Md. Code Crim. Law § 12-110, and did not “encompass virtual resources available and used only within [the game].” 851 F.3d at 320. But Washington’s statute is broader than Maryland’s. Washington law permits a plaintiff to recover “money or anything of value” lost from an illegal gambling game “from the dealer . . . or from the proprietor for whose benefit such game was played.” Wash. Rev. Code § 4.24.070. As previously stated, this language encompasses the value of the virtual chips Kater purchased.

We hold that Kater has stated a cause of action under the RMLGA. She alleges that she lost over \$1,000 worth of virtual chips while playing Big Fish Casino, and she can recover the value of these lost chips from Churchill Downs, as proprietor of Big Fish Casino, pursuant to section 4.24.070.<sup>4</sup>

---

<sup>4</sup> We deny Churchill Downs’ motion to substitute Big Fish Games, Inc. as Defendant-Appellee in place of Churchill Downs pursuant to

## CONCLUSION

For the foregoing reasons, we reverse the district court's dismissal of Kater's complaint. We remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

---

Federal Rule of Appellate Procedure 43(b). A Rule 43(b) substitution is appropriate only where "necessary," which "means that a party to the suit is unable to continue, such as where a party becomes incompetent or a transfer of interest in the company or property involved in the suit has occurred." *Sable Commc'ns of Cal. Inc. v. Pac. Tel. & Tel. Co.*, 890 F.2d 184, 191 n.13 (9th Cir. 1989) (citation omitted) (quoting *Ala. Power Co. v. ICC*, 852 F.2d 1361, 1366 (D.C. Cir. 1988)). Churchill Downs argues it is transferring Big Fish Games, the subsidiary entity that purportedly operates Big Fish Casino, to Aristocrat. But it is not enough to claim that a transfer will occur; rather, substitution is proper where "a transfer of interest . . . has occurred." *Id.*



FALSE ADVERTISING COMPLAINT -- I have been playing Big Fish Games online casino slots - Jackpot Magic Slots for approximately 2 years. In that time I have paid approximately \$2,000 or more to purchase fake coins to continue playing after constantly losing on the slots. Recently, a Federal Judge in your state ruled that these games constitute illegal online gambling (see that ruling attached,) and I totally concur with that ruling. Once players lose their free coins they are then forced to buy more fake coins to continue playing. The problem is - Big Fish Games is also guilty of FALSE ADVERTISING in my opinion. Each game introduction touts "Win Big...with 4 levels of Jackpots." See screen captures attached. Jackpots are generally at 4 different levels - 1)Mini Jackpot - 2)Mega Jackpot - 3)Monster Jackpot - 4)Colossal Jackpot. However, I have noticed during my play that jackpots above the Mini are either not turned on or not truly accessible to all players at all times. That means that players are buying coins to play and continually spinning (and losing) while trying to attain one of these jackpots - when they are not even truly possible to attain. This is a big rip-off and I consider it to be blatant FALSE ADVERTISING! Big Fish does not play fair and the consumer is being taken advantage of in a big way.





Debbie Taylor <d76013@gmail.com>

**AGO Complaint**

1 message

crcmail@atg.wa.gov <crcmail@atg.wa.gov>

Wed, Jun 6, 2018 at 11:47 AM

To:

Debbie,

Thank you for contacting the Consumer Protection Division of the Attorney General's Office. The consumer complaint you submitted through our online form was received on 6/6/2018. Your complaint is very important to us and we have assigned it to a consumer resource center specialist for review. You will be provided with a complaint number and the status of your complaint within 5 business days. During times when we experience peak complaint volumes, it may take up to 7 business days for us to contact you with your complaint number and status. Thank you for your patience during this time.

Please do not respond to this email address. The mailbox is not monitored. If you have questions, please contact our Consumer Resource Center at 1-800-551-4636.

Information Submitted:

\*\*\*\*\*

Debbie S Taylor

Arlington, TX

Contact Phone:  
Alternate Phone:  
Email:  
Age Range: 59+

Are you an active duty service member, a military dependent, retired from active duty, or a veteran: No

If English is not your first language, what is your first language:

\*\*\*\*\*

Business Name: Big Fish Games, Inc  
333 Elliott Ave West Ste 200  
Seattle, WA 98119

Bus Phone: 206-213-5753  
Email:  
Website: <https://www.bigfishgames.com/daily/slots/jackpot-c>

Names and addresses of any other businesses involved in your complaint:

Transaction date:  
Amount in dispute:

\*\*\*\*\*

Explanation of complaint:

FALSE ADVERTISING COMPLAINT -- I have been playing Big Fish Games online casino slots - Jackpot Magic Slots for approximately 2 years. In that time I have paid approximately \$2,000 or more to purchase fake coins to continue playing after constantly losing on the slots. Recently, a Federal Judge in your state ruled that these games constitute illegal online gambling (see that ruling attached,) and I totally concur with that ruling. Once players lose their free coins they are then forced to buy more fake coins to continue playing. The problem is - Big Fish Games is also guilty of FALSE ADVERTISING in my opinion. Each game introduction touts "Win Big...with 4 levels of Jackpots." See screen captures

7/12/2018

Gmail - AGO Complaint

attached. Jackpots are generally at 4 different levels - 1)Mini Jackpot - 2)Mega Jackpot - 3)Monster Jackpot - 4)Colossal Jackpot. However, I have noticed during my play that jackpots above the Mini are either not turned on or not truly accessible to all players at all times. That means that players are buying coins to play and continually spinning (and losing) while trying to attain one of these jackpots - when they are not even truly possible to attain. This is a big rip-off and I consider it to be blatant FALSE ADVERTISING! Big Fish does not play fair and the consumer is being taken advantage of in a big way.

Complaint as Public Record: Yes  
Disclosure Notices: Yes

\*\*\*\*\*  
\*\*\*\*\*

If you have any questions about the complaint submittal process, you may contact our Consumer Resource Center at 1-800-551-4636 between 10:00 a.m. and 3:00 p.m., Monday through Friday.

Sincerely,

Bob Ferguson and the AGO staff

Consumer protection issues constantly change, with new scams and threats emerging every week. To be automatically notified, please consider signing up for one or more of our newsletters (<http://eepurl.com/bd6bM5>) to keep up-to-date on the latest AGO news, opinions, consumer alerts, Ask the AG columns, and blog posts.

You can also follow us on the social networking sites Twitter (<http://www.twitter.com/agowa>), YouTube (<http://www.youtube.com/washingtonago>) and Facebook (<https://www.facebook.com/WAStateAttorneyGeneral>).

7/12/2018

Gmail - 532256 : A notice from the Washington State Attorney General's Office



Debbie Taylor <d76013@gmail.com>

---

## 532256 : A notice from the Washington State Attorney General's Office

1 message

---

ATG MI CRC Complaint Processing (prodappdb) <crccomplaints@atg.wa.gov>

Tue, Jun 12, 2018 at 12:21 PM

Reply-To: crccomplaints@atg.wa.gov

To:

Bob Ferguson  
ATTORNEY GENERAL OF WASHINGTON  
Consumer Protection Division  
800 Fifth Avenue, Suite 2000 Seattle, WA 98104 (206) 464-6686

June 12, 2018

Debbie S Taylor

Arlington, TX

RE: Big Fish Games

File #: 532256

Dear Debbie S Taylor:

Thank you for contacting the Consumer Protection Division of the Washington State Attorney General's Office. Consumer complaints provide valuable information that our office uses to identify patterns of unfair or deceptive practices that may warrant enforcement of the Consumer Protection Act.

The complaint you submitted to our office regarding Big Fish Games was reviewed and determined to be appropriate for the informal complaint resolution services offered by our Consumer Resource Center. This is an informal, voluntary process. Our office acts as a neutral party to facilitate communication between consumers and businesses to assist in resolving the complaint. We are prohibited by Washington State law from providing legal advice or representing either party.

The following information describes our informal complaint resolution process:

### Informal Complaint Resolution Process:

The process takes approximately four to six weeks to complete. A copy of your complaint was sent to the business(es) with a request to provide our office with a response within 21 calendar days. If a response is received, you will be notified and a copy of the response will be provided to you. If our office has not received a response from the business(es) within 14 calendar days, a courtesy reminder will be sent to the business(es) reminding them that their response is due within

7/12/2018

Gmail - 532256 : A notice from the Washington State Attorney General's Office

the next seven calendar days. If the business(es) do not respond to our request, our office cannot compel the business(es) to respond.

**If the business does not respond or does not resolve your complaint to your satisfaction:**

If the business(es) do not respond, or your complaint is not resolved through our informal complaint resolution service, your complaint will be closed. However, you will be notified of additional options and resources that may be available to assist you in the event you wish to pursue the matter further.

It was also determined that the concerns presented in your complaint may be of interest to the following agency; a copy of your complaint was forwarded for review:

Washington State Gambling Commission  
PO Box 42400  
Olympia, WA 98504  
[www.wsgc.wa.gov](http://www.wsgc.wa.gov)  
(360) 486-3440

We hope this information is helpful. If you have questions or would like to submit additional information regarding this complaint, our email address is [CRCComplaints@ATG.WA.GOV](mailto:CRCComplaints@ATG.WA.GOV). Please reference the assigned complaint number referenced above.

Sincerely,

FREEMAN HALLE  
Consumer Services Coordinator  
Consumer Protection Division

1-800-551-4636 for in-state callers

1-206-464-6684 for out-of-state callers

7/12/2018

Gmail - 532256 : A notice from the Washington State Attorney General's Office



Debbie Taylor <d76013@gmail.com>

---

## 532256 : A notice from the Washington State Attorney General's Office

1 message

---

ATG MI CRC Complaint Processing (prodappdb) <crccomplaints@atg.wa.gov>  
Reply-To: crccomplaints@atg.wa.gov  
To:

Thu, Jun 21, 2018 at 11:13 AM

Bob Ferguson  
ATTORNEY GENERAL OF WASHINGTON  
Consumer Protection Division - Consumer Resource Center  
800 Fifth Avenue, Suite 2000, Seattle, WA 98104 (206) 464-6684

June 21, 2018

Debbie S Taylor

Arlington, TX

RE: Big Fish Games

File #: 532256

Dear Debbie S Taylor:

Our office received the enclosed response to your complaint from Big Fish Games. This concludes our informal complaint resolution process.

We realize you may disagree with Big Fish Games's position. The Consumer Resource Center cannot compel either party to participate in, or make any adjustments as a result of, our informal complaint resolution process. This is a voluntary service and our office serves as a neutral third party. We regret that we are unable to provide further assistance to you in resolving this complaint. Our office monitors consumer complaints for possible indications of patterns of unfair or deceptive trade practices warranting further attention by our office.

Our office is prohibited from acting as an attorney for private individuals or as a judge or arbitrator in individual disputes. If you would like to pursue the matter further, you may wish to contact a private attorney for legal advice or the small claims court in your county if it is appropriate for your complaint.

General information about small claims court, including contact information, can be found by visiting the following website:  
[https://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo\\_jury.scc&altMenu=smal](https://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo_jury.scc&altMenu=smal).

7/12/2018

Gmail - 532256 : A notice from the Washington State Attorney General's Office

The Washington State Bar Association (WSBA) offers research tools to locate private attorneys in your area by offering listings for each County Bar Association. You may access the County Bar Association listing on the WSBA website <https://www.wsba.org/connect-serve/other-bars/county-minority-specialty-bars>.

If you cannot afford an attorney, and have a non-criminal legal problem, you may qualify for assistance from the NW Justice Project's CLEAR Coordinated Legal Advice, which can be reached Toll Free at 1-888-201-1014 or online at the following website: [http://www.nwjustice.org/about\\_njp/clear.html](http://www.nwjustice.org/about_njp/clear.html). In addition, if you are 60 or over, you may call CLEAR SENIOR at 1-888-387-7111 regardless of income.

You may also wish to contact the Washington State Dispute Resolution Center nearest you to see if they can assist in mediating your dispute. You can obtain additional information about the Dispute Resolution Centers at these websites: [http://www.courts.wa.gov/court\\_dir/?fa=court\\_dir.dispute](http://www.courts.wa.gov/court_dir/?fa=court_dir.dispute) or <http://www.resolutionwa.org/>. Please be aware that the Dispute Resolution Centers do not provide attorney referrals or legal advice.

We appreciate your bringing this matter to our attention. Your complaint will remain a part of our public record of this business's practices. Please note that consumer complaints, including responses, are public records and are available to the public for copying or inspection in compliance with the Washington State Public Records Act, [RCW 42.56](#).

We hope this information is helpful. If you have questions or would like to submit additional information regarding this complaint, our email address is [CRCComplaints@ATG.WA.GOV](mailto:CRCComplaints@ATG.WA.GOV). Please include the complaint number given above on any complaint correspondence.

Sincerely,

CLAUDIO FELICIANO  
Consumer Services Coordinator  
Consumer Protection Division  
1-800-551-4636 for in-state callers  
  
1-206-464-6684 for out-of-state callers

Enclosure

**From:** Katy Kaiser <[katy.kaiser@bigfishgames.com](mailto:katy.kaiser@bigfishgames.com)>  
**Sent:** Wednesday, June 20, 2018 8:41 AM  
**To:** ATG MI CRC Complaint Processing <[CRCComplaints@ATG.WA.GOV](mailto:CRCComplaints@ATG.WA.GOV)>  
**Cc:** Sarah Leung <[sarah.leung@bigfishgames.com](mailto:sarah.leung@bigfishgames.com)>  
**Subject:** File No. 532256 - Response to notice dated June 12, 2018 regarding Ms. Debbie S. Taylor's complaint against Big Fish Games

Dear Mr. Halle:

Thank you for forwarding us the complaint submitted to you by Ms. Debbie S. Taylor. Using the contact information included in the complaint, our records indicate that Ms. Taylor plays our video game Jackpot Magic Slots (JMS).

Ms. Taylor claims that we have engaged in false advertising with respect to JMS. Specifically, she suggests that certain virtual jackpot levels are not turned on or accessible to all customers at all times. Contrary to Ms. Taylor's claim, all virtual jackpot levels are available to all customers, at all times throughout JMS. Each customer has the same chances of winning a virtual jackpot as each other customer.

In her complaint, Ms. Taylor also references an interim ruling in an ongoing lawsuit related to Big Fish Games. Respectfully, Ms. Taylor does not accurately characterize the interim ruling. In the Kater case, after the district court dismissed the plaintiff's claims in their entirety, the Ninth Circuit reversed, holding at this early stage of the case that, assuming the facts as alleged in the complaint to be true, virtual tokens purchased within Big Fish Casino may constitute something "of value" under Washington State's Gambling Act, Wash. Rev. Code 9.46.0237. *Kater v. Churchill Downs Inc.*, No. 16-35010 (9th Cir. Mar. 28, 2018). The Ninth Circuit explicitly held that it could not consider the argument that players in fact receive free virtual tokens in such numbers and at such regular intervals that it is not necessary to purchase more tokens to continue game play. See Slip Op. at 7. Nor did the Ninth Circuit consider that the

7/12/2018

Gmail - 532256 : A notice from the Washington State Attorney General's Office

vast majority of consumers who play Big Fish Casino games never purchase any virtual tokens. The Kater case will now be remanded to district court for development of a factual record based on which the district court can adjudicate plaintiff's claims.

Having met all of Ms. Taylor's requests to the best of our abilities, we consider this matter to be resolved as of the date of the attached letter.

Sincerely,

Katy Kaiser, sent on behalf of Sarah Leung

**Katy Kaiser**

Paralegal

333 Elliott Ave. W. Suite 200, Seattle, WA 98119

T. 206.269.3724 | F: 206.213.3696

[bigfishgames.com](http://bigfishgames.com)



532256E.pdf  
1073K



## How are payouts determined?

Our Customer Support team is happy to help with all issues related to billing and technical support, but they cannot change the outcome of the gameplay for anyone.

Emails regarding the odds in our game will not receive a reply.

To match the experience of playing in a real casino, our odds are all based on standard casino rules and averages.

**The odds are always the same for every player** . All slot spins have the same probability of success or failure for everyone regardless of your account, player level, Coin amount, or how long

TRIPLE YOUR LUCK  
WITH A  
**3X SALE**

**SAVE NOW!**

**Coin Sale**

**3.6x** 3x SALE & 1.2x VIP B  
is applied to all purchases

**1,260,000**  
Includes ¥ 100

**3,600,000**  
Includes ¥ 250

**9,000,000**  
Includes ¥ 500

**21,600,000**  
Includes ¥ 1,000

**Limited Time Offer!**

**6,000,000 COINS**

~~Was \$7.99 USD~~

**Only \$4.99!**

00:06:46

**CONTINUE THE FUN!**

Grab This Offer!

**216,000,000** **\$99.99**  
Includes ¥ 5,000 **3x** coins

**More Offers >**

**6x OFFER!**

DON'T MISS THIS  
**DEAL!**

**7,800,000 COINS**

~~Was \$7.99 USD~~

**Only \$4.99!**

HURRY! OFFER EXPIRES IN  
00:06:57

**GET IT NOW!**

**7x OFFER!**

**Flash OFFER!**

**9,100,000 COINS**

~~Was \$34.99 USD~~

**Only \$4.99!**

HURRY! OFFER EXPIRES IN  
00:06:53

**5x OFFER!**

**DEAL OF THE MONTH**

**225,000,000 COINS**

Limited one-time Offer

**Only \$49.99!**

00:14:34

**75%**

**MORE COIN**

REUTERS ARTICLE:

## UPDATE 1-Australia's Aristocrat Leisure H1 profit rises; digital revenue triples

Reuters Staff  
2 MIN READ

(Adds details of Aristocrat results)

May 24 (Reuters) - Australia's Aristocrat Leisure said on Thursday that its half-year net profit rose 2.8 percent, as it cashed in a casual gaming gamble with digital **revenue more than tripling for the period.**

Reported net profit after tax for the six months to March 31 rose to A\$256.5 million (\$193.94 million) from A\$249.6 million a year ago, the gaming machine developer said in a statement.

Revenue from the Aristocrat's digital business rose more than three-fold, and accounted for nearly 34 percent of its total revenue. Digital revenue accounted for 16 percent of the company's total in fiscal 2017.

Aristocrat's revenue from ordinary activities for the six months rose about 29 percent on the prior year.

The company had snatched up two mobile game developers last year, in an effort to diversify its business through a larger online presence. Seattle-based Big Fish Games, the more recent of the two acquisitions, had cost the company about \$990 million.

Aristocrat shares have outperformed major peers like Ainsworth Game Technology and Crown Resorts in 2018 on great expectations from its foray into the mobile gaming space.

The company declared an interim dividend of 19 cents per share, compared to 14 cents per share a year ago. (\$1 = 1.3226 Australian dollars) (Reporting by Ambar Warrick in Bengaluru, editing by G Crosse)

SMH ARTICLE:

# Digital growth rockets at gambling giant Aristocrat



By [Nick Toscano](#)

24 May 2018 — 11:07am

- [Share on Facebook](#)
- [Share on Twitter](#)
- [Send via Email](#)

[Normal text size](#) [Larger text size](#) [Very large text size](#)

0

[Leave a comment](#)

Australia's largest pokies manufacturer says its bet on the booming free-to-play online gaming market is paying off, with digital revenue more than tripling after its expansion into the sector.

Aristocrat's core business has traditionally been supplying electronic gaming machines for casinos, pubs and clubs, but the \$18 billion company has notably upped its gamble on the online gaming market with two recent acquisitions of digital gaming companies, the US-based Big Fish Games and Israel's Plarium.

# COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG  
LONDON LOS ANGELES NEW YORK SAN FRANCISCO  
SEOUL SHANGHAI SILICON VALLEY WASHINGTON

**Beth S. Brinkmann**

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5312  
bbrinkmann@cov.com

**Via Email (brian.considine@wsgc.wa.gov)**

**August 2, 2018**

Commissioner Bud Sizemore, Chair  
Commissioner Julia Patterson, Vice-Chair  
Commissioner Chris Stearns  
Commissioner Ed Troyer  
Commissioner Alicia Levy  
Brian Considine, Esq., Legal and Legislative Manager

Washington State Gambling Commission  
4565 7th Avenue S.E.  
Lacey, WA 98503

Re: Big Fish Games, Inc. Petition for Declaratory Order

Dear Mr. Chairman, Commissioners, and Mr. Considine:

We appreciate the opportunity to provide the Commission with this submission to follow up on our July 3, 2018 petition for a declaratory order and address questions raised at the Commission's July 12, 2018 meeting. We also submitted a letter on July 26, 2018 (attached here as well), regarding the Commission's "necessary party" regulation, and look forward to the Commission's August 9 meeting, where it will further consider our petition for a declaratory order that Big Fish Casino games are not subject to the Commission's jurisdiction as "gambling" under RCW 9.46.0237 since their virtual tokens are not things "of value" because they cannot be sold, redeemed, or cashed out for money or a prize, are prohibited by the games' terms of use from being transferred for commercial gain, and have no real-world value.

Washington state law provides in RCW 9.46.0237 that "gambling" means "staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome." RCW 9.46.0285, in turn, defines "thing of value" as "any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge."

The Commission correctly explains in its 2014 brochure that these statutory provisions mean that, among other things, a social game is not "gambling" if, like Big Fish Casino, its

## COVINGTON

August 2, 2018

Page 2

virtual tokens cannot be sold or redeemed for real money or a prize. *Online Social Gaming: When is it legal? What to Consider, Let's play a game.*<sup>1</sup>

The Commission's 2014 brochure specifies that it "gives general guidance to determine if you are playing on, or operating, a legal Social Gaming website in Washington State." *Id.* Hundreds of thousands of Washingtonians have downloaded and played games being offered by companies that have relied on this guidance for understanding state law,<sup>2</sup> including companies in Washington's social gaming industry, which employs more than 6,000 individuals.<sup>3</sup> The brochure's guidance and resulting understanding of state law is consistent with the ordinary understanding of "gambling"—that it does not encompass games that are played for entertainment without possibility of winning a prize of real money or something of value outside the game.

The Commission's guidance that games like Big Fish Casino games are not gambling within the meaning of RCW 9.46.0237 is correct as a matter of Washington law for a variety of reasons, many of which were articulated in Big Fish Games' petition for a declaratory order:

- The relevant language in the Gambling Act excludes from its coverage the type of virtual tokens used in Big Fish Casino games. Those tokens are not within any of the four categories of "thing of value" provided in RCW 9.46.0285. They are not: (1) "money or property"; (2) "any token . . . exchangeable for money or property"; or (3) "any form of credit or promise, directly or indirectly, contemplating transfer of money or property or any interest therein." Indeed, Big Fish Casino's terms of use forbid the transfer of tokens for commercial gain.<sup>4</sup> And they are not (4) "any form of credit or promise, directly or indirectly . . . involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge," RCW 9.46.0285, because there is no "charge" otherwise required to play the games to begin with. Big Fish Casino games provide virtual tokens automatically when a player begins play, and at other frequent, regular intervals. These virtual tokens cannot be exchanged or cashed out for money and have no value in the real world.

---

<sup>1</sup> A copy of the *Online Social Gaming* brochure is Exhibit A to the Declaration of Gary Rubman in Support of Big Fish Games Inc.'s Petition for a Declaratory Order, which was submitted on July 3, 2018. For the Commission's convenience, a copy of the Declaration of Gary Rubman and its Exhibits are attached to this letter.

<sup>2</sup> See Declaration of Andy Vella in Support of Big Fish Games Inc.'s Petition for a Declaratory Order ¶ 7 ("More than 865,000 installations of [Big Fish Casino] have come from an IP address geo-located in the State of Washington, and there have been more than 100,000 such installations in the past twelve months. "). For the Commission's convenience, a copy of the Declaration of Andy Vella and its Exhibit are attached to this letter.

<sup>3</sup> See *Video Games in the 21st Century, The 2017 Report*, at 13, attached as Exhibit B to Declaration of Gary Rubman.

<sup>4</sup> See *Big Fish Terms of Use* at 3, attached as Exhibit A to the Declaration of Andy Vella.

## COVINGTON

August 2, 2018  
Page 3

- Washington law governing the interpretation of state statutes requires this reading, because one term in a group must be interpreted relative to and consistent with the other terms in the group. *See Wright v. Jeckle*, 158 Wash. 2d 375, 381 (2006). The first three categories in the “thing of value” statutory definition include only things that are money or that can be monetized in the real world, *i.e.*, “money,” “property,” and a property interest. The fourth category of “thing[s] of value” therefore necessarily follows suit, requiring that the “credit or promise” carry value in the real world; that is, the “credit or promise” must be redeemable for cash or capable of being monetized. Excluded from that definition, therefore, is a virtual item that is of use only within a game itself. This category, then, does not include Big Fish Casino game virtual tokens that can never be redeemed for cash or a prize in the real world, no matter how long a player plays or how many tokens a player has.
- Washington law of statutory interpretation also requires that general terms, when listed in a sequence with specific terms, be interpreted to include only those items that are similar to those items included in the specific terms. *See Davis v. Dep’t of Licensing*, 137 Wash. 2d 957, 970 (1999). Because the first three categories in the definition of “thing of value” encompass only items with real-world value beyond the game, so must the fourth.
- Washington statutes also must be interpreted consistent with “the legislative intent in the context of the *whole* statute and its general purpose.” *City of Seattle v. State*, 136 Wash. 2d 693, 701 (1998). The stated purpose of the Gambling Act is “to keep the criminal element out” of gambling without “restricting participation by individuals in activities and social pastimes, which . . . are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.” RCW 9.46.010. Big Fish Casino games are unmistakably social pastimes played only for entertainment because they cannot be played for profit or anything of real-world value.
- In addition, the rule of lenity compels a narrow interpretation of the scope of “thing of value.” Specifically, the Gambling Act imposes criminal sanctions, and the circumstances in which these sanctions apply depend on what constitutes “gambling” and “thing of value.” *See, e.g.*, RCW 9.46.160 (prescribing “class B felony”), 9.46.198 (prescribing “gross misdemeanor”). As a result, Washington law requires that the Gambling Act’s terms be read narrowly, so as to favor a party who would be facing a penalty under the statute, in a manner that limits potential liability—and thus in a manner that properly recognizes that Big Fish Casino games are not “gambling,” under RCW 9.46.0237. *See State v. Roberts*, 117 Wash. 2d 576, 586 (1991).
- The Commission’s longstanding enforcement practices and the Washington Court of Appeals’ application of the Gambling Act also support this understanding of state law. *See* Petition for Declaratory Order at 8-9.

**COVINGTON**

August 2, 2018  
Page 4

With regard to a question raised at the July 12 Commission meeting about proceedings in other states on this issue, courts have rejected various attempts to extend other states' gambling laws to reach social games similar to Big Fish Casino games. Those unsuccessful attempts to expand the reach of gambling laws included laws in Maryland, California, Illinois, and Michigan, and the courts rejected them on various grounds. The social games at issue in those cases included a casino-themed social game, a war-themed game, and a fantasy battle game, and the games involved virtual tokens, virtual currency, or virtual prizes that could be used only within each game and could not be cashed out. *See Mason v. Mach. Zone, Inc.* 851 F.3d 315 (4th Cir. 2017); *Soto v. Sky Union, LLC*, 159 F. Supp. 3d 871 (N.D. Ill. 2016); *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731 (N.D. Ill. 2016).

We appreciate the opportunity to provide this information to the Commission.

Sincerely,



Beth Brinkmann



# Attachments

# COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG  
LONDON LOS ANGELES NEW YORK SAN FRANCISCO  
SEOUL SHANGHAI SILICON VALLEY WASHINGTON

Beth S. Brinkmann

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5312  
bbrinkmann@cov.com

Via Email (brian.considine@wsgc.wa.gov)

July 26, 2018

Commissioner Bud Sizemore, Chair  
Commissioner Julia Patterson, Vice-Chair  
Commissioner Chris Stearns  
Commissioner Ed Troyer  
Commissioner Alicia Levy  
Brian Considine, Esq., Legal and Legislative Manager

Washington State Gambling Commission  
4565 7th Avenue S.E.  
Lacey, WA 98503

## Re: Big Fish Games, Inc. Petition for Declaratory Order

Dear Mr. Chairman, Commissioners, and Mr. Considine:

Thank you for the opportunity to present to the Commission at its July 12, 2018 meeting. We look forward to further opportunities to address the Commission as it considers Big Fish Games Inc.'s petition for a declaratory order confirming the Commission's earlier guidance that Big Fish Casino games are not subject to the Commission's jurisdiction as "gambling" under RCW 9.46.0237 because their virtual tokens are not things "of value," cannot be cashed out, are prohibited by the games' terms of use from being transferred for profit, and have no real-world value.

We are writing this letter in response to a question discussed at the July 12 meeting regarding whether Cheryl Kater is a necessary party to these proceedings within the meaning of WAC 230-17-180(5), such that her failure to consent to the proceeding could bar the Commission from acting on our declaratory order petition.

As you are aware, the Commission's regulations provide that it "may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding." WAC 230-17-180(5); *see also* RCW 34.05.240(7) (providing the same for state agencies under Washington's Administrative Procedure Act). Whatever interest Ms. Kater may have in the legal arguments at issue in these proceedings, she does not qualify as a "necessary party" within the meaning of this regulation, and thus cannot prevent the Commission from issuing the requested declaratory order.

The requested declaratory order will not substantially prejudice any "rights" of Ms. Kater's that could render her a necessary party. Although Ms. Kater may have an interest in what state law means and how it is interpreted by the Commission, such an interest is not a

## COVINGTON

Washington State Gambling Commission  
July 26, 2018  
Page 2

“right” specific to her that would enable her to prevent Commission action on the declaratory order petition. Other agencies that have similarly adopted regulations under RCW 34.05.240(7) have made clear that the “necessary party” provision protects a third party from having an agency directly adjudicate in a declaratory order proceeding that party’s specific rights without that party’s consent. The regulation has not been applied, however, to prevent agency action merely because a third party has an interest in the meaning of a state statute that may also be implicated in litigation.

For example, the Public Employees Relations Commission held in *In re SEIU, District 925*, 1997 WL 810875 (1997), that an employer was a necessary party to a declaratory order proceeding where the petitioner labor union sought an order declaring that the union’s collective bargaining agreement with the employer no longer covered certain union employees. As a party to the agreement, of course, a declaratory order would affect the employer’s contractual rights and obligations. The order sought here, by contrast, would not have any direct legal force against Ms. Kater. In like fashion, the Pollution Control Hearings Board held in *The Boeing Co. v. Dep’t of Ecology*, 2011 WL 3546624 (2011), that the Department of Ecology was a necessary party to the declaratory order proceeding there because the petitioner sought to have the Board enter an order that would legally invalidate the Department’s own guidance. The order sought here, on the other hand, would have no such legal effect on any right of Ms. Kater. And the Utilities and Transportation Commission explained *In re AT&T Commc’ns of Pac. Nw., Inc.*, 1996 WL 760070 (1996), that a company was a necessary party to the declaratory order proceeding there because the order sought would declare that the company specifically was not permitted “to unilaterally determine that its status as designated toll carrier and as carrier of last resort . . . ended simply because a customer determine[d] to use another toll provider.” Again, the declaratory order sought here would not adjudicate Ms. Kater’s rights, nor would it constitute any type of legal order against Ms. Kater.

That Ms. Kater’s pending lawsuit contains allegations involving the Big Fish Casino games does not change the fact that she has no “right” that would be prejudiced by a declaratory order confirming the Commission’s earlier guidance that virtual tokens in social games like Big Fish Casino, which cannot be redeemed for “real” money, and are prohibited by the games’ terms of use from being transferred for profit, are not things “of value” under Washington’s gambling laws and regulations, and that such games are not “gambling” in Washington because the required “prize” element is not present.

The Commission is not being asked to enter a declaratory order denying relief to Ms. Kater on her legal claims in her lawsuit. That is a matter for the federal court in which the lawsuit is pending. Indeed, the Ninth Circuit ruling that created the uncertainty necessitating the declaratory order request will remain unchanged by any order issued by the Commission. That ruling was based on a reading of the allegations (not *evidence*) in Ms. Kater’s lawsuit, at a preliminary phase of litigation, that differ from the evidence before the Commission in the sworn affidavit supporting the declaratory order petition. That federal court ruling did not determine the application of Washington law to the facts as presented to the Commission, which the Commission has authority to determine pursuant to state law. Indeed, the Ninth Circuit’s opinion expressly noted that it was constrained by the allegations in Kater’s complaint and could not consider the actual evidence at this preliminary stage of the case. *See Kater v. Churchill*

## COVINGTON

Washington State Gambling Commission  
July 26, 2018  
Page 3

*Downs Inc.*, 886 F.3d 784, 787 (9th Cir. 2018) (“Churchill Downs argues that this does not matter, because users receive free chips throughout gameplay, such that extending gameplay costs them nothing. But because Churchill Downs’ allegation is not included in the complaint, we do not further address this contention.”).

That Ms. Kater’s “rights” are not at issue in this declaratory order is reinforced by the fact that Ms. Kater’s interest in the legal interpretation and application of state law is shared by a vast number of other members of the public, who desire to know whether the longstanding meaning of the Washington Gambling Act continues to recognize that online social games involving tokens that lack real-world value and that cannot be transferred for commercial gain under the terms of use, do not constitute gambling under the Act. Game owners and players alike throughout Washington have relied on this understanding for years as set forth in the Commission 2014 guidance document, and have a strong interest in the Commission confirming the lawfulness of their business conduct and game-playing. Indeed, the Commission is charged by its authorizing statute, RCW Chapter 9.46, with responsibility for interpreting and enforcing the State’s gambling laws, and for deciding where they do not apply, as well.

Neither the language of the “necessary party” regulation, nor the agency orders applying it, contemplate preventing agency action when the issue of state law is of such general interest to members of the public. Were it otherwise, the declaratory order authority of state agencies could be thwarted unilaterally by a wide range of persons, including apparently thousands of putative class members in pending lawsuits that involve the same state law, claiming a right to foreclose agency action on a declaratory order petition. Litigation brought by plaintiffs in federal court does not supplant or reduce a state agency’s authority or responsibility for interpreting and providing public guidance concerning the laws it is charged with implementing and enforcing. State law interpretation and application are the province of the state legislature and the agencies it creates by legislation, not of the federal courts.

The letter submitted by Ms. Kater’s counsel on July 11, 2018, mistakenly suggests that the Commission’s “necessary party” regulation, WAC 230-17-180(5), is governed by the meaning of Washington Superior Court Civil Rule 19, entitled “Joinder of Persons Needed for Just Adjudication,” which applies when parties must be joined in civil lawsuits in court. But the two provisions are worded differently, serve different purposes, and have not been held by a court to impose the same standard.

First, the text of WAC 230-17-180(5) addresses the situation where a party has “rights” that would necessarily be “substantially prejudiced” by the declaratory order sought, whereas Civil Rule 19 is much broader, addressing any party that “claims *an interest relating to the subject matter of the action.*” Civil Rule 19 (a)(2) (emphasis added). Second, their purposes are distinct, such that it makes sense that there would be a higher showing of rights being substantially prejudiced under the regulation in order to strip an agency of its decision-making authority, as compared to a lower showing of interest relating to the subject matter of a court action in order for a party to be joined to participate. Third, Ms. Kater’s counsel does not cite any authority from Washington courts equating these two provisions or somehow reconciling such a view with the fact that they say different things and serve different purposes. *See also The Boeing Co.*, 2011 WL 3546624 (applying WAC 230-17-180(5) without reference to Civil Rule

## COVINGTON

Washington State Gambling Commission  
July 26, 2018  
Page 4

19); *In re SEIU, District 925*, 1997 WL 810875 (same); *In re AT&T Commc'ns of Pac. Nw., Inc.*, 1996 WL 760070 (same).


Moreover, Ms. Kater would not qualify as a necessary party under Civil Rule 19 even if that standard did apply. The case that Ms. Kater provides in support of her position shows only that Civil Rule 19 requires that a party be joined in a court action where that party's legal interests would otherwise be directly adjudicated in its absence. *See Burt v. Washington State Dep't of Corr.*, 168 Wash. 2d 828, 833, 836-37 (2010) (holding that a "requester of public documents (records) . . . is a necessary party to an action . . . seeking to enjoin disclosure of those records"). In addition, it is well established that "[a] mere financial stake in [an] action's outcome," which is what Ms. Kater purports to claim here, "will not suffice" to require joinder under Civil Rule 19. *Auto. United Trades Org. v. State*, 175 Wash. 2d 214, 223 (2012). To satisfy Civil Rule 19's joinder requirement, a party's interest in an action must be "sufficiently weighty" and "legally protected," like a litigant's interest in enforcing a contract to which it is a party. *Id.* at 223-24. Should the Commission's determination of Ms. Kater's purported necessary party status be appealed to a Washington court, there would be no basis for the court to impose a less demanding standard to constitute a necessary party under WAC 230-17-180(5) than under Civil Rule 19; for the reasons discussed above, a higher showing should be imposed, consistent with the text and purpose of WAC 230-17-180(5).

Furthermore, even if Ms. Kater could somehow qualify as a necessary party to the declaratory order petition, the requested order would not "substantially prejudice" any rights she might claim, as required under WAC 230-17-180(5), so her refusal to consent does not preclude the entry of the order sought. The order would not have a legally binding effect against any right of Ms. Kater's; how any application of state law in the Commission's order is weighed by the federal court or arbitrator presiding over her litigation would be a matter for that court or arbitrator to determine. *See In re Tanner Elec. Co.*, 1991 WL 11864524 (Utils. and Transp. Comm'n 1991) (Nintendo was not a necessary party to declaratory order petition seeking "a ruling whether RCW 80.28.110 require[d] Puget Sound Power & Light Company . . . to serve Nintendo . . . on request," because "Nintendo would not be bound by the stipulated facts [underlying the proceedings] if it chose to participate in later litigation" regarding the same issue).

To the extent Ms. Kater has an interest in her views being heard by the Commission, the Commission has accommodated that interest and can continue to do so, by allowing her counsel's appearance before the Commission

We appreciate the opportunity to provide this information to the Commission regarding the question of the applicability of WAC 230-17-180(5).

Sincerely,

  
Beth Brinkmann

1 **BEFORE THE WASHINGTON STATE GAMBLING COMMISSION**

2  
3 In the Matter of the Petition of Big Fish Games,  
4 Inc. for a Declaratory Order

Matter No.:

5 **DECLARATION OF GARY RUBMAN IN**  
6 **SUPPORT OF BIG FISH GAMES, INC.'S**  
7 **PETITION FOR A DECLARATORY**  
8 **ORDER**

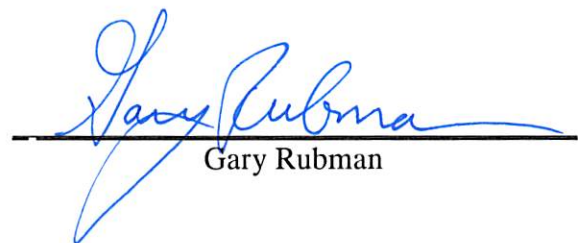
9 I, Gary Rubman, hereby declare as follows:

10 1. I am a partner at the law firm of Covington & Burling LLP, counsel to Big Fish  
11 Games, Inc. ("BFG"). I make this declaration based on my personal knowledge.

12 2. Attached as Exhibit A is a true and correct copy of a brochure published by the  
13 Washington State Gambling Commission, entitled *Online Social Gaming: When is it legal, What to*  
14 *Consider*. The brochure bears the mark "GC5-027 (3/14)" and my understanding is that it was  
15 published in 2014 and was available on the website of the Washington State Gambling Commission  
16 until recently.

17 3. Attached as Exhibit B is a true and correct copy of an excerpt of a report  
18 published by the Entertainment Software Association ("ESA"), entitled *Video Games in the 21st*  
19 *Century, The 2017 Report*. The full report is available on the ESA's website at  
20 [http://www.theesa.com/wp-content/uploads/2017/02/ESA\\_EconomicImpactReport\\_Design\\_V3.pdf](http://www.theesa.com/wp-content/uploads/2017/02/ESA_EconomicImpactReport_Design_V3.pdf) (last  
21 accessed July 3, 2018).

22  
23 I declare under the penalty of perjury under the laws of the United States that the  
24 foregoing is true and correct. This declaration is executed this 3rd day of July, 2018, in Washington,  
25 DC.

26  
27   
28 Gary Rubman

# **Exhibit A**



**Get the facts to know the way to go.** Warning signs you may be playing on, or operating, an illegal Social Gaming website in Washington State:

- There is no way to play for free.
- The prize can be sold or redeemed for "real" money.
- Players must:
  - Pay "real" money to play.
  - Give banking information to collect a prize.
  - Call to start play.
  - Disclose personal information, such as a credit card number, social security number, etc.



### Washington State Gambling Commission

#### Who We Are

- The Commission was created in 1973 to regulate and control authorized and illegal gambling activities (RCW 9.46).
- We are a law enforcement, regulatory and licensing agency.

#### What We Do

- We license and regulate all authorized gambling in the state, except for horse racing and the State Lottery.
- We investigate and control unauthorized and illegal gambling activities.

#### Our Mission

Protect the Public By Ensuring That Gambling is Legal and Honest.

Learn more about us at [wsgc.wa.gov](http://wsgc.wa.gov)



[WAGambling](http://WAGambling)



# Online Social Gaming

When is it legal?  
What to Consider

Let's play a game



*This brochure gives general guidance. You should contact an attorney if you have questions or are unsure whether a game has the 3 elements of gambling.*

You may also contact us at:  
(360) 486-3463  
(800) 345-2529, ext. 3463  
FAX (360) 486-3631  
E-mail: [AskUs@wsgc.wa.gov](mailto:AskUs@wsgc.wa.gov)  
Mail: P. O. Box 42400, Olympia, WA 98504-2400

Photos are ©iStockphoto by the following artists: Cover MerveKarahan / Laptop user gremlin, / blindfolded man DNY59, / @coin geopaul, / no cash value coin DNY59, / treasure chest bphillips.

GC5-027 (3/14)



## What is Social Gaming?

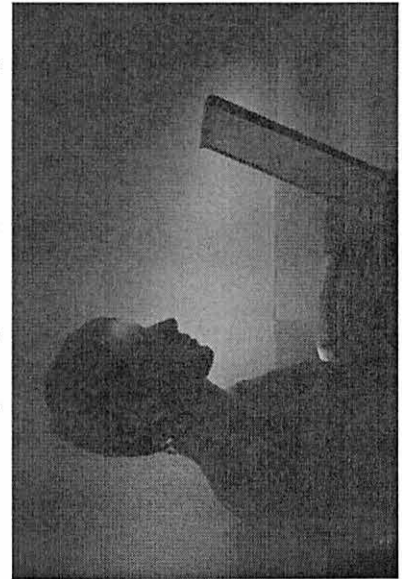
The Oxford dictionary defines **Social Gaming** as the activity or practice of playing an online game on a social media platform, with a major emphasis on friends and community involvement.

Social Gaming ranges from tending a farm to playing a soldier in combat. Ideas for new games are constantly thought up. Some popular social games involve:

- Role playing;
- Adventure;
- Arcade style games; and
- Casino style games.

Social Gaming is growing at an unprecedented rate and with it comes questions. This brochure gives general guidance to help you determine if you are playing on, or operating, a legal Social Gaming website in Washington State.

"Real" money = Legal tender, U.S. Currency.



## Is Social Gaming Legal in Washington?

Social Gaming is legal in Washington State if no gambling takes place.

### What is Gambling?

Gambling involves **3 elements**:

1. Prize;
2. Consideration (something of value, wager, fee to play); and
3. Chance.

**Legal:** If one of the **3 elements** of gambling is removed, the game is not gambling.

Things to keep in mind, to keep it legal:

- There must be a way to play for free.
- If "real" money can be used to enhance or extend play, there must be no prize.

**Illegal:** If a Social Game has the **3 elements** of gambling, it is illegal and cannot be played, or operated, in Washington State. It is illegal to solicit Washington residents to play illegal Social Games.

**Website's Rules of Play:**

- If you are thinking about participating in a Social Game, read the website's Rules or Terms of Use to determine if one of the **3 elements** of gambling is removed.
- Website operators should clearly state in their Rules that virtual money, points, and other items cannot be sold or redeemed for "real" money or prizes.

Washington State law defines gambling as:

"staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome." (RCW 9.46.0237)



## No Prize = No Gambling = OK To Play

*Buying virtual money:*

Many Social Gaming websites give free virtual money to begin play, with an option to buy more virtual money with "real" money to continue play. All play uses this virtual money.



Legal Social Gaming websites will not let players cash in their virtual winnings or points for "real" money or prizes.



Because there is no prize, these games are **not** gambling. However, if the virtual money can be sold or redeemed for "real" money or a prize, the game is illegal.

*Buying virtual prizes, avatars & tools:*

If a player spends "real" money for a virtual prize, avatar or tool to assist with game play and these items cannot be sold or redeemed for "real" money or a prize, it's **not** gambling.



For example, let's say a player uses "real" money to purchase a key to open a chest containing a rare item that the

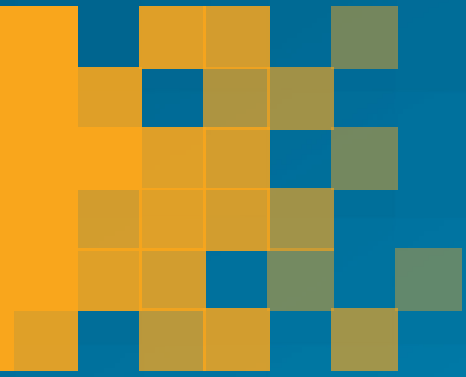
player's character can use to advance their position in the game.

Even though "real" money is used to buy a key to get a rare item, neither the key or rare item have any real-world value because they cannot be sold or redeemed for "real" money. Because there is no prize, it's **not** gambling.

## **Exhibit B**



entertainment<sup>®</sup>  
software  
association



# VIDEO GAMES IN THE 21<sup>ST</sup> CENTURY

THE 2017 REPORT

BY STEPHEN E. SIWEK



# EXECUTIVE SUMMARY

*Video Games in the 21st Century: The 2017 Report* measures the economic contributions made by the U.S. entertainment software industry to the American economy. *The 2017 Report* updates and expands upon earlier studies that quantified the economic benefits provided by the entertainment software industry to the U.S. economy as a whole<sup>12</sup>. *The 2017 Report* concludes that:

- Total video game software sales exceeded **\$24.5 billion in 2016**.
- In 2015, there were **2,457 video game companies operating at 2,858 locations in all 50 states**.
- The total direct employment by the U.S. game industry now exceeds **65,000 employees**.
- The total employment that depends on the game software industry **now exceeds 220,000**.
- Between 2012 and 2014, the number of game company locations **grew at an annual rate of 14.1%**.
- Between 2013 and 2015, direct employment in the U.S. game company industry **grew at an annual rate of 2.9%**.
- In 2015, the average annual compensation per employee (wages, salaries and employer contributions for pensions, insurance and government social insurance) **was about \$97,000**.
- The U.S. game company industry's value added to U.S. GDP was more than **\$11.7 billion in 2015**.
- The real annual growth rate of the U.S. game software industry's **value added was 3.7%** for the period 2013-2015.

---

<sup>1</sup> Siwek, Stephen E., *Video Games in the 21st Century: Economic Contributions of the U.S. Entertainment Software Industry*, Entertainment Software Association (2007).

<sup>2</sup> Siwek, Stephen E., *Video Games in the 21st Century: The 2010 Report*, Entertainment Software Association (2010).



# INTRODUCTION

The U.S. industry that develops and publishes video game software continues to create wholly new forms of entertainment for consumers worldwide. The industry also generates sales in the billions of dollars and creates thousands of American jobs.


This publication, *Video Games in the 21st Century: The 2017 Report*, presents a number of statistical measures that quantify the economic contributions of the video game industry. This report is the third economic impact study prepared for the Entertainment Software Association (“ESA”), the trade association that represents the U.S. video game industry.<sup>3</sup> The basic methods used in this report were originally described in one or both of the previous ESA studies. In this study however, there is a significant change in the underlying data used to measure the economic impact of the video game industry. Unlike previous ESA studies, the source references used in this analysis were compiled directly from game company data bases and social media websites. While the basic structure of the economic impact study has not materially changed, the inclusion of data from the ESA Geographic Impact Report has had more dramatic effects on the overall estimates presented here. ESA obtained this information from multiple different data bases/websites, including Steam, Kickstarter, International Game Developers Association, Giant Bomb, and LinkedIn.

ESA’s reliance on multiple research sources is commendable. Since its origin, the video game industry has not been subject to extensive regulation of its companies or its employees. With less regulation, there have been fewer demands for the industry to gather and publish industry data and studies. For these reasons, neither the federal government nor the industry itself has invested in creating a comprehensive data base of video game companies. However, with the publication of the ESA’s Geographic Impact Report, that condition has changed.

ESA’s Geographic Impact Report quantifies industry statistics on geographic volume, employment and growth. The study identifies 2,457 game companies that function at 2,858 locations. Approximately 80% of these companies were game developers while nearly 95% were founded in the United States. Significantly, video game companies are located in all 50 states.

---

<sup>3</sup> The previous studies were: Siwek, Stephen E., *Video Games in the 21st Century: Economic Contributions of the U.S. Entertainment Software Industry*, Entertainment Software Association (2007) and Siwek, Stephen E., *Video Games in the 21st Century: The 2010 Report*, Entertainment Software Association.



In addition to the data collected by ESA, many of the statistical measures included in this report either were taken directly from U.S. government sources, such as the U.S. Census Bureau or Bureau of Economic Analysis, or were derived using public data from those sources. A basic difficulty that continues to arise when using U.S. government data is that many (but not all) of the most relevant statistics measure only aggregated industry groupings such as software publishing. Largely for this reason, certain estimates presented in this report were derived using statistical data for broader industry groupings than video game publishing. Subsequently, where possible, these broader measures were adjusted to better reflect the known characteristics of the video game industry.

# III. U.S. EMPLOYMENT IN GAME PUBLISHING AND DEVELOPMENT

Employees in the U.S. video game industry may work in small game developer shops or in large game publishing companies with thousands of employees. They may be employed as programmers, arts and animation specialists, game designers, game production experts, quality assurance personnel, audio specialists, legal staff members or business and marketing personnel. Developers may specialize in games for specific types of platforms including mobile, handheld and online media.

In the video game industry, online company data bases and social media sites are available to researchers seeking to access or create their own data compilations. In this analysis, ESA used a variety of such tools to compile its own data base of video game companies. Within that data base, ESA collected data that focused on industry companies and employment. ESA's video game statistics were also collected at the levels of U.S. states, congressional districts and Metropolitan Statistical Areas ("MSAs").

The video game data compiled in the ESA Geographic Impact Report proved to be an important resource for the measurement of video game contributions to the U.S. economy. Data on U.S.-based publisher and developer locations from ESA's Geographic Impact Report data bases were used to estimate the number of workers now employed in the industry.

As shown in Table C-1, in the United States, there are at least 2,332 game developer locations across all 50 states plus the District of Columbia. There are also 526 publisher locations across 44 states. In total, there are at least 2,858 game company locations.

**TABLE C-1: U.S. GAME COMPANY DEVELOPERS AND PUBLISHERS**

TYPE OF COMPANY	LOCATIONS	STATES
DEVELOPER	2,322	51
PUBLISHER*	526	44
ALL COMPANIES	2,858	51

\* Publishers also include Hardware/Software Manufacturers, Service Providers, and Distributors.

Source: ESA Mapping Project Data.

Table C-2 shows the number of workers employed by these companies. As reported in Table C-2, there are now at least 65,678 workers directly employed at game software publisher and developer locations in the United States.<sup>5</sup> Of this total, 28,556 workers are directly employed at game publishing companies while 37,122 people now work directly for U.S.-located game developer firms.

**TABLE C-2: U.S. GAME COMPANY DIRECT EMPLOYMENT BY TYPE OF COMPANY**

TYPE OF COMPANY	LOCATIONS	STATES
DEVELOPER	37,122	1,331
PUBLISHER**	28,556	351
<b>ALL COMPANIES</b>	<b>65,678</b>	<b>1,682</b>

\* 1,176 locations do not report employment data.

\*\* Publishers also include Hardware/Software Manufacturers, Service Providers, and Distributors.

Source: ESA Mapping Project Data.

The employee data shown in Table C-2 can also be disaggregated on a state-by-state basis. The total number of workers directly employed at game software publisher and developer firms in the industries' top seven states are shown in Table C-3. The states of California, Washington, Texas, New York, Illinois, Florida, and Massachusetts collectively employ 55,915 workers, or 85% of the total direct employment for the U.S. game software industry as a whole.

<sup>5</sup> Of the 2,858 game company locations included in the ESA data reported in Table C-1, 1,176 locations do not report employment data. This leaves 1,682 locations, as reported in Table C-2.




**TABLE C-3: U.S. GAME COMPANY EMPLOYMENT BY STATE  
TOP SEVEN STATES**

STATE	REPORTED EMPLOYMENT*	PERCENTAGE OF ALL EMPLOYEES
CALIFORNIA	35,325	54%
WASHINGTON	6,166	9%
TEXAS	4,883	7%
NEW YORK	4,675	7%
ILLINOIS	1,727	3%
FLORIDA	1,676	3%
MASSACHUSETTS	1,463	2%
<b>TOP 7 STATES</b>	<b>55,915</b>	<b>85%</b>
<b>ALL OTHER STATES</b>	<b>9,763</b>	<b>15%</b>
<b>ALL STATES</b>	<b>65,678</b>	<b>100%</b>

\*1,176 locations do not report employment data.

Source: ESA Mapping Project Data.

The employment figures presented in these tables refer to employees who work *directly* for entertainment software developers and publishers. However, any estimate of the number of workers who are directly employed in a given industry will not capture the full impact of that industry on the economy as a whole. The U.S. economy functions as an interlocking system where changes in supply and demand for one industry affect supply and demand in other industries as well.



The U.S. video game industry creates products that combine the skills of the industry’s employees with other inputs of goods and services purchased from other industries. For example, a game developer may need to acquire a specific type of graphic design software from another firm in order to produce the game under development. Revenue from that purchase can be used to compensate employees at the firm that makes the graphic design software product. There would also be similar linkages to suppliers of the graphic design software firm and further linkages to those suppliers and on through the economy.

The U.S. government has developed a widely accepted mathematical model, known as the Regional Input-Output Modeling System (“RIMS II”) that uses input-output relationships throughout the economy to capture these interlocking affects. The input-output relationships are industry specific and take the form of “multipliers.” In this analysis, employment multipliers for the software publishing industry were obtained from the U.S. Bureau of Economic Analysis (“BEA”) for all states where game software publishing employment had been located. These multipliers were applied to the direct game industry employee counts on a state-by-state basis. The weighted average multiplier across all states was 3.355. As shown in Table C-4, in 2015 the total direct and indirect employment for the U.S. video game industry as a whole was 220,332 people. 190,706 of these people were located in the top seven states shown in Table C-4, including 123,408 employees in California alone.

**TABLE C-4: U.S. GAME COMPANY DIRECT AND INDIRECT EMPLOYMENT BY STATE**

STATE	REPORTED DEVELOPER EMPLOYMENT	REPORTED PUBLISHER EMPLOYMENT**	REPORTED DIRECT EMPLOYMENT*	DIRECT + INDIRECT EMPLOYMENT
CALIFORNIA	16,719	18,606	35,325	123,408
WASHINGTON	3,960	2,206	6,166	19,815
TEXAS	4,159	724	4,883	17,867
NEW YORK	1,916	2,759	4,675	13,522
ILLINOIS	1,547	180	1,727	5,917
FLORIDA	646	1,030	1,676	5,607
MASSACHUSETTS	1,270	193	1,463	4,570
<b>TOP 7 STATES</b>	<b>30,217</b>	<b>25,698</b>	<b>55,915</b>	<b>190,706</b>
<b>ALL OTHER STATES</b>	<b>6,905</b>	<b>2,858</b>	<b>9,763</b>	<b>29,626</b>
<b>ALL STATES</b>	<b>37,122</b>	<b>28,556</b>	<b>65,678</b>	<b>220,332</b>

\* 1,176 locations do not report employment data.

\*\* Publishers also include Hardware/Software Manufacturers, Service Providers, and Distributors.

Source: ESA Mapping Project Data.

1 **BEFORE THE WASHINGTON STATE GAMBLING COMMISSION**

2  
3 In the Matter of the Petition of Big Fish Games,  
4 Inc. for a Declaratory Order

Matter No.:

5 **DECLARATION OF ANDY VELLA IN**  
6 **SUPPORT OF BIG FISH GAMES, INC.'S**  
7 **PETITION FOR A DECLARATORY**  
8 **ORDER**

9 I, Andy Vella, hereby declare as follows:

10 1. I am a Vice President and General Manager at Big Fish Games, Inc. (“BFG”).

11 My responsibilities as General Manager include running all business and development operations for the  
12 video game Big Fish Casino (“BFC”). Prior to BFG, I worked as a Lead Engineer at Self Aware Games,  
13 the studio that created the suite of online video games that today make up BFC. For the past 6 years, my  
14 work has been dedicated to developing and enhancing BFC. I have extensive knowledge about BFC’s  
15 engineering and operations, and I am deeply familiar with gameplay protocols and player user data. I  
16 make this declaration based on my personal knowledge and review of business records maintained in the  
17 ordinary course of my employment at BFG.

18 2. BFC contains a suite of online video games that are casino-themed including, for  
19 example, virtual blackjack, poker, and roulette.

20 3. Players use virtual tokens to play BFC, which are termed “chips” per the casino  
21 theme. Players may accumulate virtual chips in various ways. All new players currently receive  
22 100,000 virtual chips automatically when they install BFC for free and create a username. Since at least  
23 2013, additional virtual chips are distributed automatically to players at various times within the games.  
24 For example, players can obtain additional virtual chips through playing the game. Players receive  
25 additional virtual chips automatically on any day that they sign in to play. They receive additional  
26 virtual chips after they are logged into BFC for certain periods of time (*e.g.*, 30 minutes) and click or  
27 press to collect more virtual chips automatically. Players also receive additional virtual chips when their  
28

1 Facebook friends install BFC, or, as of 2017, by joining a social club within BFC. Players may also  
2 purchase additional virtual chips.

3 4. Players cannot, and have never been able to, exchange or cash out BFC virtual  
4 chips for money, and the virtual chips have no value in the real world. Virtual chips can be used only  
5 within the games, such as to play the games or to obtain a virtual pet, cupcake, flag, or other virtual  
6 item.

7 5. Attached as Exhibit A is a true and correct copy of the Terms of Use that  
8 currently govern the use of BFC, dated November 30, 2017. The Terms of Use expressly forbid any  
9 transfer or sale of virtual items, including virtual chips, “for commercial gain.”

10 6. BFC does not provide any mechanism for players to sell virtual chips to each  
11 other. Since at least 2013, BFC allows a player to “gift” virtual chips to another player within the game  
12 through the use of virtual “gold bars” that are obtained through play or purchased within the games.  
13 Neither the gifting player nor BFG receives any financial compensation when virtual chips are gifted.

14 7. BFG is headquartered in Seattle, Washington. More than 865,000 installations of  
15 BFC have come from an IP address geo-located in the State of Washington, and there have been more  
16 than 100,000 such installations in the past twelve months.

17  
18 I declare under the penalty of perjury under the laws of the United States that the  
19 foregoing is true and correct. This declaration is executed this 3rd day of July, 2018, in Oakland,  
20 California.

21  
22  
23   
24 Andy Vella  
25  
26  
27  
28

# EXHIBIT A

# Big Fish Terms of Use

Last modified: November 30, 2017

## AGREEMENT AND SERVICES

PLEASE READ THESE TERMS OF USE CAREFULLY, INCLUDING THE MANDATORY ARBITRATION PROVISION IN THE SECTION TITLED "DISPUTE RESOLUTION BY BINDING ARBITRATION," WHICH REQUIRES THAT DISPUTES ARE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL AND NOT A CLASS-WIDE OR CONSOLIDATED BASIS. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED AT THE END OF THE SECTION TITLED "DISPUTE RESOLUTION BY BINDING ARBITRATION."

BY ACCESSING OR USING ANY BIG FISH OFFERING, YOU AGREE TO BE BOUND BY THESE TERMS OF USE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO THESE TERMS OF USE IN THEIR ENTIRETY, DO NOT USE ANY BIG FISH OFFERINGS.

Big Fish Games, Inc. and/or its Affiliates provide access to the Big Fish Offerings subject to the conditions set forth in these Terms of Use. For purposes of these Terms of Use, the term "**Affiliates**" means, with respect to any party, any person or entity which controls, is controlled by, or is under common control with, such party, and the term "**Big Fish Offerings**" means the web sites of Big Fish, including [www.bigfishgames.com](http://www.bigfishgames.com), any other sites on which these Terms of Use are posted, and any other Big Fish application, service or product licensed, downloaded or otherwise accessed by you through third party sites or sources, including the products and services available through any of the foregoing.

THESE TERMS OF USE ARE ENTERED INTO BETWEEN YOU AND BIG FISH GAMES, INC. THE TERM "**BIG FISH**" MEANS BIG FISH GAMES, INC. ALONG WITH ITS AFFILIATES. Your use of the Big Fish Offerings constitutes your express acceptance without reservation of these Terms of Use.

Use of the Big Fish Offerings is also governed by our [Privacy Policy](#) and any other terms of use applicable to services you register to use within a Big Fish Offering, including any amendments or updates thereto.

Use of the Big Fish Software, as hereafter defined, is governed by the [Big Fish Games, Inc. End User license](#).

Without limiting the foregoing, each of your Big Fish Offering account(s) (each a "Big Fish account"), if applicable, and participation in any Big Fish Offerings are governed by these Terms of Use. The Big Fish Offerings are always evolving, so it is important that you periodically check these Terms of Use, as well as the specific rules for any games or activities in which you

choose to participate, for updates. Big Fish reserves the right to change or modify these Terms of Use at any time and in our sole discretion. If Big Fish makes changes to these Terms of Use, we will provide notice of such changes, such as (by way of example only) by providing notice through the Big Fish Offerings or updating the "Last Modified" date at the top of these Terms of Use. If we revise these Terms of Use, such revision(s) will take effect immediately such notice. Your continued access or use of any Big Fish Offering constitutes your acceptance of the revised Terms of Use. We encourage you to frequently review these Terms of Use to ensure that you understand the terms and conditions that apply to your use of the Big Fish Offerings. If you do not agree to any of these Terms of Use, you should discontinue using or participating in any and all Big Fish Offerings. If there is a conflict between these Terms of Use and any other rules or instructions posted within a Big Fish Offering, these Terms of Use will control.

## **ACCOUNT REGISTRATION**

If you create a Big Fish account within any Big Fish Offering, you must provide truthful and accurate information to us in creating such account. If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access a Big Fish Offering, and refuse any and all current or future use of or access to any or all Big Fish Offerings (or any portion thereof).

Big Fish requires all users to be over the age of thirteen (13). If you are between the ages of thirteen (13) and eighteen (18), you may create a Big Fish account or use the Big Fish Offerings only under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Use.

Big Fish reserves the right to limit the number of accounts a user can establish. This limit may change over time in our sole discretion.

You are solely responsible for all activity on any and all of your Big Fish account(s) and for the security of your computer system. You should not reveal your username or password to any other person. Big Fish will not ask you to reveal your password. If you forget your password, you can request to have a new password sent to your registered e-mail address. You agree to indemnify and hold Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers harmless for any improper or illegal use of any of your Big Fish account(s). This includes illegal or improper use by someone to whom you have given permission to use your Big Fish account(s) or whom you have negligently allowed to access your Big Fish account(s). Big Fish reserves the right to terminate your Big Fish account(s) if any activity that occurs with respect to such account(s) violates these Terms of Use.

## **ELECTRONIC COMMUNICATIONS**

When you access a Big Fish Offering, send e-mails or electronically chat with Big Fish, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices in the Big Fish



Offerings. You agree that all agreements, notices, disclosures and other communications that Big Fish provides to you electronically satisfy any legal requirement that such communications be in writing.

## **VIRTUAL ITEMS**

Certain Big Fish Offerings may provide you with the opportunity to license a variety of virtual items such as virtual currency, virtual goods, additional levels and content packs ("virtual items") that can be used while playing the Big Fish Offering. You may be required to pay a fee to obtain virtual items. When you use virtual items within a Big Fish Offering, any virtual items that you have purchased will be deemed used before any virtual items that you have earned.

You have no property interest in any virtual items. Any purchase of virtual items, and virtual items accumulated through any applicable Big Fish Offering membership benefits, are purchases of a limited, non-transferable, revocable license to use those virtual items within the applicable Big Fish Offering. Virtual items may not be transferred or resold for commercial gain in any manner, including, without limitation, by means of any direct sale or auction service. Virtual Items may not be purchased or sold from any individual or other company via cash, barter or any other transaction. Virtual items have no monetary value, and cannot be used to purchase or use products or services other than within the applicable Big Fish Offering. Virtual items cannot be refunded or exchanged for cash or any other tangible value.

Big Fish may manage, regulate, control, modify or eliminate your virtual items in our sole discretion, and Big Fish will have no liability to you or anyone for exercising those rights. In addition, all virtual items are unconditionally forfeited if your Big Fish Offering account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering or any portion or feature of any Big Fish Offering.

Big Fish has no liability for hacking or loss of your virtual items. Big Fish has no obligation to, and will not, reimburse you for any virtual items lost due to your violation of these Terms of Use. Big Fish reserves the right, without prior notification, to limit the order quantity on any virtual items and/or to refuse to provide you with any virtual items. Price and availability of virtual items are subject to change without notice.

## **SOCIAL NETWORK SITES**

If you access a Big Fish Offering via a third party social networking site (a "**Social Game**"), you should be aware that Social Games are only available to individuals who have registered with the social networking site through which s/he accesses Social Games. You agree that your social networking site account information is accurate, current and complete.

If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access Social Games and refuse any and all current or future use of or access to Social Games (or any portion thereof).

# REVIEWS, COMMUNICATIONS AND SUBMISSIONS

## Generally

Without limiting the scope of these Terms of Use, you agree to comply with our [Forum FAQ](#) and [Review Guidelines](#) when you submit reviews, forum posts and other content via any Big Fish Offering. Inappropriate, obscene, defamatory, offensive language, crude or explicit sexual content, discussions of any matters which are explicitly or by inference illegal in any way, discussions of illegal or any other drugs, and racially and ethnically offensive speech are examples of unsuitable content that are not permitted within the Big Fish Offerings. Content standards may vary depending on where you are within a Big Fish Offering and the expectations of the relevant game community. Some game play may involve use of stronger language than others, including mild expletives. You should always use your best and most respectful and conservative judgment in interacting as part of any game play, and submitting any content, such as a review or post to any forums or message boards, within a Big Fish Offering.

We expressly reserve the right, but have no obligation, to: (a) monitor any communications within the Big Fish Offerings, including, without limitation, to ensure that appropriate standards of online conduct are being observed, and (b) immediately or at any time remove any content that we deem objectionable or unsuitable in our sole discretion. Big Fish does not endorse, approve, or prescreen any content that you or other users post or communicate on or through any Big Fish Offerings. Big Fish does not assume any responsibility or liability for any content that is generated, posted or communicated by any user on or through the Big Fish Offerings. You agree to indemnify Big Fish and each of their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from any liability or damages arising out of or resulting from any content you post or communicate on or through the Big Fish Offerings.

Without limiting the generality of these policies and standards, the following actions are examples of behavior that violate these Terms of Use and may result in any or all of your Big Fish account(s) being immediately suspended or terminated:

- Posting, transmitting, promoting, or distributing any content that is illegal
- Harassing or threatening any other user of a Big Fish Offering or any employee or contractor of Big Fish
- Impersonating another person, indicating that you are a Big Fish employee or a representative of Big Fish (if you are not), or attempting to mislead users by indicating that you represent Big Fish in any way
- Attempting to obtain a password, other account information, or other private information from any other user of a Big Fish Offering
- Uploading any software, files, photos, images or any other content to a Big Fish Offering that you do not own or have the legal right to freely distribute, or that contain a virus or corrupted data, or any other malicious or invasive code or program
- Posting messages for any purpose other than personal communication, including without limitation advertising, promotional materials, chain letters, pyramid schemes, political

campaigning, soliciting funds, mass mailings and sending "spam", or making any commercial use of any Big Fish Offering.

- Disrupting the normal flow of dialogue, or otherwise acting in a manner that negatively affects or disrupts other users.
- Improperly using any game support functions or complaint buttons, or making false complaints or other reports to Big Fish representatives.
- Posting or communicating any player's real-world personal information within a Big Fish Offering or by or through a Big Fish Offering or any related bulletin board.
- Uploading or transmitting, or attempting to upload or transmit, any material that acts as a passive or active information collection or transmission mechanism, including, without limitation, gifs, 1x1 pixels, web bugs, and other similar devices.
- Using or launching any automated system, including, without limitation, any spider, bot, cheat utility, scraper or offline reader that accesses a Big Fish Offering, or using or launching any unauthorized script or other software.
- Using a false e-mail address or otherwise disguising the source of any content that you submit within a Big Fish Offering, or using tools which anonymize your internet protocol address.
- Interfering or circumventing any Big Fish Offering security feature or any feature that restricts or enforces limitations on use of or access to a Big Fish Offering.
- Attempting to sell any part of a Big Fish Offering, including, without limitation, any virtual items (if applicable), Big Fish accounts and access to them in exchange for real currency or items of monetary or other value.
- Engaging in cheating or any other activity that Big Fish deems to be in conflict with the spirit of a Big Fish Offering.

## **Public Nature of Communications**

You acknowledge and agree that your submitted content, including your reviews and your communications with other users via online messaging, private messaging, forums or bulletin boards, and any other similar types of communications and submissions on or through any Big Fish Offering, are non-confidential, public communications, and you have no expectation of privacy concerning your use of or participation in any Big Fish Offerings (other than with respect to the information you provide to us in establishing your Big Fish account(s), if applicable). You acknowledge that personal information that you communicate publicly within any Big Fish Offering may be seen and used by others and may result in unsolicited communications. Big Fish is not liable for any information that you choose to submit or communicate to other users on or through any Big Fish Offerings, or for the actions of any other users of any Big Fish Offering.

You represent and warrant that you have all necessary rights in and to any materials that you post within any Big Fish Offering, that such materials do not infringe any proprietary or other rights of third parties, that all such content is accurate and will not cause injury to any person or entity, and that you will indemnify Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers for all claims resulting from your submitted and posted content. If any such materials incorporate the name, voice, likeness and/or image of any individual, you represent and warrant that you have the right

to grant Big Fish permission to use any such name, voice, likeness and/or image of such individual appearing in the materials you post throughout the world in perpetuity. Once you post or communicate any content or materials on or through a Big Fish Offering, you expressly grant Big Fish the complete, worldwide, fully sublicensable and irrevocable right to quote, re-post, use, reproduce, modify, adapt, publish, translate, create derivative works from, display, distribute, transmit, and broadcast such content or materials, including without limitation the name you submit in connection with such content or materials, in any form, with or without attribution to you, and without any notice or compensation to you of any kind. We reserve the right to immediately remove any content that may be considered, in our sole discretion, in violation of the rights of any third party.

## **Commercial Activity and Unsolicited E-mail**

You may not use any portion of the Big Fish Offerings to collect information, including login names, about other users, and use of such information to send unsolicited e-mail or for any other purpose is strictly prohibited. You may not advertise any goods or services on any Big Fish Offerings, or otherwise exploit your participation on or through any Big Fish Offerings for any commercial purpose.

## **Customer Reviews**

You may submit reviews of certain Big Fish Offerings. Use of the reviews feature is for your personal, non-commercial use and is at your own option and risk, and you must comply with the policies set forth in these Terms of Use and the [Review Guidelines](#).

When you post a review, we will display your rating of the Big Fish Offering, along with your user name and certain other information you may provide, such as your city and state location, skill level, favorite game and favorite genres. By submitting a review, you are consenting to the release of all information that you provide in that review to a public forum. If you do not want any such information to be shared in a public forum, do not use the review feature.

## **BIG FISH SOFTWARE**

We may require that you download certain software from Big Fish, its principals or its licensors onto your computer ("**Big Fish Software**"). Subject to your compliance with these Terms of Use, Big Fish grants to you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Big Fish Software to participate in the Big Fish Offerings. The Big Fish Software is for your personal use, and may not be reproduced, duplicated, copied, resold, sublicensed, or otherwise used in whole or in part by you for commercial purposes. You may not modify, translate, reverse-engineer, reverse-compile or decompile, disassemble or create derivative works from any of the Big Fish Software.

NEITHER BIG FISH GAMES, INC. NOR ITS LICENSORS IS LIABLE FOR ANY DAMAGES IN CONNECTION WITH YOUR USE OF ANY BIG FISH SOFTWARE (INCLUDING LIABILITY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE), AND THE ENTIRE

RISK OF USE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE, RESULTING FROM ANY USE OF THE BIG FISH SOFTWARE, RESIDES WITH YOU.

## **THIRD PARTY LINKS and THIRD PARTY CONTENT AND SERVICES**

Any and all software, content and services (including advertising) within a Big Fish Offering that are not owned by Big Fish are "**third party content and services.**" Big Fish acts merely as an intermediary service provider of, and accepts no responsibility or liability for, third party content and services. In addition and without limiting the generality of the foregoing, certain Big Fish Offerings may include links to sites operated by third parties, including advertisers and other content providers. Those sites may collect data or solicit personal information from you. Big Fish does not control such sites, and is not responsible for their content, policies, or collection, use or disclosure of any information those sites may collect.

## **VIOLATION OF THESE TERMS OF USE**

If you violate our Terms of Use, Big Fish reserves the right, in its sole discretion, to immediately terminate your participation in any or all Big Fish Offerings, including any and all Big Fish accounts you have established. You acknowledge that Big Fish is not required to notify you prior to terminating any such account.

## **TERMINATION OF ANY BIG FISH ACCOUNT**

Big Fish and you each have the right to terminate or cancel any of your Big Fish account(s), if applicable, at any time for any reason. You understand and agree that cancellation of your Big Fish account(s) and/or ceasing use of any and all Big Fish Offerings are your sole right and remedy with respect to any dispute with Big Fish. This includes, but is not limited to, any dispute arising out of or directly or indirectly related to: (a) any provision contained in these Terms of Use or any other agreement between you and Big Fish, including, without limitation, the [Privacy Policy](#), or Big Fish's enforcement or application of these Terms of Use or any other such agreement, including, without limitation, the [Privacy Policy](#), (b) the content available on or through the Big Fish Offerings, or any change in or to such content, (c) your ability to access and/or use any Big Fish Offerings, or (d) the amount or type of any fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods, in each case imposed or implemented by Big Fish on or through any Big Fish Offering.

Big Fish reserves the right to collect fees, surcharges or costs incurred before you cancel your Big Fish account(s) or a particular subscription. In the event that your Big Fish account or a particular subscription is terminated or cancelled, no refund will be granted, no online time or other credits (e.g., points in an online game) will be credited to you or converted to cash or other form of reimbursement, and you will have no further access to your account or anything associated with it (such as points, tokens or in-game items). Any delinquent or unpaid accounts

must be settled before Big Fish may allow you to create any new or additional accounts. All virtual items are unconditionally forfeited if your Big Fish account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering that includes virtual items.

Without limiting the foregoing provisions, if you violate these Terms of Use, Big Fish may issue you a warning regarding the violation, or, in Big Fish's sole discretion, immediately terminate any and all Big Fish accounts that you have established with any Big Fish Offering, with or without notice.

## **INTELLECTUAL PROPERTY RIGHTS**

The names and logos, and other graphics, logos, icons, and service names associated with the Big Fish Offerings are trademarks, registered trademarks or trade dress of Big Fish or its licensors or principals in the United States and/or other countries. Big Fish's trademarks and trade dress may not be used in connection with any product or service that is not owned or operated by or on behalf of Big Fish, or in any manner that is likely to cause confusion among consumers or that disparages or discredits Big Fish or any Big Fish Offering. The compilation of all content on the Big Fish Offerings is the exclusive property of Big Fish and is protected by United States and international copyright laws. You may not use, copy, transmit, modify, distribute, or create any derivative works from any content from the Big Fish Offerings unless we have expressly authorized you to do so in writing. All other trademarks not owned by Big Fish that appear on the Big Fish Offerings are the property of their respective owners, who may or may not be affiliated with or connected to Big Fish. If you fail to adhere to these Terms of Use, other content owners may take criminal or civil action against you. In the event legal action is taken against you for your acts and/or omissions with regard to any content on the Big Fish Offerings, you agree to indemnify and hold harmless Big Fish and its employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers.

## **LIMITATIONS ON WARRANTIES AND LIABILITY**

YOU EXPRESSLY AGREE THAT THE USE OF ANY BIG FISH OFFERING, BIG FISH SOFTWARE AND THE INTERNET IS AT YOUR SOLE RISK. ALL BIG FISH OFFERINGS AND BIG FISH SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BIG FISH DOES NOT GUARANTEE THAT YOU WILL BE ABLE TO ACCESS OR USE THE BIG FISH OFFERINGS OR BIG FISH SOFTWARE AT ANY PARTICULAR TIMES OR LOCATIONS, OR THAT THE BIG FISH OFFERINGS, BIG FISH SOFTWARE, NEWSLETTERS, E-MAILS OR OTHER COMMUNICATIONS SENT FROM BIG FISH ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH BIG FISH IS TO STOP USING THE BIG FISH OFFERINGS AND BIG FISH SOFTWARE, AND TO CANCEL ANY AND ALL OF YOUR BIG FISH ACCOUNTS, IF APPLICABLE. YOU ACKNOWLEDGE AND AGREE THAT BIG FISH IS NOT LIABLE FOR ANY ACT OR FAILURE TO ACT ON ITS OWN PART, OR FOR ANY CONDUCT OF, OR COMMUNICATION OR CONTENT POSTED WITHIN A BIG FISH OFFERING BY, ANY BIG FISH OFFERING USER. IN NO EVENT SHALL BIG FISH'S OR ITS EMPLOYEES', CONTRACTORS', OFFICERS', DIRECTORS' OR SHAREHOLDERS' LIABILITY TO YOU EXCEED THE AMOUNT THAT YOU PAID TO BIG FISH FOR YOUR PARTICIPATION IN ANY BIG FISH OFFERING. IN NO CASE SHALL BIG FISH OR ITS EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS OR SHAREHOLDERS BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY BIG FISH OFFERING OR BIG FISH SOFTWARE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, SUCH LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT BIG FISH IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD BIG FISH LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF BIG FISH OFFERINGS AND OPERATORS OF SOCIAL NETWORKING AND OTHER EXTERNAL SITES, AND THAT THE RISK OF USING OR ACCESSING BIG FISH OFFERINGS AND BIG FISH SOFTWARE, SOCIAL NETWORKING SITES AND OTHER EXTERNAL SITES, AND OF INJURY FROM THE FOREGOING, RESTS ENTIRELY WITH YOU.

## **INDEMNIFICATION**

You agree to defend, indemnify and hold harmless Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from and against any and all liabilities, claims and expenses, including attorneys' fees, that arise from a breach of these Terms of Use for which you are responsible or in connection with your transmission of any content to, on or through any Big Fish Offering. Without limiting your indemnification obligations described herein, Big Fish reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

## **IMPORT TAXES AND FEES**

When you buy physical goods (e.g. CD-ROM) through any Big Fish Offering for delivery outside the United States, you are considered an importer and, as between you and Big Fish, you will be responsible for payment of all taxes, duties, fees or other charges that may be applicable to such importation, including VAT, and you must comply with all laws and regulations of the country in which you are receiving the goods. Your privacy is important to us and we know that you care about how information about your order is used and shared. We would like our

international customers and customers dispatching products internationally to be aware that cross-border deliveries are subject to opening and inspection by customs authorities.

## **EXPORT CONTROL LAWS**

Certain Big Fish Offerings may be subject to United States and international export controls. By accessing Big Fish Offerings, you warrant that you are not located in any country, or exporting any Big Fish Offerings, to any person or place to which the United States, European Union or any other jurisdiction has embargoed goods. You agree to abide by all applicable export control laws and further agree not to transfer or upload, by any means electronic or otherwise, any Big Fish Offerings that may be subject to restrictions under such laws to a national destination prohibited by such laws without obtaining and complying with any required governmental authorizations.

## **OTHER LEGAL TERMS**

You agree that these Terms of Use are not intended to confer and do not confer any rights or remedies upon any third party. If any part of these Terms of Use are held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. If any provision of these Terms of Use is found to be illegal or unenforceable, these Terms of Use will be deemed modified to the extent necessary to make them legal and enforceable, and will remain, as modified, in full force and effect. These Terms of Use, including all terms and policies referenced herein, contain the entire understanding, and supersede all prior agreements, between you and Big Fish relating to this subject matter, and cannot be changed or terminated orally.

## **PRIVACY**

Big Fish respects the privacy of Big Fish Offerings users. Please review our [Privacy Policy](#), which also governs your access to and use of the Big Fish Offerings, to understand our policies and practices with respect your personal information.

## **APPLICABLE LAW, JURISDICTION, AND VENUE**

These Terms of Use and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Washington, exclusive of conflict or choice of law rules.

The parties acknowledge that these Terms of Use evidence a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted under these Terms of Use shall be governed by the Federal Arbitration Act (9 U.S.C., §§ 1-16).



You and Big Fish irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in King County, Washington, for all disputes arising out of or relating to these Terms of Use, the subject matter of these Terms of Use, or your access to and use of any Big Fish Offering, that are heard in court (not arbitration).

## **DISPUTE RESOLUTION BY BINDING ARBITRATION**

**PLEASE READ THIS "DISPUTE RESOLUTION BY BINDING ARBITRATION" PROVISION CAREFULLY, BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH BIG FISH AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.**

THIS PROVISION PRECLUDES YOU FROM BRINGING ANY CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH. IT ALSO PRECLUDES YOU FROM PARTICIPATING IN OR RECOVERING RELIEF UNDER ANY CURRENT OR FUTURE CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH BY SOMEONE ELSE. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL.

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT DECISION. IT IS YOUR DECISION TO MAKE AND YOU SHOULD NOT RELY SOLELY ON THE INFORMATION PROVIDED IN THIS AGREEMENT, AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS REGARDING THE CONSEQUENCES OF YOUR DECISION. YOU MAY OPT OUT OF THIS ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS BELOW.

**Scope of Arbitration Provision.** You and Big Fish agree that any dispute, claim or controversy arising out of or relating to your access to or use of any Big Fish Offering or to these Terms of Use (including without limitation any dispute concerning the breach, enforcement, construction, validity, interpretation, enforceability, or arbitrability of these Terms of Use) (a "**Dispute**"), shall be determined by arbitration, except that you and Big Fish are NOT required to arbitrate any Dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents.

**Location of Arbitration and Applicable Rules.** You and Big Fish agree that such arbitration shall occur in King County, Washington. You may request to appear in such proceedings telephonically. You and Big Fish agree that such arbitration shall be conducted by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS"), as modified by these Terms of Use.

**Authority of Arbitrator.** With the exception of class procedures and remedies as discussed below under "Waiver of Class Relief," the arbitrator shall have the authority to grant any remedy that would otherwise be available in court.

**Confidentiality.** You and Big Fish shall maintain the confidential nature of the arbitration proceedings and the arbitration award, including the arbitration hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision

**Allocation of Arbitration Fees.** If you assert a Dispute as a consumer, you will only be required to pay arbitration fees of \$250 of the fees charged by JAMS in connection with any arbitration under this section, and Big Fish will bear all other costs charged by JAMS or the arbitrator, including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services. You will still be responsible for paying your own attorneys' fees.

**WAIVER OF CLASS RELIEF.** WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AGREE THAT YOU AND BIG FISH WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR PROCEEDING. YOU AND BIG FISH ARE EACH WAIVING RESPECTIVE RIGHTS TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

**Procedure to Opt Out of Arbitration Provision.** You may opt out of this arbitration provision only by written Notice via U.S. Mail, or by any nationally recognized delivery service (e.g., UPS, Federal Express, etc.) to Big Fish, Attn: Legal Department, at 333 Elliott Avenue West, Suite 200, Seattle, WA, 98119. **You must send such Notice within thirty (30) days of your acceptance of these Terms of Use.** You must sign and date the Notice, and include in it your name, address, and a clear statement that you do not wish to resolve disputes with Big Fish through arbitration. If you do not follow this procedure by your thirty (30) day deadline to do so, then you and Big Fish shall both be bound by the terms of this section entitled Dispute Resolution by Binding Arbitration.

If any portion of this section entitled "Dispute Resolution by Binding Arbitration" is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

## **STATUTE OF LIMITATIONS**

You and Big Fish agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of a Big Fish Offering, these Terms of Use or the [Privacy Policy](#), must be filed within ONE (1) YEAR after such claim or cause of action arose, and is thereafter forever barred.

## **SEVERABILITY**

If any part of these Terms of Use is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

## **CONTACT US**

Big Fish Games, Inc.  
Attn: Legal Department  
333 Elliott Avenue West, Suite 200  
Seattle, Washington 98119  
USA

## **DIGITAL MILLENNIUM COPYRIGHT ACT**

The Digital Millennium Copyright Act provides recourse to copyright owners who believe that their rights under the United States Copyright Act have been infringed by acts of third parties over the Internet. If you believe that your copyrighted work has been copied without your authorization and is available on or in a Big Fish Offering in a way that may constitute copyright infringement, you may provide notice of your claim to Big Fish's Designated Agent listed below. For your notice to be effective, it must include the following information:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) A description of the copyrighted work that you claim has been infringed upon;
- (iii) A description of where the material that you claim is infringing is located within the Big Fish Offering;
- (iv) Information reasonably sufficient to permit Big Fish to contact you, such as address, telephone number, and, if available, an e-mail address at which you may be contacted;
- (v) A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- (vi) A statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (vii) Big Fish's Designated Agent is:

Big Fish Games, Inc.  
Attn: Legal Department  
333 Elliott Avenue West, Suite 200  
Seattle, Washington 98119  
USA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE WASHINGTON STATE GAMBLING COMMISSION**

In re Petition of Big Fish Games, Inc. for a  
Declaratory Order

**COMMENT OF CHERYL KATER**

1 **INTRODUCTION**

2 Despite naming its core product “Big Fish Casino,” Petitioner Big Fish Games, Inc. (“Big  
3 Fish”) is trying hard to portray itself as something other than a gambling operation. It uses a  
4 number of euphemisms to that effect such as “free-to-play games,” “social gaming,” “mobile  
5 gaming,” and “casual gaming.” But as the United States Court of Appeals for the Ninth Circuit  
6 correctly held, Big Fish Casino is gambling under Washington law. There is no reason for this  
7 Commission to overturn that finding.

8 Big Fish is right that the Ninth Circuit’s decision was based on the complaint Ms. Kater  
9 filed in her lawsuit, which does not contain everything about how Big Fish Casino operates. Ms.  
10 Kater does not yet have all of the information about Big Fish Casino’s operation because she has  
11 not yet had the opportunity to request any documents or take any depositions in her lawsuit.  
12 However, she has learned more about how Big Fish works since she filed her case, and she  
13 presents that information in the Factual Background section below. Most importantly, Ms. Kater  
14 has learned that some players have lost hundreds of thousands of dollars at Big Fish Casino, that  
15 Big Fish hires personal VIP hosts to cater to those biggest of spenders, that the availability of  
16 “free” chips is directly tied to how much money players spend, and that the “social gaming”  
17 aspects of Big Fish Casino are engineered to pressure addicted players into spending more  
18 money.

19 Next, in the Legal Argument section, Ms. Kater explains why she is a “necessary party”  
20 under Washington law, which requires the Commission to obtain her consent before issuing a  
21 declaratory order, such as the one Big Fish requests, that would substantially prejudice her. Ms.  
22 Kater respectfully declines to consent. At the Commission’s request, she also explains what the  
23 term “thing of value” means under Washington law and why that term applies to the chips that  
24 are at the core of the Big Fish Casino.

25 Finally, in the concluding section, Ms. Kater respectfully offers some questions that she  
26 believes the Commission should ask before deciding to grant Big Fish’s petition. Ms. Kater  
27 appreciates the careful manner in which the Commission has approached this serious issue, and  
28

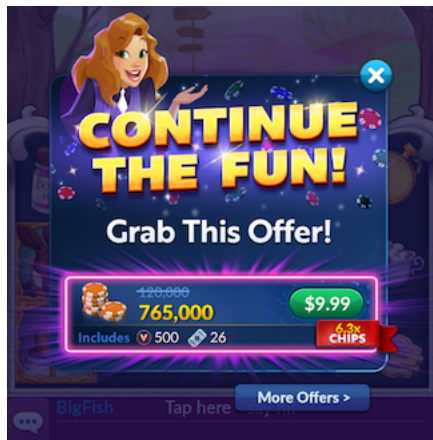
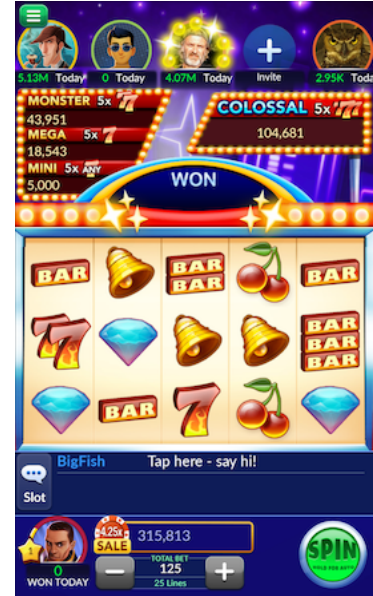
1 she thanks the Commission for taking the time to consider her comment.

## 2 FACTUAL BACKGROUND

### 3 I. Big Fish Casino’s Games

4 The Big Fish Casino makes money by offering electronic  
5 versions of popular casino games—mostly slot machines, but also  
6 blackjack, poker, and roulette. Like the brick-and-mortar casinos  
7 that this Commission regulates, Big Fish Casino operates by  
8 enticing players to open their wallets to get casino chips, which are  
9 required to play the games.

10 Using their chips, players wager at games that operate and  
11 look like slot machines. Players at these machines choose how  
12 many chips they want to bet each time they spin, which determines  
13 the size of the jackpot they stand to win. For example, a player  
14 betting \$1 worth of chips might have a “HUGE WIN” and gain ten times that amount.



15 When players lose all of their chips they must ante up  
16 with more real money if they wish to continue playing. If a  
17 player does have enough chips to spin a slot machine, Big  
18 Fish replaces the game with a full-screen message that reads:  
19 “Continue the Fun! Grab this Offer!” It then offers a package  
20 of chips for \$9.99 to continue playing the game.

21 Big Fish publishes offers of packages of chips for  
22 sale, ranging from \$1.99 for 20,000 chips to \$249 for 10  
23 million chips. “VIP Members” are entitled to special offers for many more chips at discounted  
24 prices. There are 15 published tiers of VIP membership, plus a “secret” 16th tier for the biggest  
25 spenders. Big Fish explains that there are two ways to become a VIP: “[p]urchasing chips and  
26 gold packages” for real money and “[l]eveling up” by collecting “XP.” (Ex. A.) Players “[g]ain  
27 XP by placing bets” with chips that they buy for real money. (Ex. B.) VIP tiers, therefore, are  
28 directly tied to the amount of money players spend playing the game. Reaching the highest level

1 VIP tier requires spending more than a quarter million dollars gambling at Big Fish Casino.

2 Big Fish does sometimes offer free chips. Big Fish tells players that “[y]ou automatically  
3 get free chips each day that you open Big Fish Casino. For every consecutive day that you play,  
4 you get additional chips up to a maximum amount based on your VIP tier.” (Ex. C.) Players are  
5 also told that they “[g]et free chips every 30 minutes” and that “[t]he higher your VIP tier, the  
6 bigger your bonus.” (*Id.*) In other words, the way that players get “free” chips is to spend money  
7 buying chips. Top tier VIP players can get extra bonus chips from their personal VIP concierges,  
8 but even those are based on “recent spend.” (Ex. G.) Sending out a personal representative with a  
9 free play voucher is a documented technique used by Las Vegas casinos to keep players  
10 spending money when they feel like they’re losing. Natasha Dow Schüll, *Addiction by Design:  
11 Machine Gambling in Las Vegas* 154-55 (2014) (“Some have raised the question of whether it is  
12 ethical to reward players who are losing to keep them playing longer, pointing out that it is  
13 illegal to adjust a game’s mathematical odds over the course of a play session.”).

14 Players who do not spend any money get small amounts of free chips—a few thousand a  
15 day, which would cost a dollar or two if purchased. That doesn’t get you far. For context, one  
16 player reported going through 40 *million* chips in less than an hour of playing slots. (Ex. G.) At  
17 some point, players are *always* faced with a choice: spend real money on chips or stop playing.  
18 For people addicted to gambling, that’s not really a choice.

## 19 **II. Big Fish’s Corporate History and Business Model**

20 Although Big Fish claims throughout its petition that its chips have no “real-world value”  
21 (a phrase it uses repeatedly) and that there is no charge to play the games, it delivered a starkly  
22 different message to its investors when it was owned by Churchill Downs, a publicly traded  
23 American company.<sup>1</sup> Publicly traded companies must file annual reports with the U.S. Securities  
24 and Exchange Commission, which makes them available to the public on its website. In its first  
25 annual report after it bought Big Fish Games, Churchill Downs explained to its investors exactly  
26

27 <sup>1</sup> Earlier this year, Churchill Downs sold Big Fish Games to Aristocrat Technologies, Inc., a  
28 Nevada subsidiary of an Australian company that primarily makes slot machines and other  
gambling devices, for almost a billion dollars. “Australia’s Aristocrat Leisure nets gaming  
company Big Fish for \$990 million,” Reuters (Nov. 29, 2017), [https://cite.law/H2Z8-P2T9;  
Stock Purchase Agreement, https://cite.law/5FCQ-HHD8](https://cite.law/H2Z8-P2T9; Stock Purchase Agreement, https://cite.law/5FCQ-HHD8).

1 how it planned to make money on its purchase of the company:

- 2 • our free-to-play strategy assumes that a large number of players will  
3 download our games because they are free, and that we will then be able to  
effectively monetize the games ... ;
- 4 • even if our free-to-play games are widely downloaded, a significant portion  
5 of the revenues generated from these titles are derived from a relatively  
small concentration of players ... [.]

6 Churchill Downs, Inc., *2014 Annual Report* 36, <https://cite.law/Y36L-V93L>. Churchill Downs  
7 specifically noted that Big Fish’s “business depends on developing and publishing free-to-play  
8 and premium paid casual and mobile games that consumers will download and spend time and  
9 money on consistently.” *Id.*

10 Big Fish portrays itself as a “social gaming” platform, but that phrase means something  
11 very different to Big Fish than it does to the average person. The main social units of Big Fish  
12 Casino are called “clubs,” and they are specifically designed to use social pressure to increase the  
13 amount of money people spend on its games. Clubs are groups of people who band together in a  
14 group and compete with other clubs by playing Big Fish Casino slot machines together to win  
15 special bonuses and prizes. The more chips club members win, the more bonuses they get. In the  
16 “competitive” clubs, Big Fish warns that members are generally “expected to follow certain Club  
17 rules in terms of competing and funding.” (Ex. D.) The club leaders, who are other Big Fish  
18 Players, have the ability to kick players out of clubs if they are not contributing to the club by  
19 buying, wagering, and winning chips. (*See* Ex. E.) Big Fish tells club leaders who are  
20 considering kicking out a member that they should “[c]heck if they’re funding the Club first,  
21 from the ‘Members’ page. Losing funding members makes it more difficult to level up the Club  
22 – leveling up the Club allows for a larger Club and bigger Club Challenges and bigger Challenge  
23 rewards.” (*Id.*)

### 24 **III. The Problem of Addiction to Mobile Games.**

25 The gambling app industry refers to games like the ones offered at the Big Fish Casino as  
26 “free-to-play,” but that phrase is a misnomer. The casino games cost money—a lot of money.  
27 And for the gambling addicts who produce a huge share of the Big Fish Casino’s revenue, there  
28 are real-world consequences. Ms. Kater lost more than \$10,000 playing the game. Another



1 player, Suzie Kelly, lost more than \$300,000 to her addiction to Big Fish Casino, withdrawing  
2 funds from her husband’s retirement account and taking out two home equity loans to pay her  
3 Big Fish credit card debts. In 2016, Big Fish’s casino games alone brought in \$182.5 million in  
4 revenue. Churchill Downs, Inc., *2016 Annual Report* 41, <https://cite.law/S8RR-GMMZ>.

5 New York University Professor Natasha Dow Schüll, one of the country’s preeminent  
6 experts on machine gambling, is unsurprised that people become addicted to these games the  
7 same way that they become addicted to more traditional gambling games. As she explains,  
8 people who gamble at machines play “not to *win* but simply to *continue*.” Schüll, *supra*, at 2, 12  
9 (emphasis in original). “[I]t is not the chance of winning to which [machine gamblers] become  
10 addicted; rather, what addicts them is the world-dissolving state of subjective suspension and  
11 affective calm they derive from machine play.” *Id.* at 19. All the while, they keep feeding money  
12 into the machine, destroying families and causing financial ruin. *See generally id.* at 189-234. As  
13 Professor Schüll has stated in media interviews, mobile games like Big Fish Casino operate on  
14 those same addictive principles. *See, e.g.,* All Things Considered, “Stuck In The Machine Zone:  
15 Your Sweet Tooth For ‘Candy Crush,’” NPR (June 7, 2014), <https://n.pr/SBIVN8>. Indeed, Big  
16 Fish’s new corporate owner, Australian gambling machine company Aristocrat, invented the  
17 strategy of providing frequent “wins” of an amount less than the initial bet, a strategy that  
18 increases players’ perception of winning (even as they lose) and drives addiction. Schüll, *supra*,  
19 at 121-27.

20 Washington has recognized that unregulated for-profit gambling contributes to the  
21 devastating problem of gambling addiction, which affects thousands of adults and adolescents  
22 across Washington and the United States. *See* 2005 Wash. Sess. Laws 1605. Internet gambling is  
23 especially pernicious in this regard because it makes gambling uniquely accessible to teenagers.  
24 Evergreen Council on Problem Gambling, *What’s the Big Deal About Teen Gambling?*,  
25 <https://cite.law/H35Q-393T> (warning parents that “[o]ne-third of Washington teens surveyed  
26 said they had gambled in the last 12 months” and thousands of Washington high school seniors  
27 “are already having problems because of gambling”). In fact, Churchill Downs alerted investors  
28 that increased regulatory scrutiny of its marketing to children could prove a drain on its earnings.

1 See Churchill Downs, Inc., 2014 Annual Report 36, <https://cite.law/Y36L-V93L>. Like  
2 Washington’s legal casinos, Big Fish Casino does have an age limit. Unlike regulated casinos,  
3 that age limit is 13 years old. (Decl. of Andy Vella dated July 3, 2018, Ex. A at 2.)

#### 4 **IV. Kater Litigation History**

5 After losing well over \$10,000 on Big Fish’s games, Cheryl Kater filed a class action  
6 lawsuit on behalf of all players who lost money at Big Fish Casino against Big Fish’s then-parent  
7 company, Churchill Downs. The basis of her lawsuit was Washington’s Recovery of Money Lost  
8 Gambling Act, RCW 4.24.070, which permits recovery of money lost at illegal gambling games  
9 from either the winner or the proprietor of the game. Ms. Kater sued Churchill Downs because  
10 she played Big Fish Casino while Churchill Downs was the proprietor of the game.<sup>2</sup>

11 Ms. Kater initially lost her case, with the judge finding that because the chips at Big Fish  
12 Casino cannot be redeemed for cash, the games are not gambling. Ms. Kater then appealed that  
13 decision to the United States Court of Appeals for the Ninth Circuit. She argued that Big Fish  
14 Casino’s chips are “things of value” under Washington law, and that nothing in the statute  
15 requires the ability to cash out as a prerequisite for a game of chance to be gambling. The three-  
16 judge panel of the Ninth Circuit unanimously agreed with her, with Hon. Milan D. Smith, Jr.  
17 writing that “despite collecting millions in revenue, Churchill Downs, like Captain Renault in  
18 *Casablanca*, purports to be shocked—shocked!—to find that Big Fish Casino could constitute  
19 illegal gambling. We are not.” *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 785 (9th Cir. 2018).

20 Churchill Downs disagreed with the decision and hired well-known attorneys from two  
21 major Washington, DC law firms to file a petition for rehearing by a larger panel of Ninth Circuit  
22 judges. The granting of such a petition is a two-step process. After all of the 22 active judges on  
23 the Ninth Circuit receives a copy of the petition, any one of them can request a vote on whether  
24 or not to grant it and rehear the case. If a judge requests a vote, then the judges are polled to

---

25  
26 <sup>2</sup> Big Fish is not currently named as a defendant in the *Kater* case. At the July meeting, Big  
27 Fish’s counsel stated that Ms. Kater “opposed” Big Fish’s participation in the lawsuit.  
28 (Transcript at 0:47:06.) That statement is misleading. Ms. Kater opposed Churchill Downs’  
attempt to get out of the case entirely and replace itself with Big Fish Games before she even had  
a chance to learn who was responsible for what conduct. (Ex. F.) Depending on what she learns  
in discovery, she reserves the right to add Big Fish as a defendant. In any event, as explained  
below, Big Fish’s status as a non-party to the *Kater* case is irrelevant.

1 determine if there is a majority in favor of rehearing the case. Not a single judge requested to  
2 hold a vote on Churchill Downs' petition. The case is currently back in front of the district court  
3 in Tacoma. Still unhappy with the Ninth Circuit's holding, Big Fish now seeks relief from this  
4 Commission.

#### 5 **LEGAL ARGUMENT**

6 The Commission requested briefing on several legal issues, which Ms. Kater addresses  
7 here. First, because Ms. Kater is a necessary party who would be substantially prejudiced by the  
8 declaratory order that Big Fish is asking for, her consent is required before the Commission  
9 enters that order. She is a necessary party because her success in her lawsuit may be affected by  
10 the Commission's decision. She would be substantially prejudiced by the entry of the order Big  
11 Fish is asking for because Big Fish and Churchill Downs intend to use that order against her in  
12 her lawsuit in order to argue that the court no longer has to listen to the Ninth Circuit's decision.

13 Second, Big Fish's chips are things of value under Washington law. As the Ninth Circuit  
14 explained, the definition of "thing of value" under Washington law unambiguously includes Big  
15 Fish Casino's chips because those chips are "a form of credit ... involving extension of ...  
16 entertainment or a privilege of playing [Big Fish Casino] without charge." *Kater*, 886 F.3d at  
17 787. Big Fish largely repeats the same arguments that its former parent company made to the  
18 Ninth Circuit, and which the three-judge panel unanimously rejected. The argument that the  
19 Ninth Circuit did not consider—that Big Fish Casino is purportedly not gambling because it  
20 gives away free chips—is factually extremely dubious.

21 Third, although it is not directly related to the "thing of value" definition, Ms. Kater  
22 wishes to address the Commission's social gaming pamphlet, which is discussed at length in Big  
23 Fish's petition. As the Ninth Circuit correctly recognized, the pamphlet is the well-intentioned  
24 creation of the Commission's staff based on their understanding of the Commission's priorities,  
25 not an official statement of the law. The Commission's records do not suggest that any  
26 commissioner ever saw the pamphlet before it was published, let alone approved it. If the  
27  
28

1 Commission or a court determines that the pamphlet is not correct, then it can be revised.

2 **I. The Commission Requires Ms. Kater’s Consent Before Issuing the Declaratory**  
3 **Order that Big Fish Has Requested.**

4 Washington law provides for an administrative agency to decide the applicability of its  
5 rules to a specific situation in a declaratory order proceeding, rather than by traditional  
6 rulemaking. However, there are limitations on when the declaratory order procedure can be used.  
7 Chief among those is the consent limitation. Before issuing a declaratory ruling, the Commission  
8 must obtain the written consent of every person who is 1) a necessary party and 2) would be  
9 substantially prejudiced by the declaratory ruling. RCW 34.05.240(7); WAC 230-17-180(5).

10 **A. Ms. Kater Is a Necessary Party Under Washington Law.**

11 When the Washington Legislature drafts a law, it does not do so on a blank slate. Rather,  
12 it does so with an understanding that certain terms have commonly understood legal meanings,  
13 and with the intention to use those meanings. *Ralph v. State Dep’t of Nat. Res.*, 182 Wn.2d 242,  
14 248 (2014). “Necessary party” is a legal term of art that has been used by Washington and  
15 federal courts for over a century. *See, e.g., Pain v. Isaacs*, 10 Wash. 173, 175 (1894); *Waterman*  
16 *v. Canal-Louisiana Bank & Tr. Co.*, 215 U.S. 33, 49 (1909) (“Davis is a necessary party, in the  
17 sense that he has an interest in the controversy”). By 1988, when the Legislature enacted the  
18 statute that is at issue here, the meaning of that term was well-set in Washington’s law: “A  
19 necessary party is one who has sufficient interest in the litigation that the judgment cannot be  
20 determined without affecting that interest or leaving it unresolved.” *Harvey v. Bd. of Cty.*  
21 *Comm’rs of San Juan Cty.*, 90 Wn.2d 473, 474 (1978). Big Fish suggested at last month’s  
22 hearing that the necessary party standard was “a high standard[.]” (Transcript of July Meeting at  
23 0:51:17.) But the Washington Supreme Court has held precisely the opposite, calling the  
24 necessary party standard “a low standard that requires a showing of possibility that the failure to  
25 join will impair or impede the party’s interest.” *Burt v. Washington State Dep’t of Corr.*, 168  
26 Wn.2d 828, 833 (2010). There is no reason to believe that the term means anything different in  
27 this context.

28 Big Fish’s counsel also suggested at the July meeting that this standard properly applied

1 only to court cases and not to administrative proceedings, but the law does not support that  
2 conclusion. The declaratory order process before the gambling commission is the administrative  
3 equivalent of a declaratory judgment proceeding.<sup>3</sup> In fact, it *replaces* the normal declaratory  
4 judgment procedure in the context of an agency action. *See Alsager v. Bd. of Osteopathic Med. &*  
5 *Surgery*, 196 Wn. App. 653, 673 (2016). And in the declaratory judgment context, the rule is the  
6 same. *Primark, Inc. v. Burien Gardens Assocs.*, 63 Wn. App. 900, 906 (1992) (“A necessary  
7 party for these purposes is defined as one whose ability to protect its interest in the subject matter  
8 of the litigation would be impeded by a judgment. Such a party must claim a sufficient interest in  
9 the litigation such that the judgment cannot be determined without affecting that interest.”).

10 Other Washington administrative agencies have arrived at the same conclusion. For  
11 example, in *In Re Cascade Nat. Gas Corp.*, No. UG-001119 (Jan. 19, 2001), *available at*  
12 <https://cite.law/BU5U-TB3Y>, the Utilities and Transportation Commission considered a petition  
13 by a gas company requesting a declaration that the company did not require a certificate from the  
14 commission to provide certain services. The petition arose directly out of a dispute with another  
15 gas company that did hold a certificate and did not want its territory to be encroached upon. *Id.*  
16 ¶¶ 26-28. The commission noted that the declaratory order process was inappropriate in that  
17 context because it would require the consent of “all certificated gas companies” as necessary  
18 parties. *Id.* ¶ 13.

19 In this case, Ms. Kater easily satisfies the standard to be a necessary party. She has a  
20 significant interest in whether or not Big Fish Casino is gambling, because her pending lawsuit  
21 depends on that exact question. Instead of having the matter decided by a jury of Washingtonians  
22 after discovery and a fair trial, Big Fish is seeking to shortcut the judicial process by asking this  
23 Commission to effectively decide Ms. Kater’s case based on its one-sided and misleading  
24 characterization of its business.

25 While Big Fish does not explain its plan in its petition, there can be no real question  
26

---

27 <sup>3</sup> A declaratory judgment action is when a person files a lawsuit asking a court to determine  
28 the rights of the parties rather than to award money damages. Often, it’s used by someone who  
believes they’re about to get sued and does not want to wait for the other side to sue them. For  
example, an insurance company who does not believe it has to cover a claim might file a  
declaratory judgment action to ask the court to decide that it does not have to pay.

1 about what it intends to do. At every step of the litigation in the *Kater* case, Churchill Downs has  
2 invoked the pamphlet created by the Commission’s staff (discussed in detail below) and urged  
3 the courts to defer to what it says. *See Kater*, 886 F.3d at 788. The goal is the same here. If the  
4 Commission finds that Big Fish Casino is not gambling, Churchill Downs *will* argue in court that  
5 the decision is dispositive and ends Ms. Kater’s case. Big Fish even concedes that the petition  
6 was brought as a direct result of the Ninth Circuit’s ruling in Ms. Kater’s case. (Pet. ¶ 6.)

7       Whether or not that plan is successful, this petition affects Ms. Kater’s ability to protect  
8 her interests in court. That is true regardless of whether Big Fish is a party in the *Kater* litigation.  
9 She is therefore a necessary party to this proceeding.

10       **B. Ms. Kater Would be Substantially Prejudiced by an Adverse Ruling**

11       Being a necessary party is not enough to trigger the consent requirement. If the necessary  
12 party would not be substantially prejudiced by the entry of the declaratory order, then the  
13 Commission can proceed without written consent. RCW 34.05.240(7); WAC 230-17-180(5).  
14 Because Ms. Kater *would* be substantially prejudiced by the declaratory order Big Fish requests,  
15 her consent is required.

16       It is at best disingenuous for Big Fish to suggest that Ms. Kater will not be substantially  
17 prejudiced when the very purpose of the petition is to obtain a ruling that will allow Churchill  
18 Downs to win its case against Ms. Kater. Ms. Kater has spent the last three years prosecuting her  
19 lawsuit. After losing in the district court, she appealed and prevailed in the Ninth Circuit. But if  
20 the Commission enters a declaratory order finding that Big Fish Casino is not gambling,  
21 Churchill Downs and Big Fish will argue that the court in Ms. Kater’s case no longer has to  
22 listen to the Ninth Circuit. They will say that the law is now “clarified” and that this Commission  
23 has definitively ruled that their games are not gambling. That will prejudice Ms. Kater because it  
24 would allow Big Fish and Churchill Downs to negate the victory that Ms. Kater won in court.  
25 Courts regularly find that a plaintiff is prejudiced when defendants who don’t like the answer  
26 they got in one forum try to seek a remedy in another. *See, e.g., Martin v. Yasuda*, 829 F.3d  
27 1118, 1126 (9th Cir. 2016) (“[I]n order to establish prejudice, the plaintiffs must show that, ...  
28 that they would be forced to relitigate an issue on the merits on which they have already

1 prevailed in court[.]”); *Steele v. Lundgren*, 85 Wash. App. 845, 859 (1997) (holding that  
2 “[p]rejudice can be substantive, such as when a party loses a motion on the merits and then  
3 attempts, in effect, to relitigate the issue” in another forum).

4 Ms. Kater is a necessary party because her interest in her lawsuit may be affected by the  
5 declaratory order Big Fish requests. She will be substantially prejudiced by it because Big Fish  
6 and Churchill Downs will then use that order against her in her own lawsuit. Accordingly,  
7 without Ms. Kater’s written consent, this Commission’s rules and Washington law prevent the  
8 entry of an order declaring that Big Fish Casino is not a gambling game.<sup>4</sup>

9 **II. The Ninth Circuit Correctly Found that Big Fish Casino Is Gambling Under**  
10 **Washington Law Because Its Chips are Things of Value.**

11 As discussed above, the Commission should not reach the substantive matters of this  
12 declaratory petition. However, the Commission is correct to recognize that these are important  
13 issues, and Ms. Kater appreciates the opportunity to provide the Commission with more detailed  
14 information about Big Fish Casino and how it qualifies as gambling under Washington law.

15 **A. Big Fish Casino Chips are “Things of Value” Under RCW 9.46.0285.**

16 In Washington, “gambling” is defined by statute as “staking or risking something of  
17 value upon the outcome of a contest of chance or a future contingent event not under the  
18 person’s control or influence, upon an agreement or understanding that the person or someone  
19 else will receive something of value in the event of a certain outcome.” RCW 9.46.0237. There is  
20 no dispute that Big Fish Casino’s games are contests of chance, as there is nothing the player can  
21 do to affect the outcome. The previously open question, now resolved by the Ninth Circuit, was  
22 whether the chips that are wagered at Big Fish Casino count as “something of value” under the  
23 statute.

24 RCW 9.46.0285 defines “thing of value” to include three categories:

25 [1] any money or property, [2] any token, object or article exchangeable for money  
26 or property, or [3] any form of credit or promise, directly or indirectly,

27 <sup>4</sup> Ms. Kater acknowledges that she would not be prejudiced by a declaratory order—as  
28 suggested by Commissioner Troyer—holding that Big Fish Casino *is* gambling. (*See* Transcript  
of July Meeting at 0:56:02.) However, she does not request that such an order be entered, and she  
agrees with Commissioner Troyer that this is a matter better left to the court. (*See id.* at 0:56:20.)

1 contemplating transfer of money or property or of any interest therein, or involving  
2 extension of a service, entertainment or a privilege of playing at a game or scheme  
3 without charge.

4 Since the statute uses the word “or,” an item need only fall into one of these categories to meet  
5 the “thing of value” definition. *See State v. Hardtke*, 183 Wn.2d 475, 483 (2015) (finding the  
6 legislature’s use of the word “or” to create “separate and distinct categories”).

7 For this case, the relevant part of the statute is the last one. “[T]he virtual chips are a  
8 ‘thing of value’ because they are a ‘form of credit ... involving extension of ... entertainment or a  
9 privilege of playing [Big Fish Casino] without charge.’” *Kater*, 886 F.3d at 787. The Ninth  
10 Circuit accurately and succinctly explained why:

11 The virtual chips, as alleged in the complaint, permit a user to play the casino games  
12 inside the virtual Big Fish Casino. They are a credit that allows a user to place  
13 another wager or re-spin a slot machine. Without virtual chips, a user is unable to  
14 play Big Fish Casino’s various games. Thus, if a user runs out of virtual chips and  
15 wants to continue playing Big Fish Casino, she must buy more chips to have “the  
16 privilege of playing the game.” Likewise, if a user wins chips, the user wins the  
17 privilege of playing Big Fish Casino without charge. In sum, these virtual chips  
18 extend the privilege of playing Big Fish Casino.

19 *Id.* (internal citations omitted).

20 To arrive at this determination, the Ninth Circuit relied on the Washington Court of  
21 Appeals’ decision in *Bullseye Distributing LLC v. State Gambling Commission*, 127 Wn. App.  
22 231 (2005). *Bullseye* involved a machine that “utilized play points that [players] obtained by  
23 purchase, by redeeming a once-a-day promotional voucher, or by winning a game on the  
24 machine.” *Kater*, 886 F.3d at 787. Agreeing with this Commission, the *Bullseye* court  
25 “concluded that the game’s play points were ‘things of value’ because ‘they extend[ed] the  
26 privilege of playing the game without charge,’ even though they ‘lack[ed] pecuniary value on  
27 their own.’” *Id.* (quoting *Bullseye*, 127 Wn. App. at 241). In other words, it didn’t matter that the  
28 game could be played for free sometimes, because the prize that people could win allowed them  
to continue playing the game. That is exactly how Big Fish Casino operates.

Big Fish offers the Commission the same argument that it made to the Ninth Circuit: that  
*Bullseye* is irrelevant because it centered on players’ ability to redeem points for money or  
merchandise. (Pet. ¶ 24.) The Ninth Circuit expressly disagreed:



1 Contrary to Churchill Downs' assertion, nothing in *Bullseye* conditioned the court's  
2 determination that the play points were "thing[s] of value" on a user's ability to  
3 redeem those points for money or merchandise. Instead, *Bullseye*'s reasoning was  
4 plain—"these points fall within the definition of 'thing of value' because they  
5 extend the privilege of playing the game without charge." *Id.* at 1166. Based on the  
6 reasoning in *Bullseye*, we conclude that Big Fish Casino's virtual chips also fall  
7 within section 9.46.0285's definition of a "thing of value."

8 *Kater*, 886 F.3d at 787-88. That's what's going on here: even if Big Fish Casino chips do not  
9 have any inherent pecuniary value, they nevertheless extend players the privilege of playing the  
10 game, which would otherwise cost money. That makes them things of value.

11 Churchill Downs presented the Ninth Circuit with the argument that "other federal courts  
12 that have held that certain 'free to play' games are not illegal gambling." *Id.* at 788. The Ninth  
13 Circuit was also not persuaded by that argument, noting that the same cases Big Fish cites in its  
14 petition "involve[] analysis of different state statutes, state definitions, and games." *Id.* Instead of  
15 other states' laws, the Ninth Circuit's "conclusion turn[ed] on Washington statutory law,  
16 particularly its broad definition of 'thing of value'...." *Id.* That is the correct analysis.

17 The Ninth Circuit did not consider the argument, which Big Fish raises here, that its  
18 periodic distribution of free chips means that the game is free. *See id.* at 787. But as a factual  
19 matter, **Big Fish Casino is not free**. If players run out of chips, they cannot continue to play  
20 unless they either spend money or wait for Big Fish to give them some more promotional chips.  
21 As Professor Schüll explained, that continuation of play is exactly what Big Fish's big spenders  
22 are addicted to. Further, the mechanism is the same as how the machine described in *Bullseye*  
23 operated. Everyone got to play for free every single day, but additional plays after that cost  
24 money. *See Bullseye*, 127 Wn. App. at 235-36. This Commission argued that this fact was  
25 irrelevant to whether or not the machine was gambling, and the court agreed. *Id.* at 242. Big Fish  
26 Casino differs only in that instead of having to go to a bar or a restaurant to play, people can play  
27 anytime and anywhere on their phones.<sup>5</sup>

28 And as explained in the background section above, even Big Fish's promotional chips  
aren't really free. The amount and the availability of those "free" chips are directly based on

---

<sup>5</sup> Although the Ninth Circuit did not need to consider the matter, the idea that Big Fish's chips aren't merchandise just because they are "virtual" is highly suspect. Any other computer software is "virtual" too, but nobody can argue that a license key for Microsoft Office has no value just because it cannot be used outside of Microsoft Office.

1 “recent spend” —that is, the amount of money that the player has spent on chips recently. (Ex.  
2 G.) Worse, Big Fish uses the promise of “free” chips as a predatory tool to get addicted players  
3 to come back and put down more money. If a player hasn’t spent enough money recently, then  
4 Big Fish won’t give them any more free chips. At some point, players *always* have to put in cash  
5 or stop playing. That fact, combined with the addictive nature of machine gambling, is how  
6 players lose tens or hundreds of thousands of real-world dollars on Big Fish’s casino games.

7 As far as the statute, it contains nothing to suggest that something that otherwise meets  
8 the statutory definition of “thing of value” is no longer a thing of value if it is given away for free  
9 on occasion, or even regularly. Churchill Downs’s argument also doesn’t line up with common  
10 sense. If a grocery store gives away free samples of cheese, that doesn’t mean that cheese has no  
11 value; it’s simply an attempt to get consumers to buy cheese. *See, e.g., Bailey v. Morales*, 190  
12 F.3d 320, 325 (5th Cir. 1999) (“[F]ree samples and risk-free trials of products are common  
13 marketing tools.”). And despite its protestations, even Big Fish’s internal accounting practices  
14 treat the chips as having value, not booking them as revenue until after they are wagered and lost  
15 (which takes, on average, a mere three days). *See Churchill Downs, Inc., 2016 Annual Report* 65,  
16 <https://cite.law/S8RR-GMMZ>

17 Further, free slot play at traditional casinos is now ubiquitous and “has largely replaced  
18 the issuance of cash for promotions, rebates and mail offers[.]” Steven M. Gallaway, “The Beat  
19 Goes On,” *Global Gaming Business Magazine* (July 26, 2016), <https://cite.law/5HRN-K742>.  
20 This state is no exception to the trend. Regular players at the Ilani Casino in Ridgefield can earn  
21 “Status Points” that entitle them to free slot play;<sup>6</sup> 7 Cedars Casino in Sequim offers \$5 of free  
22 play to seniors every Monday;<sup>7</sup> and women who play frequently can receive up to \$25 in promo  
23 play on “Ladies Day Wednesdays” at The Point Casino in Kingston.<sup>8</sup> And whether it is 7 Cedars  
24 or Big Fish, the same thing happens when the promotional play runs out: players have to pay.

25 As the Ninth Circuit correctly held, Big Fish Casino’s chips meet the statutory definition  
26 of “thing of value” because they entitle players to keep playing the game without charge.

27 <sup>6</sup> “Super Slot Play Thursdays,” <https://cite.law/KRN5-T49F>.

28 <sup>7</sup> “Savvy Seniors,” <https://cite.law/J6DC-27LV>.

<sup>8</sup> “Ladies Day Wednesdays,” <https://cite.law/3K8T-E2QM>.

1 Because Big Fish Casino games permit players to wager those chips at games of chance for the  
2 ability to win more, they are gambling games under Washington law.

3 **III. A Pamphlet Produced by Staff Should Not Prevent the Commission’s**  
4 **Careful Study of this Issue.**

5 Although it does not relate directly to the definition of “thing of value,” Ms. Kater wishes  
6 to offer some clarification on the pamphlet created by the Commission’s staff that Big Fish says  
7 supports its view of the law. The pamphlet is a two-page document that is in the lobby of the  
8 Commission’s office in Lacey, and also on the Commission’s website. It says that it provides  
9 “general guidance” and advises people with questions to contact their attorney.

10 Churchill Downs presented the pamphlet to the Ninth Circuit, arguing that it represented  
11 the settled view of the Commission. The Ninth Circuit chose not to defer to the statements in the  
12 pamphlet because it concluded that the pamphlet did not necessarily represent the official view  
13 of the Commission. *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 788 (9th Cir. 2018). This is  
14 what Big Fish’s counsel was referring to when she said that the pamphlet was not “formal”  
15 enough.

16 The Commission operates knowing that its interpretations of statutes must be “clear and  
17 definitive” for a court to defer to them. *See W. Telepage, Inc. v. City of Tacoma Dep’t of Fin.*,  
18 140 Wn.2d 599, 612 (2000); *see also* RCW 34.05.230 (setting out procedure for agency to  
19 communicate an interpretive statement to the public). This is a good rule because it allows the  
20 Commission to have open dialogue with its staff and with the public on important matters  
21 without being concerned that offhand statements or informal pamphlets will be held up later as  
22 an official legal position in a court case. In fact, at the May 2013 meeting, former Commission  
23 chair John Ellis questioned staff members’ conclusion that certain mobile games—including Big  
24 Fish Casino—are not gambling. (Ex. H at 5.) A few months later, former Commissioner  
25 Geoffrey Simpson raised a similar concern about the value of virtual currencies. (Ex. I at 12-13.)

26 As far as the pamphlet is concerned, Big Fish has never provided any evidence that it has  
27 been adopted as the official position of the Commission. *See Gerow v. Wash. State Gambling*  
28 *Comm’n*, 181 Wn. App. 229, 239 (2014) (holding that Gambling Commission rules related to

1 whether certain devices must be licensed require a three-vote majority to be adopted). The  
2 Commission’s records disclose that it was prepared by Jim Dibble, David Trujillo, Mark Harris,  
3 and Amy Hunter, with input from Susan Newer. (*See* Ex. J.) The records contain no indication  
4 that any commissioner ever approved or even reviewed the pamphlet before it was provided to  
5 the public, further demonstrating that the Ninth Circuit was right not to defer to it.<sup>9</sup>

6 The pamphlet reflects the Commission staff’s understanding of the law at the time the  
7 pamphlet was prepared (given the Ninth Circuit’s decision in *Kater*, it is now out of date) and  
8 specifically says that it is intended to provide only “general guidance.” The experience and  
9 dedication of the Commission’s full time staff is invaluable, but it is the appointed  
10 commissioners, not the staff, who the Legislature has vested with the authority to interpret the  
11 state’s laws. If the Commission considers the matter in this or another proceeding and arrives at a  
12 different conclusion than is stated in the pamphlet, then Director Trujillo and his capable staff  
13 will certainly be able to update it to reflect an accurate statement of the law.

#### 14 CONCLUSION

15 Ms. Kater is a necessary party who would be substantially prejudiced by the declaratory  
16 order that Big Fish requests. Accordingly, that order cannot be entered without her consent. Nor  
17 need it be, because the Ninth Circuit ruled correctly that Big Fish Casino is, indeed, gambling.  
18 Accordingly, Big Fish’s petition should be denied.

19 If the Commission is inclined to rule substantively on Big Fish’s petition, it should first  
20 require Big Fish to publicly answer some questions about how it operates. Because Ms. Kater’s  
21 case is at an early stage, she has not yet had the opportunity to take discovery, and Big Fish’s  
22 lawyers have suggested that they are going to continue trying as hard as they can to make sure  
23 that she never can. But there are some deeply troubling aspects of Big Fish’s business model that  
24 the Commission should know more about before giving it a stamp of approval. Big Fish’s  
25 internal documents detailing its product design strategy are likely to be helpful here, and the  
26 Commission has every right to request to inspect them or even issue a subpoena. *See* RCW

---

27 <sup>9</sup> Ms. Kater’s counsel requested “[a]ll records related to the creation, drafting, preparation, or  
28 publication of the pamphlet[.]” In response, the Commission did not produce any communication  
with any commissioner.

1 9.46.140. As a start, Ms. Kater proposes the following questions:

2 1. How much of Big Fish’s revenue comes from games that look identical to slot  
3 machines? Another similar company, Double Down, testified at last month’s hearing that virtual  
4 slot machines were their largest money-maker.

5 2. How long can players play for free, and what happens when they run out of free  
6 play? Big Fish talks at length about how its games are free to play, but that clearly isn’t the  
7 whole story. Its reports to investors say both that the game is “monetized” via sale of chips, and  
8 that the casino brought in more than \$180 million in a single year.

9 3. Does Big Fish design its games to maximize the amount of time and money  
10 players spend, and if so, how? Big Fish’s internal documents are unlikely to talk about addiction  
11 exactly, but they are likely to discuss how to maximize the amount of time its players spend  
12 interacting with its games. They are also likely to discuss when and how free chips are allocated.  
13 If those chips are allocated in such a way to encourage people to spend money, that is no  
14 different from designing the games to be addictive.

15 4. What does Big Fish do to protect children from becoming addicted to its pay-per-  
16 play games? Big Fish’s terms of service allow players as young as 13. There are many media  
17 reports of children spending thousands of dollars of their parents’ money on games similar to Big  
18 Fish Casino. *See, e.g.*, Bourree Lam, “Amazon Will Refund \$70 Million Worth of App  
19 Purchases Made by Kids,” *Atlantic* (Apr. 5, 2017), <https://cite.law/7Z6M-UJAN>. Some of the  
20 slots on offer appear to be themed to attract children, such as “Treasure Trove Island Cove,”  
21 which features a cartoon pirate.

22 5. How much of Big Fish’s revenue comes from players who are losing thousands of  
23 dollars or more on its games? Churchill Downs’s annual reports note that a large chunk of its  
24 income comes from a relatively small number of players.

25 6. Setting aside players who only play for free, how much does the average paying  
26 player lose on Big Fish Casino on a weekly, monthly, and yearly basis?

27 7. Are there limits on how much people can wager at the game or in one spin? Ms.  
28 Kelly reports losing \$300,000 at Big Fish Casino’s slot machines, and she says that she isn’t

1 alone.

2 8. What is Big Fish’s policy regarding persons who ask to exclude themselves from  
3 the game?

4 If Big Fish wants this Commission to approve of its operation—whether in a declaratory  
5 order proceeding or in a different kind of proceeding—then the public deserves to answers to  
6 these questions.

7  
8 Respectfully submitted,

9 **CHERYL KATER,**

10 Dated: August 2, 2018

By: /s/ Alexander G. Tievsky  
*One of her attorneys*

11  
12 Benjamin H. Richman\*  
brichman@edelson.com  
13 Alexander G. Tievsky\*  
atievsky@edelson.com  
14 EDELSON PC  
350 N LaSalle Street, 14th Floor  
15 Chicago, Illinois 60654  
Tel: 312.589.6370  
16 Fax: 312.589.6378

Rafey S. Balabanian\*  
rbalabanian@edelson.com  
Eve-Lynn J. Rapp\*  
erapp@edelson.com  
EDELSON PC  
123 Townsend Street, Suite 100  
San Francisco, California 94107  
Tel: 415.212.9300  
Fax: 415.373.9495

17 \*Admitted in Illinois. Illinois permits Washington attorneys to appear before Illinois  
18 administrative agencies. Ill. Sup. Ct. R. 707; see WAC 230-17-045(3).

# Exhibit A



[Big Fish Casino](#) [VIP Rewards Program](#) [VIP FAQ](#)

## Articles in this section

# How do I become a VIP?



Big Fish

Updated 1 day ago

## How do I become a VIP?

There are two ways to become a VIP:

- [Purchasing chip and gold packages](#)
- [Leveling up](#)

VIP Tier	VIP Points Required to Reach Tier
<b>Tier 0</b>	0
<b>Tier 1</b>	250
<b>Tier 2</b>	1,250
<b>Tier 3</b>	3,750
<b>Tier 4</b>	11,250
<b>Tier 5</b>	41,250
<b>Tier 6</b>	103,705
<b>Tier 7</b>	178,750
<b>Tier 8</b>	441,250
<b>Tier 9</b>	841,250



<b>Tier 10</b>	1,516,250
<b>Tier 11</b>	3,266,250
<b>Tier 12</b>	7,391,250
<b>Tier 13</b>	13,391,250
<b>Tier 14</b>	29,641,250
<b>Tier 15</b>	64,641,250

## Purchasing

For every purchase you make, you'll earn VIP Points. The amount of VIP Points earned depends on your current VIP tier.

As you continue to collect VIP Points, you'll move from one VIP tier to the next.

VIPs Tier 4 and above have exclusive access to several benefits, including early access to slot machines, special VIP-only slot machines, as well as the VIP Lounge. Anyone who becomes a VIP by purchasing at least \$5 or more will have access to these benefits even before becoming VIP T4!

## Leveling Up

You'll also earn VIP points every time you collect enough XP to [level up](#).

# Exhibit B



[Big Fish Casino](#) > [How to Play](#) > [General](#)

Articles in this section ▼

## XP & Leveling Up



Big Fish

Updated 20 hours ago

### What is XP, and how do I gain it?

Experience Points (XP) reflect your accomplishments in Big Fish Casino.

Gain XP to level up, earn rewards, and unlock new games and features.

### How do I get XP?

Gain XP by placing bets.

### What rewards do I get for gaining XP?

Gain XP to level up.

As you level up, you'll earn cool new titles, get rewards, and unlock new games and features.

### Rewards:

- Chips
- Gold
- Tickets
- Free spins
- VIP Points

**Unlockable items:**

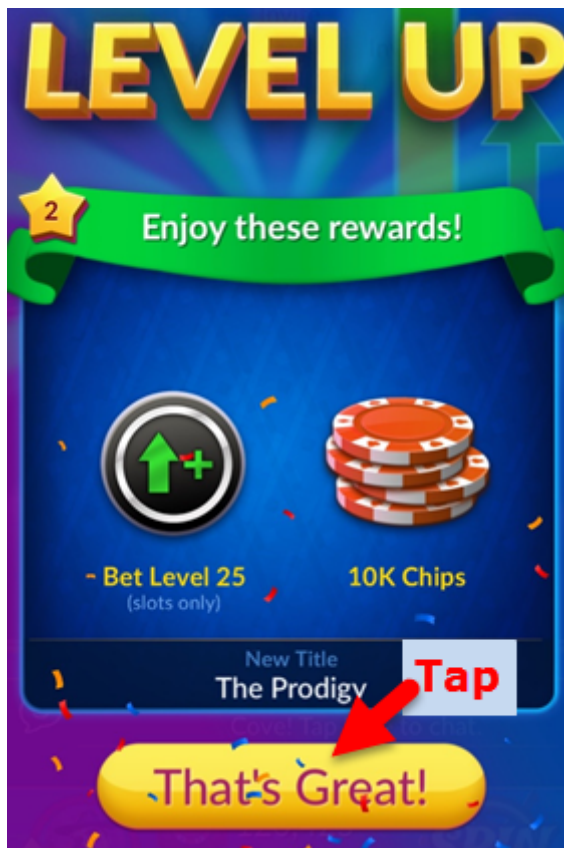
- Slot machines\*
- Higher line bets
- Gifts

*\*If you installed Big Fish Casino before January 5, 2016, you will continue to have access to any slot machine that you already play, provided it is still included in the game. Future slot machines will unlock based on your level.*

**How do I collect my reward?**

You'll receive an in-game notification when you level up.

Tap the button within the notification to accept your reward.



Depending on the game or the type of slot machine you're playing, the Level Up notification may appear at different times:

- **Slots:** Level Up notification will appear while you're playing the slot machine.
- **Classic Slots and other games** (Roulette, Texas Hold 'Em Poker, etc.): Level Up notification will appear the next time you close/reopen Big Fish Casino and return to the Lobby or the next time you exit a new format slot machine.\*

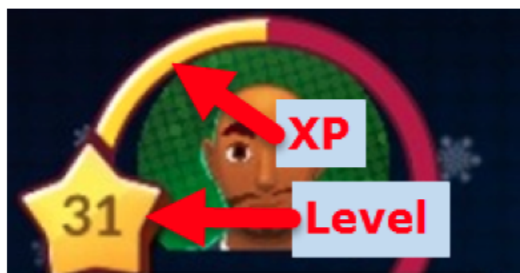
*\*PC players: You must level up at a new format slot machine to see the notification and get your reward. If you level up while playing an original format slot machine, you will not receive the reward until the next time you level up at a new format machine. At that time, you will receive both the current and previous rewards.*

## How do I check my XP and level?

Your level and XP are displayed directly over your profile picture.

Your level appears within a star-shaped badge in the bottom-left corner of your picture.

The bar around your profile picture reflects your XP. It shows how much XP is needed to go from your current level to the next level. The XP bar fills from left to right. Once the bar is filled, you'll level up and the bar will reset.



---

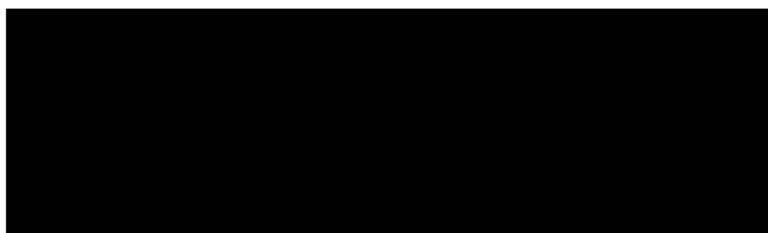
Was this article helpful?

430 out of 661 found this helpful

Have more questions? [Submit a request](#)

---

Return to top 



# Exhibit C



[Big Fish Casino](#) [Chips / Gold / Purchasing](#) [Free Chips](#)

---

## Articles in this section

---

# How do I get free chips?



Big Fish

Updated 3 days ago

## How do I get free chips?

There are a bunch of ways to get free chips:

### In-game Bonuses

- [Return Bonus](#) - You automatically get free chips each day that you open Big Fish Casino. For every consecutive day that you play, you'll get additional chips up to a maximum amount based on your VIP tier.
- [Daily Friend Bonus](#) - Add friends to get more Daily Bonus chips. You'll get 1,000 chips per friend up to a maximum of 25,000 chips.
- [Chip Bonus](#) - Get free chips every 30 minutes. The higher your VIP tier, the bigger your bonus.
- [Daily Spin](#) - Spin once each day when you first open the game.
- [Videos](#) - Watch videos to get chips.

### Facebook

- Facebook - Redeem promotions on the [Big Fish Casino Facebook page](#). You do not need a Facebook account to redeem these promotions.

### Email

- Email newsletter - Redeem promotions in the Big Fish Casino email newsletter.

### Redeeming in-game currency:

- [Tickets\\*](#) - Redeem tickets for the chance to win chips in the Reward Center.
- [Gold\\*\\*](#) - Exchange gold for chips.\*

*\*Tickets can be won in gameplay. They can also be received as part of an in-app purchase.*

*\*\*Gold can be won in gameplay. It can also be purchased via an in-app purchase.*

[Facebook](#) [Twitter](#) [Link](#) [Google](#)



# Exhibit D



[Big Fish Casino](#) > [Clubs / Chat / Friends](#) > [Clubs](#)

Articles in this section



# Club Member Dos and Don'ts



Big Fish

Updated 3 hours ago

Interested in joining a Club, or already a member?

Here are some tips on getting the most out of Clubs and having a fun time playing Casino with others!

**Do:**

- Read the descriptions of Clubs to find one that's the best for you.
  - If you'd just like to have fun, hang out, and socialize with others while playing, look for a Club not requiring certain amounts of Club challenge activity or donations.
  - If you're more competitive, look for a Club competing with others or focused on completing challenges, possibly with certain requirements to stay active.
- Search for a Club type that suits you best.
  - Look for a "Social" Club if you'd like to chat and meet new friends, without any expectations regarding funding or competing.
  - Look for a "Casual" Club if you'd like a Club that aims to grow and participate in Club tournaments, but doesn't have very strict expectations. Members of this type of Club should try to help out as they can, but it's understood that not everyone

can contribute all of the time. This type of Club is the middle ground between Social and Competitive Clubs.

- Look for a "Competitive" Club if you'd like to compete with other clubs and rank high in the Club tournaments. Members of these Clubs will be expected to follow the Club leader's rules regarding competing and funding. Aim to win those Club tournaments!
- If your current Club isn't the right fit, that's ok – you can leave and join a new Club, or even start a Club of your own! To leave a Club, tap "More Options" on the Club page, then tap "Leave Club". Try out more Clubs and experiment to find the one that suits you best!
- Participate in Club chat to talk with other members in the Clubs, even if they're at a different slot machine! Tap the "Slot" button to the left of the chat window to switch between chatting with the table and chatting with your Club (non-Classic slots only).
- Work with your fellow Club members to complete Daily Challenges, by spinning in slot machines. Complete the challenges to earn Club bonuses!
- If it's something you like, compete with other Clubs to get to the top! Also compete in Club tournaments, coming soon!
- Invite your friends to the Club, to stay in touch and play together more easily.
- Share the Club with friends outside of the game, by tapping "Share Club" on the Club page.
- Send Friend Requests to other Club members, so that you can send them personal Inbox messages!
- Fund the Club – this helps level up the Club. Leveling the Club is important, as higher levels allow more members and greater Challenge rewards!
- Be on the lookout for more features and improvements – we're working on bringing exciting new things to Clubs soon!

## Don't:

- Forget to collect your Club bonuses. As the challenges are completed, you'll be able to collect the bonuses from the main Club page. They do expire if not collected, so make sure to collect them!
- Worry if you're kicked from a Club – you can join a new Club that's a better match for you, or start one of your own. Join a Club with friends, or invite them to yours, and try out new Clubs to find one that you'll have the most fun in. Make sure to look for a Club whose Club type suits you best.
- Miss out on Club discussions and gossip. Make sure to switch to Club chat at a slot machine, to see what everyone's been saying!

# Exhibit E



[Big Fish Casino](#) [Clubs](#) / [Chat](#) / [Friends](#) [Clubs](#)

Search

---

## Articles in this section

---

# Kicking a member from the Club



Big Fish

Updated 14 hours ago

## Should I Kick a Club member?

As a Club leader, you have the ability to remove Club members.

To remove a member:

1. Visit the Members page.
2. Tap the ... button.
3. Select **Kick From Club**.
4. Provide a reason for kicking the member.
5. Tap **Kick Member**.

**Please keep in mind that kicking is unpleasant for the one being kicked, and could lead to losing a contributing Club member, so be mindful before deciding to kick someone out.**

Here are some things to keep in mind when thinking about kicking a member:

- Check if they're funding the Club first, from the "Members" page. Losing funding members makes it more difficult to level up the Club – leveling up the Club allows for a larger Club and bigger Club Challenges and bigger Challenge rewards.
- When kicking someone, the pop-up will also display their recent chips donated, to help in making an informed decision.

- Check if they're contributing to Challenges from the Daily Club Challenge page. Completing Challenges lets everyone in the Club get bonus Chips and Club reputation.
  - We're also working on making it easier to see everyone's Challenge/Club point contributions, besides the top 10.
- Are they an active member in Club chat? Keeping the Club social helps keep other Club members engaged and active.
- If they haven't been active or contributing recently, why not? Check in with them – send them a personal Inbox message to find out. They may have been away recently; encourage them to play more by sending them an Inbox message. There is also a limit to funding a Club – if the Club has already reached its max funds that day, they would be unable to fund the Club that day.
- New Club members may not be able to fund the Club right away – if they funded a Club earlier that day, they will be unable to fund one for 24 hours.
- Are they being disruptive in chat, or with other Club members? Setting expectations for your Club or sending them a personal Inbox message to discuss things may help, but feel free to kick them if they're not helping with the right mood for the Club.
- Remember – you can always make your Club Invite only, by editing the Club settings from "More Options". This helps you choose who you would like in the Club.

[Fac Twi Link Goc](#)

# Exhibit F

**No. 16-35010**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

**CHERYL KATER,**  
*Plaintiff-Appellant,*

**v.**

**CHURCHILL DOWNS, INC.,**  
*Defendant-Appellee.*

---

On Appeal from the United States District Court  
For the Western District of Washington  
Case No. 2:15-cv-00612-MJP  
The Honorable Marsha J. Pechman

---

**PLAINTIFF-APPELLANT'S RESPONSE IN OPPOSITION TO  
APPELLEE'S MOTION TO SUBSTITUTE UNDER RULE 43(b)**

---

Ryan D. Andrews  
randrews@edelson.com  
Roger Perlstadt  
rperlstadt@edelson.com  
Alexander G. Tievsky  
atievsky@edelson.com

EDELSON PC  
350 North LaSalle Street, 13th Floor  
Chicago, Illinois 60654  
Tel: 312.589.6370  
*Counsel for Plaintiff-Appellant*



Nearly three years ago, Plaintiff-Appellant Cheryl Kater filed a lawsuit against Defendant-Appellee Churchill Downs to recover what she lost at its illegal online gambling operation. Now, Churchill Downs is under contract to sell that portion of its business—non-party subsidiary Big Fish Games, Inc. (“Big Fish”)— to an Australian gambling machine manufacturer for a nine-figure profit. Churchill Downs now asks, for the first time on appeal, that the Court ignore the allegations in Ms. Kater’s complaint and dismiss it from this lawsuit so that the sale can proceed. Federal Rule of Appellate Procedure 43 provides no legal basis for such a maneuver, and the motion should be denied.

**I. Churchill Downs Cannot Escape this Lawsuit Based on a Hypothetical Future Sale.**

“[S]ubstitution under Rule 43(b) is appropriate only where necessary, and necessary means that a party to the suit is unable to continue such as where a party becomes incompetent or a transfer of interest in the company or property involved in the suit has occurred.” *Sable Commc’ns of Cal. Inc. v. Pac. Tel. & Tel. Co.*, 890 F.2d 184, 191 n.13 (9th Cir. 1989) (internal citations, alterations, and quotation marks omitted) (citing *Ala. Power Co. v. I.C.C.*, 852 F.2d 1361, 1366

(D.C. Cir. 1988)). There is no provision in Rule 43 allowing substitution of a party based on a possible *future* transfer of interest. In every case Churchill Downs cites to support its position, the relevant transfer was fully complete before the substitution request was granted.

As of the date of the filing of Churchill Downs's motion, however, Churchill Downs still owns Big Fish. The sale of the Big Fish subsidiary is a hypothetical future event subject to a number of contingencies. For example, the parties can cancel the sale by mutual agreement, or unilaterally if the closing does not occur by a certain date. Stock Purchase Agreement dated November 29, 2017, <https://perma.cc/TFA4-RQT3>. Rule 43(b) requires that the party to be substituted is actually incompetent to proceed and does not allow for a substitution where the relevant party simply does not wish to litigate the case any longer. *Alabama Power*, 852 F.2d at 1366. Accordingly, the motion should at least be denied as premature.

## **II. Churchill Downs Is Still a Competent Defendant.**

Even assuming the sale takes place, substitution is not appropriate because Churchill Downs will remain a legally competent defendant under the allegations in Ms. Kater's complaint. In the cases

Churchill Downs cites, the interest *in the case* had entirely passed to a different entity, meaning that the original defendant was not legally competent to continue in that capacity. *See Maier v. Lucent Techs., Inc.*, 120 F.3d 730, 733 n.1 (7th Cir. 1997) (“Because AT&T’s interest in this case has passed to Lucent, which is no longer a subsidiary of AT&T, we grant the motion.”); *Beghin-Say Int’l, Inc. v. Ole-Bendt Rasmussen*, 733 F.2d 1568, 1569 (Fed. Cir. 1984) (allowing substitution where interest in the relevant patent had been assigned to a different entity).

But here, Ms. Kater named only Churchill Downs as a defendant and alleged conduct on the part of Churchill Downs itself—not any subsidiary. Specifically, she alleged that Churchill Downs owned and operated the gaming device at which she lost things of value, and that Churchill Downs was, at the relevant time, the “proprietor for whose benefit such game was played or dealt[.]” RCW 4.24.070. (*See also* EOR 28 ¶¶ 37-38; EOR 31 ¶ 49; EOR 33 ¶ 59.) Ms. Kater alleges that Churchill Downs—not Big Fish Games—retained the benefit of what she lost gambling at the Big Fish Casino. (EOR 28 ¶ 38.) Accordingly, even if Ms. Kater had filed her lawsuit after the sale was complete, Churchill Downs would *still* be a competent defendant. Its potential

transfer of the Big Fish portion of its business to another entity at a healthy profit does not relieve it of liability for being the proprietor of an illegal gambling game. *See Niven v. E.J. Bartells Co.*, 983 P.2d 1193, 1196 (Wash. Ct. App. 1999) (“Glen Alden's earlier transfer of ... liabilities to its subsidiary ... did not end Glen Alden’s responsibility for those liabilities. It merely gave Glen Alden and its successor ... a claim for indemnity[.]”). Ms. Kater intends to continue to pursue her claims against Churchill Downs both before this Court and on remand, regardless of any sale.

### **III. Churchill Downs Cannot Raise this Matter for the First Time on Appeal.**

Finally, if Churchill Downs believes that Ms. Kater named the wrong defendant, then it should have said so a long time ago. Churchill Downs’s explanation as to why Big Fish is the proper defendant does not depend on the potential sale. If it is now true, as Churchill Downs claims in its motion, that Big Fish and not Churchill Downs is the proprietor of the online gambling game at issue here, (*see* Mot. at 1), then the same has been true since this action was filed. Churchill Downs could have raised this issue, but it decided to not do so, even informally. As far as this appeal is concerned, the argument that

Churchill Downs is the wrong defendant is waived. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[A]n appellate court will not consider issues not properly raised before the district court. Furthermore, on appeal, arguments not raised by a party in its opening brief are deemed waived.”).

In any event, it is doubtful that the relationship between Churchill Downs and Big Fish is so clear-cut, especially considering that Churchill Downs’s new position directly conflicts with its previous statements to this Court and the district court. (*Compare* Mot. at 1 (“Big Fish Games, Inc.—not Churchill Downs—owns and operates ... the game at issue in this case”) *with* Defs. Br. at 5 (“Churchill Downs owns Big Fish Casino[.]”) *and* dkt. 24 at 1 (“Defendant Churchill Downs Incorporated ... is a diversified entertainment company that owns and operates ... Big Fish Casino.”).) Substituting Big Fish as the defendant will likely lead to an extended discussion—never raised before the district court—as to whether it can still be held liable for Churchill Downs’s actions. Such “potentially complex issues” related to substitution of parties “which were not considered by the District Court in the first instance and have only been briefed here as part of [a]

motion to substitute” are not appropriate for consideration on appeal.

*Koons v. XL Ins. Am., Inc.*, 620 F. App’x 110, 113 (3d Cir. 2015).

### CONCLUSION

Churchill Downs’s motion to substitute should be denied. If the case is remanded, then any necessary addition or substitution of parties can take place in the district court.

Dated: January 18, 2018

Respectfully submitted,

**CHERYL KATER,**

By: s/ Alexander G. Tievsky  
*One of Plaintiff-Appellant’s Attorneys*

Ryan D. Andrews  
randrews@edelson.com  
Roger Perlstadt  
rperlstadt@edelson.com  
Alexander G. Tievsky  
atievsky@edelson.com  
EDELSON PC  
350 North LaSalle Street, 13th Floor  
Chicago, Illinois 60654  
Tel: 312.589.6370  
Fax: 312.589.6378  
*Counsel for Plaintiff-Appellant*

# Exhibit G

---

**Erica Martin (Big Fish Casino)**

Apr 25, 10:54 AM CDT

Hey Suzie,

Although I'm typically unable to provide boosts because of the terms of the weekly purchase plan that you're on, I've gone ahead and snuck some chips your way as a special one-time courtesy today. Hoping that they help score some big wins your way!

Erica

---

**Suzie Kelly**

Apr 24, 8:23 PM CDT

Erica..

Can you all loosen up?? This is ridiculous. I lost \$400 in minutes today.

---



---

**Byron Scott** (Big Fish Casino)

Jun 14, 12:24 PM CDT

Hi Suzie,

We have guidelines in place where the amount we can provide is based on a number of factors, recent purchases being one of those factors. I am going over our normal guidelines for you, I'm more than happy to do this given your Tier + our history together.

I have added a few more chips for you now.

- Byron

---

**Suzie Kelly**

Jun 13, 3:50 PM CDT

Hi Byron...

Curious.. Why have all of the chip gifts lately been 30 and 40 million? Haven't I spent enough on the app?

---

**Byron Scott** (Big Fish Casino)

Aug 1, 11:44 AM CDT

Anytime Suzie and not at all, I have to base the amounts on recent spend unfortunately, but I know you're going through a lot of nonsense so I'll continue to try and provide the highest amount I can.

How's your weather been? Its 95 here today, I hope I don't melt :(

---

**Suzie Kelly**

Aug 1, 11:23 AM CDT

Hi B.. I always appreciate the chips. Really 🍷

Did I do something to offend you? You used to give me a lot more. The 40 mill never lasts me more than an hour.. if I'm lucky 😞

# Exhibit H

**WASHINGTON STATE  
GAMBLING COMMISSION MEETING  
THURSDAY, MAY 9, 2013  
APPROVED MINUTES**

**- PUBLIC MEETING -**

**Chair John Ellis** called the Gambling Commission meeting to order at 9:55 a.m. at the Vancouver Heathman Lodge and introduced the members present. He welcomed ex-officio member Senator Steve Conway, who represents the 29<sup>th</sup> District in Tacoma. Senator Conway has quite a background in gambling issues, in large part from him chairing for a number of years the primary House committee that heard gambling related legislation.

**MEMBERS PRESENT:**     **Chair John Ellis**, Seattle  
                              **Commissioner Mike Amos**, Selah  
                              **Commissioner Kelsey Gray**, Seattle/Spokane  
                              **Commissioner Margarita Prentice**, Seattle  
                              **Senator Steve Conway**, Tacoma

**STAFF:**                    **David Trujillo**, Interim Director  
                              **Mark Harris**, Assistant Director – Field Operations  
                              **Tina Griffin**, Assistant Director – Licensing Operations  
                              **Amy Hunter**, Administrator – Communications & Legal  
                              **Callie Castillo**, Assistant Attorney General  
                              **Gail Grate**, Executive Assistant

**Agenda Review / Director's Report:**

**Interim Director David Trujillo** asked Chair Ellis to join him at the podium for a personnel recognition matter. He explained that Chair Ellis' term as Gambling Commissioner will end June 30 and he recognized Chair Ellis for his dedication to the Governor of Washington State, to this Commission, licensees, staff, and to the citizens of Washington State. Chair Ellis has served with distinction and honor. Interim Director Trujillo read a thank you letter from Governor Jay Inslee to Chair Ellis dated May 8 and presented a certificate and plaque commemorating his term of service on the Gambling Commission from February 2005 to June 2013.

**Chair Ellis** thanked his fellow Commissioners, the staff of the Gambling Commission, all of the stakeholders, representatives of the Tribes, and others who were present. He said it had been extremely rewarding to participate as a Commissioner on the Gambling Commission for eight plus years. It is frequently said, but cannot be said too often, that the Gambling Commission staff operate as a model public agency, and that is definitely true. It has been extremely enjoyable to be a part of and to observe their commitment to making gambling not only fair and honest, but well received, and dealing with issues openly in the state. He has enjoyed very much working with all of the stakeholders concerning gambling issues; although, some of the stakeholders may not regret

too much seeing him depart since he was not always on their side. But at the same time, Chair Ellis said he has enjoyed their professional approach to the issues that the Commission had to deal with – many of which were not easy.

### **Agenda Review/Director's Report**

**Chair Ellis** announced that the executive session at the end of the meeting was going to be significantly longer than normal because the Commission would be reviewing the qualifications of applicants for the Director position. As a departure from the normal procedure, after the conclusion of the executive session, the public meeting would be reopened to make a decision concerning the recruitment process, because that needs to be made in a public meeting.

**Interim Director Trujillo** welcomed Senator Conway to his first meeting as an ex-officio on the Commission, adding he looked forward to learning from Senator Conway's experience. He reported that the Governor had appointed Mr. Chris Stearns to the vacant Commissioner position. He was unable to make this meeting, but does plan to attend the July Commission meeting. Commissioner Stearns is from the Navajo Nation and practices Native American law with Hobbs, Straus, Dean & Walker. He is an active member of Seattle's Native American and social justice communities, has served as Chairman of the Seattle Human Rights Commission, and serves on the Seattle Public School Strategic Plan Task Force. In 2012, he was named Vice President of the Board of Directors of the Seattle Indian Health Board. Commissioner Stearns is no stranger to Washington, D.C. as he served as the Indian Affairs Director under Energy Secretary Bill Richardson, as Democratic Counsel to the U.S. House Committee on Natural Resources under Chairman George Miller, as Deputy Counsel to the U.S. House Native American Affairs Subcommittee, as North Dakota State Campaign Director for Vice President Al Gore, and as political advisor to Tex Hall who is the President of the National Congress of American Indians.

Interim Director Trujillo reported there were no staff requested changes to the agenda. He drew attention to a letter that explains the "My Account" online feature. Beginning on May 15, various online services will be available under the "My Account" tab. With one login, licensees would be able to submit activity reports, view previously submitted activity reports, update contact information, submit organizational employee applications with one electronic payment, get the contact name and number of their field agent, tell staff what information a licensee may want to receive, view calendar information of Commission events, view the latest newsletter and tweets, and complete a customer feedback form. Staff is continuing to work towards a one-stop, one portal for the "My Account" concept. Representative Richard DeBolt sent the Commission a letter dated April 10 that said his questions from November 2012 regarding a rule petition had been answered and he encouraged the Commission to act upon the petition. Representative DeBolt had sent the Commission a letter in November 2012 asking them to take pause with a rule petition and to consider it thoughtfully.

Interim Director Trujillo pointed out an article regarding the Washington State Online Poker Ballot Initiative, explaining there were currently two Initiatives (I-582 and I-583) that they are planning to move forward with. I-582 would authorize only online poker in this state; casino games and sports betting would still not be allowed. The proposal does have a mechanism for the Washington State Gambling Commission to create a licensing process for online poker rooms. Taxes would be

paid for online poker, but I-582 was silent as to what the tax rate would be. I-583 would repeal the criminal penalties for online poker as long as the person was not involved in the operation of the gaming platform.

**Chair Ellis** asked if there were any questions; there were none. He welcomed Paul Dasaro and Rick Herrington.

### **Staff Presentation on Social Gaming Platforms** (*PowerPoint Presentation*)

**Mr. Paul Dasaro**, Administrator of the Electronic Gambling Lab, introduced Rick Herrington, Program Manager in the Criminal Intelligence Unit, and explained they would be giving an overview about the concept of social gaming. Social gaming is a very trendy issue right now and it is very difficult to define what it is; a lot of buzz about it is heard in the technology world. There is no real industry-accepted definition of what exactly social gaming is, but generally speaking there are several characteristics that are typical of social games. Some of those characteristics include online play over the internet. Many of the games are characterized by the inclusion of multiple players. Often players interact with each other at some level in an online world. Many of the games use social media directly so people can log on to Facebook or some other social media site and play directly through their Facebook page. The casino-style games in social gaming are characterized by the use of virtual game play credits that players can earn or they can purchase credits to play the game with real money, but the credits cannot be redeemed for real money. The social gaming media makes most of its money from players that are offered the option of purchasing items within the game.

One of the popular games right now is called Farmville where players can pay a small amount of money to purchase additional land or an additional tool to use within the game. It is important to note that most social gaming is not considered traditional casino style, although one of the most popular games is poker. It is a very large and consistently growing industry with \$8 billion in revenue last year. At least 78 million people play these games in the United States and 200 million players worldwide play social games. The question is what motivates people to play these games. People spend hours playing the games. Some of the items are community-based play – players playing either within a game world with other players nearby or playing directly against other players, which can be seen in the poker style games. There is a lot of competition with people trying to beat each other and everybody is trying to improve their statistics, plus virtual cash is an element. It is not necessary to buy virtual cash to play the game as most games offer players a certain amount of virtual cash just for entering. Players do not have to actually purchase virtual cash with real cash, although that is an option. The virtual cash does enhance game play and it also allows people to improve their play within the game. Another popular social game is called Candy Crush.

One of the most popular poker games is a standard Texas Hold'em game called DoubleDown Casino. Players are sitting at a virtual poker table playing with other real people who can be anywhere in the world. They are playing with virtual chips that can either be purchased or just gained through entering the game. This is a company that was purchased recently by IGT and is an IGT themed slot game. DoubleDown is based out of Seattle. It is an online version of the same game that has been approved for Washington TLS, and is in many jurisdictions throughout the

world. Players are using virtual chips and not real chips, and these virtual chips cannot be redeemed for real cash. With DoubleDown's ability to purchase virtual chips, players get 150,000 chips for \$3, which they can purchase directly through their Facebook page. Zynga has a different conversion, but is essentially the same concept. Players can purchase more chips or more time to play with real money, which is how these companies make their money. Most of the social games are played through any type of internet capable device, like desktop computers through web browsers or through specialized software that can be installed. Mobile devices like Smartphones, Tablets, and iPods are a growing medium. Apple devices are a closed environment, and are a relatively small share of Smartphones and Tablets, but they are very popular in certain parts of the world. Android would be the more common types that are seen in Google and Samsung and are a more open environment, so it is a somewhat easier market for manufacturers to enter, and has a much larger market share throughout the world.

**Program Manager Rick Herrington** explained that when he looks at any form of gambling, especially on the internet, he applies the basic rules of gambling: chance, consideration, or prize. In each of these games, there are two of the elements, but not the third, which is an actual prize. Players do get virtual prizes and/or an endorphin rush; they can build their avatar and improve their avatar by purchasing other things of the same nature. It is not gambling in the current format according to Washington State law. At any time in the future, if the federal government or Washington State changes its laws, any one of these social platforms could be changed to a real gambling platform overnight.

**Senator Steve Conway** asked if other states allowed prizes and how it would be monitored. He asked if staff had checked other states to see if they were allowing actual prizes with this form of gaming. **Mr. Herrington** replied he did not think anybody else was allowing prizes to be awarded. He explained it was on Facebook and is being done internationally, but they are gambling platforms right now. The only place they are not gambling formats is in the United States, but he could not say whether another state is allowing it. If they are, they are in violation of the Unlawful Internet Gambling Enforcement Act (UIGEA) and a whole myriad of other laws. UIGEA deals with internet gambling and payment services, so if there is any payment process done over the internet with any form of gambling, it is illegal. If any state is offering this and allowing it to go on, it is in violation of federal law.

**Mr. Dasaro** stated there were several states that were in the process of allowing regular online gaming, but as far as he knew, most of those states were not contemplating using this particular type of gaming for their online sources. A week or two ago Nevada went live with their first official intranet gambling platform, which is only within the boundaries of the state of Nevada, and that was done completely proprietary through a company called Fertitta Gaming. Ultimate Poker is the name of the site, but that is a strict online gaming platform that is not tied to Facebook or any of the other traditional social gaming platforms. Other states that are currently very close to developing similar platforms are Delaware and New Jersey. There is talk within those states of establishing interstate gambling compacts so that an operator in Nevada could offer bets to players in New Jersey or Delaware, depending on how those compacts flesh out over time. But under current law in all those states, it is just within the borders of that state.

**Chair Ellis** said if the issue for whether or not social gaming currently constitutes gambling under Washington law was prize, then what would players get if they won. There is the option to buy chips, but does that mean the player simply has a bigger pile of chips in front of them than somebody who is playing solely with the free chips. **Mr. Herrington** affirmed, if they are playing poker, they would have a bigger advantage over the player with fewer chips. It is all virtual currency that does not really exist; it is just there and has no redeemable value. **Chair Ellis** said that, to argue the other side of that question, as demonstrated by 78 million people playing the game in the United States there was a value in simply being able to play and to play effectively. Therefore, if players were able to play more and play better by winning the virtual chips, they would have received a prize. **Mr. Herrington** replied he would call it buying endorphins.

**Chair Ellis** asked if there were any more questions; there were none. He thanked Mr. Dasaro and Mr. Herrington for the presentation.

### **Recruitment Update**

**Ms. Lisa Benavidez**, Administrator of the Human Resources and Training Division, gave an update on the process to date for filling the Director position. At the April Commission meeting, the Commissioners approved the position description, a salary range of consideration, and a recruitment process in which Commission staff would be responsible for recruiting for the Executive Director position. The job announcement was posted on April 15 and closed on May 5. There were 27 applications received and of those 27 applications, 8 candidates met the minimum qualifications. Of those 8 candidates, there was one application that was a really standout candidate. Ms. Benavidez had been asked to provide a grouping of applicants: the A group would be the candidates that would be recommended to move forward; the B group would be the candidates that met the minimum qualifications; and the C group would be the candidates that did not meet the qualifications required for this position. During the Executive Session, the Commissioners will consider the candidates in both the A group and the B group. Ms. Benavidez said she had a copy of the candidates placed in the C group in case the Commissioners were interested in looking at those. Ms. Benavidez recommended moving forward during the executive session to review all of the candidates that meet the minimum qualifications, then come back to the public portion of the meeting and have the Commissioners make a decision on which of the eight candidates they would like to consider further. The candidates are only identified by number in the packets of information provided to the Commissioners. Once they decided which candidates to move forward, Ms. Benavidez would contact those candidates. None of the candidates have been notified that this is a public process, so she would let them know that if they want to continue to be considered in this process, their names would be made public and the rest of the process would be happening in public. She asked that the Commissioners let her know if they have recommendations or ideas on types of interview questions they would like to ask the top candidates. Ms. Benavidez explained she would be responsible for writing the final interview questions and also for scheduling those interviews. She suggested a few dates that both she and AAG Callie Castillo was available. She hoped that all the Commissioners would be available to interview the finalists and asked if the Commissioners had any conflicts on any of the following dates: June 4, 10, 17, 18, 19, and 25. Following the interviews, Ms. Benavidez would then move forward with scheduling the psychological and polygraph exams for the candidates.



**Chair Ellis** asked if, in the process as Ms. Benavidez envisioned it, following the interviews but before the polygraph and psychological exams, the Commissioners would have the option to designate a preferred candidate and proceed only as to that candidate. **Ms. Benavidez** affirmed that was correct.

**Commissioner Gray** said she had glanced at the references and asked if they looked good. She wanted to make sure the Commissioners were also involved in checking references and know what is said. She thought it was really important the Commissioners developed questions that they have used. **Ms. Benavidez** agreed.

**Chair Ellis** thought that was clearly an important part of Ms. Benavidez' proposal. He suggested looking at several of the elements individually to make sure the Commissioners were all comfortable with them. He said there was one candidate in the A group that Ms. Benavidez thought had outstanding credentials and seven in the B group who met the minimum qualifications but were not on the same level as the outstanding candidate. These candidates have been identified by number only, not by name. During the executive session, the Commissioners will review all eight of the applications to make sure they are comfortable with the decision that Ms. Benavidez had made; the one candidate in the A group and the seven in the B group. He asked if that seemed like a good procedure; the other Commissioners affirmed. He explained that at the end of the executive session, he would reconvene the public meeting for the Commissioners to make a determination as to which candidate or candidates they wanted to proceed with interviews. He asked that AAG Callie Castillo attend both the executive session and the interviews to make sure the Commission does not cross the line between what can be discussed in an executive session versus what can only be discussed during an open public meeting. He suggested going over the suggested interview dates.

**Commissioner Gray** agreed it was a good thing to look at the suggested interview dates, but thought the Commission had not had an opportunity to really look at the candidates. She was concerned the Commission was moving too fast. She understood they were trying to get this done quickly, but felt they had not had the opportunity to really look at the A group and the B group of candidates and decide whether the Commission was looking at interviewing just one candidate or more. There may be two or three candidates from those eight. She thought the Commission could look at the suggested dates, but she did not want to get locked into just those dates and that timing.

**Chair Ellis** responded he did not think the Commission was locked into anything; they would be looking at the candidates in the executive session later this afternoon. If there was any follow-up the Commissioners thought was important, that they have not talked about, that could be done as well. He explained that Ms. Benavidez was just trying to coordinate calendars, recognizing that June is entering into the vacation period. There is no need for urgency because the Commission has a very good Interim Director; there is no huge hole that demands being filled immediately. Chair Ellis asked if any of the Commissioners had a conflict with any of the suggested dates.

**Commissioner Amos** had a conflict on June 10. **Chair Ellis** understood that plans could change and suggested that if any of those dates become ones where a Commissioner has a conflict, they should let him know and he would coordinate with Ms. Benavidez. He indicated that Ms. Benavidez would continue to take the lead in the process of receiving the Commissioners' input on interview areas or questions they would like to see included between now and the week of May 13. The Commissioners should give their input to Ms. Benavidez and she would prepare the questions.

It would be most efficient for all of the Commissioners who are available to attend the interviews, participate, and observe the candidates in action, and then be able to go into an executive session and discuss the qualifications of the candidates, taking into account their applications, their qualifications, and their interview performance.

**Commissioner Gray** asked about the group that had been selected at the April meeting that included Commissioner Amos, Ms. Benavidez, and herself. **Chair Ellis** replied that, when they talked about that at the last meeting, it occurred to him that the other Commissioners would need to be present at the interviews in order to knowledgably discuss the candidates during the executive session.

**Commissioner Gray** said that, in the development of the questions, she was really interested in the kinds of questions they could have. She was hoping that in executive session they could spend a bit of time on the kinds of questions. **AAG Castillo** responded that any discussion would be prohibited under the Open Public Meeting Act. Everything except the actual evaluation of the applicants must be done in a public setting; any general discussion by the Commission as a body, or any committee thereof (including two members), would have to be done in a public session. There would need to be notice to the public for any sort of meeting the Commission would have. The Open Public Meeting Act really limits what the Commission can do in executive session. She suggested that if the Commission wanted to have a general discussion, they do it here in this meeting. If a Commissioner has an individual thought, they could relay it directly to Ms. Benavidez, but if the Commission wants to have a discussion among themselves, it would have to be done in a public meeting.

For the same reason that AAG Castillo just mentioned, **Chair Ellis** cautioned against cc'ing the other Commissioners with any ideas a Commissioner may submit to Ms. Benavidez so there is not the appearance of a dialogue among the Commissioners to develop those questions. Staff will give public notice of the Special Commission meeting for the purpose of the interviews, which only requires 24-hours notice. **Commissioner Gray** asked if it was required to provide public notice that the Commission was going to have that discussion now. **Chair Ellis** replied they could have that discussion now because it fit within the confines of the agenda item of the recruitment process. **AAG Castillo** confirmed. **Commissioner Gray** asked if the Commissioners would be interested in giving Ms. Benavidez some general ideas on the kinds of questions they thought would be important. **Ms. Benavidez** asked if Commissioner Gray would be concerned about doing that in front of any potential candidates that might be in the room. **Commissioner Gray** replied no, it would just be general kinds of questions. **Chair Ellis** pointed out that Mr. Trujillo, for example, was a candidate. He thought Ms. Benavidez was asking whether Mr. Trujillo would have an advantage over other candidates the Commission may interview if he heard in advance the kinds of questions or areas of questioning the Commission was talking about. He thought Mr. Trujillo could probably leave the room, but **AAG Castillo** replied that would not be required by law. The Commission could not exclude candidates from the public meeting; it would be the candidate's own preference, but the Commission itself could not exclude the public, including applicants, from that discussion. **Chair Ellis** asked if Commissioner Gray would like to suggest some areas that she would like to see included. **Commissioner Gray** replied it was not so much in terms of areas, and she would not go into any detail, but she did believe a candidate's discussion about how they

might address a problem would be important. **Ms. Benavidez** suggested that Commissioner Gray send her an email if she would like to go into more detail. **Commissioner Gray** agreed.

**Chair Ellis** asked if any of the other Commissioners had areas or specific types of questions they thought should be included that they would like to discuss now. **Interim Director Trujillo** said he would prefer to step out of the room if there were any detailed questions. **Chair Ellis** asked if anyone had any detailed suggestions; there were none. **Chair Ellis** said the Commissioners would submit any input they had to Ms. Benavidez by the end of next week by email. **Ms. Benavidez** said she would be in the office all week so if anyone wanted to call her, she would be available. **Chair Ellis** asked if there were any other areas that Ms. Benavidez would like additional input from the Commission on. **Ms. Benavidez** replied there was not. **Chair Ellis** asked if any Commissioners had other comments or questions they would like to raise at this point.

**Commissioner Prentice** stated that over time, she has developed a trust for Ms. Benavidez and she did not think Ms. Benavidez needed a lot of additional instruction from the Commission. She thought they were all on the same page and did not want to get bogged down. She said it was time to proceed. **Chair Ellis** agreed, indicating that Ms. Benavidez and her staff had done a commendable job, being somewhat under the gun to proceed forward, in giving the Commission the draft job specifications, the draft bulletin, getting the bulletin published, and getting a broad response. **Commissioner Gray** agreed it was very thorough.

### Legislative Update

**Ms. Amy Hunter** provided a quick update on the legislative process, noting there would be a special session. The last day of the regular session was Sunday, April 28 and the special session is scheduled to begin on Monday, May 13. There are just a couple of bills that are still in the process:

- ESSB 5723 is the enhanced raffle bill that Special Olympics has addressed the Commission about in the past. That bill had some amendments that were done in the House so it needed to go back to the Senate for concurrence, which has occurred. The bill went to the Governor on April 27 and Ms. Hunter anticipated that he would sign the bill. Assuming that it is signed, it would be effective on July 28. Staff has tried very hard to cover the policy issues while it was in the process so that it would be the Legislature setting everything, like the “refer a friend” drawing and other special things. If it was not spelled out in the bill then it would come to the Commission during the rule making process to figure it out. Staff thought it was better to have things be specific. The main area that was not specific dealt with an independent audit, which Special Olympics wanted in the bill for their interest in protecting their assets. That is now in the bill and it is very specific that the Commission would do rule making around that. Ms. Hunter felt that would probably be the biggest area that would need more discussion. She did not want to downplay the amount of work that would be involved with the rule making, because staff will have to go through the current rules and see if they now conflict with what this law would allow and how to best spell that out. It might be one rule that says the provisions in x, y, z rules do not apply, or go through the individual rules and say something like except for enhanced raffles these are what the requirements are. Ms. Hunter has had e-mail conversations with Mr. Eliason, who is with Special Olympics, working on this to figure out who the people are from his

organization that will be their point of contact on the rule making part. Plus staff from both Field Operations and Licensing Operations have been established. Staff is anticipating the rules would be up for filing at the July meeting. Ms. Hunter thought it was a disappointment to Special Olympics, who had some different ideas about the emergency rule making provisions and they were hoping to do a raffle by the end of the year.

Assuming the process goes smoothly, Ms. Hunter anticipated the rules would be up for filing at the July meeting, up for discussion at the August meeting, up for final action at the September meeting, and effective the middle of October. The most work usually goes into rules when they are up for filing, so she thought Special Olympics would be able to make some fairly solid plans based on where the rule making process was at that point. It is on the fast track already. Typically, staff waits for the Governor's action before starting to do much more. But in this case, with all of the outreach that had gone on, Ms. Hunter said she would be very surprised if the Governor would veto the bill. If that happened, then staff would stop what they have done up to that point and go from there.

- House Bill 1403 deals with information that needs to be given to the Department of Revenue. The bill passed unanimously in both the Senate and the House, but it had been changed at different times, so the bill had to go back for concurrence. All of that happened, and the bill was delivered to the Governor who signed it on May 1. It will be effective July 28. Staff needs to let the Department of Revenue know who our coordinator is and get the applications over to the Department of Revenue. It will take some time, but is not expected to be real intense. The Commission has 38 business license applications that would be required under this bill to be provided to the Department of Revenue. Assistant Director Tina Griffin has followed the bill very closely and already has some pretty defined ideas on how that would occur.
- SGA 9158 (Commissioner Prentice's confirmation) and SGA 9106 (Commissioner Gray's confirmation) are still active. The Legislature has the ability to act on those during the special session, so there is still time. The Commissioners continue to serve even if they have not gone completely through the confirmation process.
- The statewide budget bill is obviously the one that most of the action during special session should occur on. And there is an update on page 4 of the memo explaining what the latest versions of those bills do as far as impacts on the Commission. But really, they are impacts on agencies statewide. There is nothing specific for the Gambling Commission in the budget, which is good news.

Those bills that died will be up for more discussion during the 2014 session. They do not have to be reintroduced. Some of the bills that died were gambling specific.

- House Bill 1295 modified the powers and duties of the Commission.
- HB 1824 reduced the penalty for a person when they're doing unlawful internet gambling in his or her primary residence, and it's for recreational purposes. That bill did have a hearing.
- SB 5552 deals with child support enforcement and being able to check the DSHS system if there is a winner over a certain threshold.

Ms. Hunter said she would bring to the July Commission meeting a list of bills that would require any type of agency implementation. Staff tracks many other general government bills and near the end of the legislative session, the Legislative Team goes through those bills more closely to see if there are things that staff would need to do. Ms. Hunter started presenting that list last year and hoped that was an effective way for the Commission to know some of the behind-the-scenes things that happen at the end of the session. Ms. Hunter thanked the Commission for their assistance and input as she has gone through the legislative process. She said it was always helpful to hear their ideas and pass on their input on the bills to the Legislature.

**Chair Ellis** asked if there were any questions; there were none. He thanked Ms. Hunter for all of the good work done by her and her staff on another successful legislative session.

### **House Bill 1295**

**Chair Ellis** thanked Ms. Hunter for preparing the information; it was very helpful.

**Ms. Hunter** explained her memorandum included testimony on HB 1295, which several of the Commissioners had a chance to watch on TVW. This report was a follow-up to discussion at the last meeting about taking a position on HB 1295 at this meeting as opposed to waiting until the fall. Staff intends to meet with the members of the Committee during the interim, so the more they know about the Commission's position, the better they can pass that on to the committee members who are always genuinely interested in hearing what the Commission has to say. When Senator Conway was in the House, he always asked what the Commissioners thought. The bill deals with the Gambling Commission's powers and duties and gives some things to the Legislature that are currently in the Commission's powers and duties. The bill says the Legislature retains sole authority for approval of any *expansion* or *enhancement* of the scope and manner of approved gambling activities and any increase in the maximum wager, money, or other thing of value that may be wagered or contributed by a player in any gambling activity subject to that chapter. From a practical point, it means there would be some changes that are now accomplished by rule that would need to go to the Legislature. There would also be many current staff approvals that could fall under being an expansion or an enhancement. The question then becomes what the Legislature was intending and how the Commission would best deal with it.

The bill was introduced on January 22 and the prime sponsor was Representative Sam Hunt who had been the Chair of the House Government and Tribal Affairs Committee during the 2011 and 2012 sessions. That committee was responsible for hearing gambling-related bills. Prior to that committee, it had been the House Commerce and Labor Committee that had heard gambling bills for many years and was chaired by then Representative Steve Conway, who is now a Senator and an ex-officio member on the Commission. This year, gambling issues went to the Government Accountability and Oversight Committee, a newly created committee chaired by Representative Chris Hurst. There were seven other members who signed on to the bill: Representatives Rodne, Wilcox, Appleton, Zeiger, Moscoso, and McCoy. Some of those members had been on the House Government and Tribal Affairs Committee. Chair Hurst and Representative Moscoso would be the two members on the current committee who would be hearing this bill.

In January, previous Director Day and Ms. Hunter had met with Representative Hunt and Chair Hurst as a follow-up to the letter that Representative Hunt had sent to the Commission in November 2012 regarding the Galaxy Gaming petition. The timing ended up making it appear that the meeting was related to this bill, but was originally intended as a follow-up to the letter. During the meeting, the Representatives were very open to any options the Commission might see for the bill. Ms. Hunter followed up the meeting with an e-mail explaining the Commission had not had a chance to talk about the bill and that the comments had been offered from staff's perspective and to help ensure that, if legislation was passed, the Commission and staff would be properly interpreting it to carry out the intent of the bill. The Committee heard the bill on February 7 and the Commission decided at the February Commission meeting to take a neutral with concerns position on the bill. Ms. Hunter was able to relay that position to the Committee before they took executive action on the bill, which was scheduled but not voted on, so the bill died in Committee after the hearing. It was one of the few items on their agenda for that day and they devoted over 40 minutes of their one-hour hearing to the bill.

**Commissioner Prentice** said she had watched the hearing on television and thought they had a very good discussion. She did not have the feeling that it dragged on but felt it was done knowledgeably.

**Ms. Hunter** reported there were six people who testified about the bill:

- Representative Hunt did not have a lot of information about why he introduced the bill. He said that, as technology changed, he wanted to clarify that expansion of gambling was within the power of the Legislature, so his intent was to strengthen that. He also said he was willing to continue working on it and this was his first try to clarify that.
- Victor Mena said one of the themes of the hearing was the rules process, how that works, and how much time is devoted by the Commission. The piece that was missing from that testimony, which Ms. Hunter tried to make clear in her e-mail, was that much of that had to do with the laws that the Commission has to follow for rule making. By the time a petitioner files something, the Commission has to wait so many days before it is published in the register. It ends up being a minimum of a three-month process. That is not because anyone was being necessarily slow. He thought everyone could see the benefits of that three-month process as it allowed for more time.
- Ric Newgard is with Seattle Junior Hockey and the Washington Charitable and Civic Gaming Association. He said that right now they know who they need to come to for changes, which is the Gambling Commission. They have limited funds and do not have any funds to hire a lobbyist, so they would be concerned about not having access to the decision makers.
- Dolores Chiechi, Recreational Gaming Association, talked about the role that ex-officio members play, which gives the give-and-take, both for ex-officio members to give the Commissioners input and also to be able to take that back to the Legislature. She said that she was concerned and did not want to see it go backwards. The Gambling Commission was created to keep the Commission out of some of these areas.

- Chris Keeley, Recreational Gaming Association and the past owner of a card room for 14 years, spoke about some of the details the bill would have the Legislature involved in if it were to pass, like the game approvals. The Committee would be dealing with derivatives of games and some things that this five-person Commission does not presently deal with because they are done by Commission staff.

Ms. Hunter said she spoke next and tried to be clear that the Commission had not had a chance to talk about the bill yet, but that she saw it as being a policy bill and the Commissioners appreciate that it is within the Legislature's purview to decide what type of direction they want to give. The Commission would want to make sure that, if legislation passed, it was clear so they could carry out the intentions of the bill. Ms. Hunter said she went through some of the different approvals that it appeared the bill would be hitting on, like wagering limits and rule changes that range from operational to licensing. She went through how many petitions the Commission gets and how those were being disposed of. If the Commission was not getting the petitions, then in theory the Legislature would be getting bills in those arenas. She went through the list of other approvals that staff goes through. One other thing that was discussed was the pilot program. There was some discussion about whether that was a pilot program by the Legislature or by the Commission and that process.

- Martin Durkan, Jr., from the Muckleshoot Tribe signed up with a "maybe" position. He went through what his testimony was.

Ms. Hunter said Chair Hurst explained that one of the reasons he signed on to the bill was so there would be a hearing on it. They have seen many areas where major changes have occurred. He thought the Tribes had major changes also and wondered whether the Legislature had a chance to catch its breath and ask where it was going. He did reference back to the bad incident earlier that involved a couple of legislators, referring back to GamScam and everything that happened several years ago. He said that he had seen this in other areas where the Legislature had ceded too much of its authority to agencies and he was interested in that across the board. His question was whether the elected representatives of the people have enough oversight over what was going on. He wanted to make it clear that he did not want those in the industry to think this was picking on any individual person, and that he shared this same concern about rule making and wanted to make sure that the Legislature was asking some questions.

The committee talked briefly about looking at some gambling issues during the interim and had a planning meeting that was scheduled near the end of session. They ended up canceling that meeting. Ms. Hunter assumed that had they had the meeting, they would have gone through the list of what items they wanted to look at during the interim. She did not know if there would be that type of meeting during this special session, and she did not think there was any requirement that they have a work session and go over those. Obviously, they can develop their list of items that they want to look at during the interim. She was not certain if gambling would be on the horizon or not. Ms. Hunter thanked the Commissioners for their input, adding she was glad they decided to have this discussion early as opposed to waiting until the fall because that would give more time to meet with members during the interim to take back any comments the Commission has and if their position of neutral with concerns has changed.

**Senator Prentice** said she was still neutral with concerns, except she was glad for the chance to see what it was that had been bothering the Legislature, and some of it was just bad memory. She recalled being there – and particularly it was the pilot program -- and it was not really explained as applying to all applicants but was explained as a pilot program. She thought “pilot program” meant a limited number. She remembered thinking that she could have kicked herself because it was not defined or limited. She said she always felt a little uncomfortable and she gathered that Chair Hurst was also feeling that way, then those kinds of uncomfortable feelings begin to increase. And it looks like several legislators had questions that really did not get asked at the time. Perhaps what is being seen is a chance to have a better discussion. If the legislators are feeling uncomfortable with something, then they should say so and make it clear at the time. Commissioner Prentice did not want to see overlooked what the Commission was created for. It is going back in history, but maybe the Commission should take a look at how awful things were and why the government tried to take the politics out of it. She did not want to lose the Commission’s complete focus on that. Some of the people that testified do not always agree with the Commission and do not always like the discussion. The point is, the Commission takes it seriously and tries and knows all about it. The legislators have to deal with so many things. Commissioner Prentice said another thing she was afraid of – and people always have to be careful – was if you do not get it done early, a legislator can play a few games and say move to the ninth order of business and your bill does not get through. The Commission does not do that here; they do not have that ability. They know the games that can be played. Commissioner Prentice said she would rather keep the Commission’s and the Legislature’s focus and have some good rancorous discussion because she believed everyone on the Commission and the Legislature was sincerely trying to do what was right within the state. The Commission does not want to deliberately have anybody fail, but it has to deal with what the federal law said to do with Tribes. It has tried to be fair. This is going to continue. She thought the kinds of discussions might be uncomfortable at the time, but also thought they were very healthy. The Commission and staff need to make the Legislature feel more comfortable with what they do. **Commissioner Gray** said she absolutely agreed.

**Senator Conway** made an observation that a ruling was made by Brad Owen that the enhanced raffle bill was considered an expansion of gaming in the Legislature. Probably one of the most important public issues the Legislature has to consider is how certain changes lead to the expansion of gaming in this state. He said he had left the House and moved to the Senate at the time and did not actually know how this bill came about because he was not involved in any of the development of it. The bill has not been heard in the Senate; there has not been a Senate hearing on the bill. He said that, if he understood anything about the background of this bill, the Legislative concern was that any action the Commission might take might lead to an expansion of gaming. Senator Conway knew that prior to his leaving the House, the wager bill was one of those considerations of raising the wager limits without really taking into consideration how that might potentially expand gaming in general. If there was any kind of concern he saw in this bill, it was trying to ensure that the actions of this Commission do not adversely impact the expansion of gaming because of the relationship between what the Commission authorizes and what would lead to an expansion of gaming in general. That’s what he saw in the bill. He understood the complexities of the issue in terms of what was meant by enhancements. That is the kind of phraseology that would be subject to a great deal of interpretation; what is an enhancement and what is the dividing line between what the Commission can do and what the Legislature has the authority to do. In the testimony, clearly, the constitution set the authority of the Legislature in the



expansion of gaming, so that is the line that the Commission is trying to figure out here. Senator Conway said he had some background in this issue because the Legislature had some concerns about the issues of how some rule making that might occur on the Commission's level might actually expand gaming in general in the state.

**Commissioner Prentice** said she thought part of what was being seen was that the Chairs of the Committee had been different and that was what was being reflected in the different interest levels. Representative Chris Hurst is completely sincere and very smart, and he wants to look at the concerns a little deeper than they have been, which is fine. But it might look uncomfortable because he has a different focus, but she thought they could all live together.

**Chair Ellis** agreed, adding that Ms. Hunter had made the point at the last meeting that, to the extent there were comments being made by legislators, it might be time to look at these issues and study the gambling issues that reflect the change in the committee structure and the change in the committee personnel – the Representatives in the House that are now looking at gambling issues who were not there previously. Following up on the point that Senator Conway made, he noted it was not that long ago that then Representative Conway and Senator Kohl-Welles had a joint committee review of gambling issues. He did not think that any members of the House Oversight Committee were even aware that the study had gone on and he could imagine why it was difficult for the members to know that, particularly if there was also staff turnover in the interim. An important part of the process that needs to be had in connection with this bill, assuming that it continues to be on the table in the next session, is to educate the legislators about that kind of past history, as well as the past history that Commissioner Prentice and Senator Conway mentioned. The issue now before the Commission, recognizing that the Commission has taken a neutral with concerns position in the past, is whether they should take a position actively opposing the bill to make the Commission's view clear. Since the Commission was considering taking a position on this legislation, he thought the public should have the opportunity to address the issue, and opened the meeting to public comment.

**Ms. Dolores Chiechi**, Recreational Gaming Association (RGA), welcomed Senator Conway. She said the RGA knew how much knowledge and history Senator Conway brought to this issue, and they were encouraged by that. Ms. Chiechi said her mind was a little jumbled as to how she wanted to begin because when this bill was introduced, the industry felt it was quite a hit at them. In fact, when she met with a number of the sponsors of the bill, one of them said "Yes, Dolores, this is a target on your forehead." So when a legislator says something like that to her, she takes it seriously and does what she can to protect her members and see its defeat. She would like to see a thorough discussion and the Commission's awareness of some of those political things that occur when talking about the Legislature and the process that takes place there versus at the Commission meetings, which is much more apolitical, much more thoughtful, and a lot of time goes into it. There were many mis-statements that happened during that hearing. Ms. Chiechi said it was hard to sit in that audience and not have someone knowledgeable, like Ms. Hunter, on staff who could refute and explain to the Chair that, in fact, the Legislature did not create a pilot program; that was the Commission. The Legislature authorized house-banked card games, but the Commission made the decision to go into a pilot program. Ms. Chiechi said she did her best with all due respect to argue that point with the Committee Chair. House-banked card rooms have been in existence for 16 years and there has been all that time for the Legislature to pull back. As Commissioner

Prentice and Senator Conway know, there have been numerous bills year after year to put the card room industry out of business, to tax them out of business, and to restrict what they could do. So, they have been fighting for their existence, but they are now down to 55 clubs.

Ms. Chiechi said that when she inferred it would be difficult for the card room industry to get a hearing in front of the Legislature, the Chairman replied that “Well, there was an individual who called, asked for a hearing, got a bill drafted, and we passed it out of committee. It’s as easy as that.” Ms. Chiechi responded that for the past ten-plus years she has been working for this industry, and they have not been able to get a hearing on bills they want. That is the difference between this body of Commissioners and that legislative body. The RGA has presented petitions to this body and gotten some wins and some losses, but at least they get to have the dialogue, the conversation, with the Commission. She said she appreciated Commissioner Prentice’s comment. It is sometimes raucous, and sometimes the industry vehemently disagrees, but it has always been done with respect and they have the opportunity to come to the podium and make their arguments. That is not the case when they cannot get a hearing on a bill that could save their industry. She wanted the Commission to understand that it was a lot different when they were talking about trying to educate 146 people in Olympia, not to mention committee staff that has changed more than three times, when committee staff does not have the knowledge to refute something the Chair says or something an individual testifies to. There were comments made that if the Tribes wanted an increase, it had to go before the Legislature – but it does not, and the committee was not corrected. The legislative staff did not correct them because maybe they were not aware. So that committee walks out thinking the bill affects everybody and that it was something that could potentially rein in the industry as a whole, but it would not. It would rein in 12 percent of the industry, but 88 percent would not be touched by this legislation. Ms. Chiechi had a hard time when those misstatements were made and she was sitting in the audience, with her tongue bleeding down her face, wanting to say “wait, that is not factual.”

Some of the staff of this Commission has been doing this for decades and they understand the nuances of the industry, the licensees, and the politics of it. This Commission has been very conservative in addressing petitions that have come forward based on that, limiting the scope and nature through strict regulation and control. That is constantly part of the rules procedure and it is constantly part of the Commission’s consideration as they look at petitions that are brought before them. It is really tough when the industry is outmanned, outgunned, and outspent in the Legislature. In this body, they do not have that influence because the Commission listens to the facts, the people, and the staff. Ms. Chiechi wished and hoped that the Commission would change its position and take a staunch opposition to this bill and really explain to the Legislature why it is important that these issues remain under the Commission’s purview.

**Commissioner Amos** commented that it had been a real learning curve for him over the past five years since he was appointed. Before he got this appointment on the Commission, he was an officer with the Yakima Police Department and was the State President of WACOPS. When dealing with the legislature, they were able to go to Senator Conway’s office and talk about legislation to help law enforcement, and also to talk with Senator Prentice. He said he felt the same way as Ms. Chiechi about House Bill 1295. He does not particularly care for the bill and thought the Commission needed to take a stance. The Commission should decide what it wants, and then it has to go back to the Legislature for them to vote on it. He did not think that was the

intent when it was set up all those years ago – back in the 70s when it first started because of the corruption in the gambling in this state. Commissioner Amos firmly believed the Commission needed to take concerns over this bill. He thanked Ms. Chiechi for her testimony. He said he wished he knew the hearing was going on because he would have liked to be there. Representative Chris Hurst and he have been cops together for years, which might give him a chance to discuss the bill.

**Ms. Chiechi** thanked Commissioner Amos, and asked what the purpose of this Commission would be if this type of legislation occurred; what the duty and the scope of this Commission would be. It would have to trim down. There would still be administrative hearings, but there would not be much point to have a meeting each month for about an hour. She thought a lot of those things should be relayed to the Committee by the staff. The statute that created the Gambling Commission outlined its duties. This Commission has been asked by the Legislature to come to them with recommendations, to come to them with the knowledge of sitting on this Commission for six years or the staff for decades, and to bring that knowledge forward to the Legislature who deals with thousands of issues every year for three months, 105 days or 60 days, and then they are bombarded with their personal jobs back in their district. They do not have time to delve into the issue as the Commission does. Ms. Chiechi thought this was an opportunity for the Commission to take a look at what the statute reads for its role and take more of a proactive position with the Legislature and show them that the Commission knows what it is doing, that the staff is educated and aware and knowledgeable on this issue.

**Commissioner Prentice** said she was not as inclined to punch the legislators back, but agreed they really did need more factual information. Chair Hurst talked about the industry continuing to expand, but the Commission knew that was not true. They get the list of all of those businesses that are no longer in existence, plus a couple more that are going to be gone soon. The Commission has tried to look at why. Some are because the economy is bad, but she wondered what else was going on. It is a big concern to everybody in this room, yet the assumption is it keeps growing. Commissioner Prentice thought the Legislature needed to take a look at that list, look at the changes, and look at what has happened with bingo, which is down to about 16 places now in the whole state. Each time it is less. The Commission is watching this huge change and is not just expanding everything. It is not so. But she wanted to be polite and show the Legislature a comparison of last year's list and this year's list so they can see what has actually happened. Commissioner Prentice said she was not ready, at this point, to hit back because the facts are wrong.

**Ms. Chiechi** replied that part of her challenge is that she could not even get a meeting with some of the legislators.

**Chair Ellis** commented that he was struck by the extensive number of comments about how slow the process is before the Gambling Commission and the alleged need for a faster process. As Ms. Hunter pointed out about the speed – it has to do with the Administrative Procedure Act and the various elements of that Act that have to be done at different times in order to allow public participation before a decision can be made by an administrative agency. It is ironic that when looking at the history of the petitions before this Commission, many of them have come from the RGA. And to the extent that there are victims of this slow process, it is the RGA and its members

that have been the victims, yet Ms. Chiechi was not complaining about the slowness of the process. **Ms. Chiechi** thanked Chair Ellis.

**Commissioner Gray** commented that as she was listening to Senator Conway, she recalled a conversation she had that she felt was really important. The Legislature makes policy; that is the role of the Legislature to make policy. The role of the Commission is to ensure that policy is followed. When she read the bill, she said that was administrative; it is taking one piece and giving that to the Legislature to deal with without really looking at the policy. She hoped that if this came back again, that in the interim some time would be spent on what the policy is that they are really looking at, and then they can begin to look at the role. She thought this bill does not do what was intended by the Legislature.

**Commissioner Prentice** added that the Commission is designed to be regulatory and law enforcement and she did not know if anyone in the Legislature knew that. There are assumptions about what the Commission is doing – like they were just giving the whole thing away – but she thought there was a whole lot of education that needed to be done politely. The Commission needs to be very clear about what they are about.

**Senator Conway** said that when he was Chairman of the House Commerce and Labor Committee he was a firm believer in having a greater relationship between the Gambling Commission and the legislative bodies, which they did work on a little bit. He shared an incident that does not deal with the Gambling Commission, but with the Lottery Commission. The Lottery Commissioners made a decision to allow machines to be put up in the grocery stores and people to be able to go directly to those stores and purchase tickets. That decision by the Lottery Commission directly impacted the gaming and how gaming is done in this state, in terms of putting money into machines. That is the issue where this line is so important. The decisions made at a Commission level may have impacts on how gaming is done and how it is authorized in the state. Many who have a long history with gaming in this state know how things have changed. Even legislators often pass bills without knowledge of how they are going to impact the general nature of gambling in this state. Senator Conway said he knew that history very well, but was not going to revisit it. He thought the Legislature was trying to ensure that everyone clearly understood how their decision-making can impact gambling in general. That case of the Lottery Commission is a good example of how they were just trying to help the sellers of their tickets do it easier and not have to have the sales going on directly with a clerk. But when they allowed that machine to disburse tickets with money going in, it impacted how gaming and gambling was done in this state. He said he just wanted to bring caution to that. Although he has had no involvement on this bill, he believed that was what the Legislature was looking at. Maybe this bill does not reflect exactly the language that is needed, but he thought that was the issue: how Commission decisions impact gambling in general or the expansion of gambling in general in this state.

**Chair Ellis** agreed that was an important point. There are times when it can be difficult for the members of the Commission to clearly focus on whether they are over the line in getting into developing policy in the gambling area versus enforcing what the Legislature has already decided. He thought it would be extremely valuable to the Commission going down the road that Senator Prentice is now a regular Commission member. She has on a number of occasions pointed out to the Commission that they were on that line or over it and that it was something the Legislature

should deal with. He said it would also be excellent to have Senator Conway present to the extent he was not tied up in the Legislature and was able to participate in that kind of dialogue. He asked if there were any other comments; there were none.

**Commissioner Amos** said he was not happy with “concerns” and asked if there was a definition from an attorney that was a little stronger that would get the point across. **Chair Ellis** asked if he meant other than oppose. **Commissioner Amos** replied he thought the Commission should oppose the bill. **Ms. Hunter** responded there were no actual definitions. The sign-up in the House and the Senate are different and people sign up under many different ways. When she signed up to talk on this bill, she put “other” because that was the closest box to neutral with concerns, and then she just explained it. Ms. Hunter did not think there was a problem with the Commission just being flat out opposed to the bill, which sends a different message than neutral with concerns. She thought the Commission was in the right place in February, but as the bill moved forward and as staff pondered enhancements and expansion, she started thinking maybe she should have recommended opposed at that point. But staff is just dealing with the best information they have at the time. All of these comments are very helpful and will help direct staff’s comments, regardless of whether the Commission decides to remain neutral with concerns or opposed. Just hearing the discussion has already given Ms. Hunter many ideas of other things that can be shared with the individual members during the interim

**Commissioner Amos made a motion seconded by Commissioner Gray to oppose House Bill 1295. The vote was taken; the motion passed with four aye votes.**

**Chair Ellis** called for a break at 11:40 a.m. and reconvened the meeting at 11:55 a.m.

### **Problem Gambling Program Updates**

**Interim Director Trujillo** reported that the Commission was fortunate to have two presentations on problem gambling. He explained that he and Lena Hammons from the Tulalip Tribes had known each other for a very long time; when he was a regulator from the State and she was a regulator from the Tribe. He introduced Ms. Lena Hammons from the Tulalip Tribes. **Chair Ellis** welcomed Ms. Hammons.

#### **Tulalip Tribes** (PowerPoint Presentation)

Lena Hammons, Tribal Gaming Commission/Family Services Manager  
Ellie Lorenz, Family and Youth Serviced

**Ms. Hammons**, Tulalip Tribal member and Executive Director of Behavioral Health that includes their problem gambling program, thanked the Commission for the honor of being here today to present her program in front of the Commission and the audience. Ms. Hammons said she has an extensive history with the problem gambling program with the State, the Tribes, and the RGA program. When she accepted this job, she had no clue that she would be in charge of the problem gambling recovery process, but was grateful to be back in this arena again. She introduced Diane Henry, who is the Clinical Supervisor in the Chemical Dependency Program and is also the Supervisor of their Problem Gambling Program. Ellie Lorenz has been in their problem gambling coalition over the past few years along with Ms. Hammons before she became Behavioral Health.

Ms. Lorenz is very knowledgeable and works very hard on the program. In addition to being the lead problem gambling counselor, Ms. Lorenz is also a chemical dependency counselor. Ms. Ellie Lorenz will be giving the presentation.

**Chair Ellis** welcomed Ms. Lorenz.

**Ms. Ellie Lorenz** introduced Diane Henry who would be showing the PowerPoint, adding that she did a wonderful job in designing the presentation. Ms. Lorenz reported that she came to work for the Tulalip Tribes in 2008. She is a Blackfeet from Montana, so she is the other Native. That was one of the good things about being able to come to work for Tulalip, which has been such a rewarding experience. Gayle Jones was their Clinical Director at that time. Ms. Lorenz said a lot of people were interested in the history of how they started their own Problem Gambling Program among the Tribes. Tulalip started the program in 1999. They wanted to have the counselors become certified, but had not yet developed the ongoing state program. Ms. Lorenz came on as a Chemical Dependency Counselor in 2008. In 2009, she was going to Doctor Maurer, who was their supervisor consultant in Seattle for the gambling program. At that time, the Tulalip had three counselors that were interested in becoming problem gambling counselors; herself, Gayle Jones, and Gary Isham. They went to training and heard about the Compact funds. Gayle Jones had the initiative to find out how the Tulalip could start its own program, which was the beginning. She wanted Ms. Lorenz to apply for the coordinator position, which is what they needed, so she began. Ms. Lorenz was under supervision, so she went to one of her monthly supervision trainings with Doctor Maurer and told him that she had been hired as the coordinator and asked what she should do. There was no manual, so Doctor Maurer suggested Ms. Lorenz meet with Maureen Greeley from the Evergreen Council on Problem Gambling and a couple other people that could be her mentors, which was absolutely incredible. From there, she had her first meeting with Ms. Greeley and Ricki Haugen from Kalispel who had started her program and had done the state certified program at the Kalispel Tribe in Spokane. They were great mentors. Ms. Lorenz went to the Advisory Committee on a quarterly basis, which was a great benefit because at that particular time new WAC rules and changes for gambling were coming in. It helped her know what was going on so she was not completely in the dark anymore. When it was time for Ms. Lorenz to get state certified, she had an idea of what to do and how to do it. Between the Advisory Committee, Ms. Greeley, and supervision with Doctor Maurer, was the ground breaking area to get this program off the ground. They are really proud to be the first state certified Problem Gambling Tribal Gaming Program in Washington State. They started outreaching into their community and did all the different things they could do to get that going, but they also reached out to everybody and offered all of their services. The Tulalip has a lot of its own cultural involvement, like the medicine wheel that brings mental, emotional, physical, and spiritual aspects to work with all of their clients. Ms. Lorenz believed there were root problems that create problem gambling, and that finding out what the roots are and being able to pull them out is very helpful. She tells her people that they are trying to eradicate all of the roots so they do not start springing up again and redeveloping. They want to get rid of them for good, which the medicine wheel gives them the ability to do. The program also has clinical assessment, with individual sessions and group counseling. Gary Isham is their group leader and deals with education. He gets down and really talks about what are pathological problem gamblers. They are also getting a recovery home off the ground to be able to reach out to people that are coming from inpatient treatment so they will have a place to go with support and ways and means to continue their freedom from the addiction. Their program has the

resources to continue the treatment without time limitations and can continue to work with people until they feel like their needs are met; they do not have a 28-session time constraint. If they have to go further, they can. They have the benefit of being able to work with them and for them for as long as it takes.

In the program's group sessions, Mr. Isham talks about finances, which is the number one thing with problem gamblers that they have to get a handle on immediately. A lot of people do not like to talk about finances, but that is what they need to reach out and touch immediately. They have to get that aspect open, shine the light on the secret and expose it, and then eradicate the root. There is a lot of grief and loss that is very heavy. People are carrying all of this within and do not even realize that it is one of the roots. A lot of times when grief or loss is mentioned, people automatically think of death, but it really is so much deeper than that. If they miss a telephone call, they can go into a grieving episode. Giving up the addiction is a grief, giving up gambling, giving up whatever their addiction is. So they spend a lot of time working on that, working on themselves, getting down and looking at what is really causing the problems. Gary Isham does a lot with values and ethics, anxiety, depression, and then Post Acute Withdrawal Syndrome (PAWS), which starts anywhere from two months and can go on for a couple of years. But PAWS is also a big part of recovery. There is addiction versus wellbriety, which is like sobriety. It is a matter of just getting well and going on from there; intellect over emotions. Mr. Isham says let's talk about their intellect; let's not go to their emotions; let's try to stay out of emotions because emotions get them into trouble. Emotion is action, so they are either going in a negative direction or a positive direction. So if they are using intellect, then hopefully they can go down the straight road. The program has inpatient treatment and can refer people if they meet the ASAM criteria and they really need inpatient treatment. Ms. Lorenz works together with Evergreen Council for referrals. There is a referral source in Louisiana and one in Oregon. There are different places where people can be sent if they really need inpatient treatment. The program also has culturally relevant programs: Sweat, Talking Circle, AWARE, and family sessions. AWARE is a very strong support system for people to be able to be around others who can support their emotions and their needs, and someone to listen to them and be there for them. Through the program, there are a lot of events to know that there are other ways to have fun besides buying into their addictions, like lots of dances, community get-togethers, and that type of thing. It is still new and is just taking off and doing well.

Currently there are more women than men in their program (about 11 men and 14 women). These are actually quite high numbers for people in gambling treatment because their Tribe does not have them knocking down the walls or kicking down the doors wanting to come in. That is because gambling is still where alcohol was about 30 or 40 years ago. It is still the elephant in the room and is something that nobody wants to talk about, nobody wants to look at, and nobody wants to identify with it – if someone knows someone who has a problem, they just deny it and try to overlook it. So it has taken time to get their numbers up, but they are up now. In 1999, when Diane Henry started the program, they had one client. All the counselors were fighting over that one client because they needed the hours to get certified, but that one client did not provide that many hours. Their people are from all around Snohomish County, so it is a lot of work to get their Tribal members in the program. Currently, they have a lot more non-tribal members. There are a few tribal members, but it is lower now than it has been in the past. There is no fee for the services and it is open to everybody, which they are very grateful for.

The number of gambling clients has increased through community awareness events. Ms. Lorenz sponsored the program with Evergreen Council on Problem Gambling because in the beginning, Maureen Greeley had opened doors for her and showed her where to go, what to do, and how to learn all the various things, which was wonderful because she had things she wanted to do. They started Four Directions Conferences, which bring the Nations together in gambling conferences to see what they have available and what problem gambling is all about. It is especially good for the Tribes that have casinos. To date they have had four of those conferences. The first one was at Muckleshoot, the next two were at Tulalip, and the last one was at Swinomish. Evergreen Council does a wonderful job of bringing this all together, and Ms. Lorenz has been pleased to be able to be a part of it. Two summers ago they offered the New Directions Summer Youth Program. Evergreen Council hired a lot of artists throughout the community to come and teach the Tulalip youth about cultural, and also provided gambling information, education on gambling, and education on different addictions. The youth also did a mural (a painting on a rock, a big beautiful one) and they were so proud of it because it was something they could look at and know they did it and were a part of.

The first couple of years, Ms. Lorenz tried to get into every community event that was imaginable. If it showed up, she was on the Richter scale and had all her stuff out there. She wanted everyone to see her, to know her, and to know that the Tribes had a problem gambling program. Even today, a lot of people do not know they have a problem gambling program, but she said she has not given up on that and is still working on it. Plans are to present at the National Conference where the Tulalip, Puyallup, and Swinomish are going to be presenters. There will be a breakout session and a hostess room to bring a lot of the Natives together and do a lot of networking, which Ms. Lorenz was excited about. It has been difficult getting the word out, letting people know who the members of the program are, and where they are located. They have benefited from the ads from Evergreen Council. The numbers are starting to go up thanks to the calls on the hotline, which has been very helpful. A meeting was started for providers, which includes five tribes that meet once a month to collaborate on what they know and to give information on what the program is doing. They bring information about what they are doing and share ideas and programs, and they have all grown from it. The Swinomish, Suquamish, Lummi, Puyallup, and Tulalip are part of the providers so far and those five Tribes have really benefited. No one showed up with a manual, so they are helping each other. The program has five staff members that include the Clinical Administrator Diane Henry and also Lena Hammons. She asked if there were any questions.

**Chair Ellis** asked if there were any questions of Ms. Lorenz; there were none. He thanked Ms. Hammons and Ms. Lorenz for the presentation, which was very informative on an extremely important topic. **Ms. Lorenz** thanked the Commission for their attention.

**Puyallup Tribe of Indians** (PowerPoint Presentation)

**Interim Director Trujillo** introduced Jennifer LaPointe, the Operations Director of the Puyallup Tribal Health Authority, who has been with the Puyallup Tribe for 11 years and has direct oversight of the Problem Gambling Program development.

**Chair Ellis** welcomed Ms. LaPointe.



**Ms. Jennifer LaPointe**, Program Manager for Health Authority, thanked the Commission for their time to hear about the Puyallup Tribe's program. She mentioned that the Honorable David Bean had planned to be at this meeting but was ill and could not attend. She reported their Tribe has a Problem Gambling Prevention Treatment Program. She would be reviewing some of the highlights in a nutshell and some of the things that are most exciting that have been done since they started going down this road of problem gambling. The Tribe has been working on a multi-level program and goes off in a lot of avenues. She said she would go over some of the different things they have done within the Health Authority, the Emerald Queen Casino, and the Tribal Gaming collaboration with their communication plan, education, treatment, and then a little bit about their vision of where they want to go next.

The Health Clinic, the General Manager of the Emerald Queen Casino operations, and the Puyallup Tribal Gaming Agency are all working together. They all are very busy entities, so it has been difficult to make time for them to collaborate. They have worked together on many things, the biggest being self-barring policies and making sure the people who are asking to be self-barred from the casino know about the program and get the right resources. The casino customer population is much bigger than any population the Health Authority can serve, but a portion of them are eligible for the services. The Tribe wants to make sure those customers know about the program and have input from the program on what should be the parameters and requirements for people re-entering the program. They have had a lot of policy-type discussions and making sure that all the dots get connected and everyone knows what each other is doing in those areas. They have had discussions and will continue to have discussions on casino employees and problem gambling within the employee population: how to serve them and how to do prevention activities with casino employees. There is a lot of problem gambling with casino employees that cannot really be avoided because they work in a casino. They work together on that and make sure the HR Department has the resources and that they continue to talk about that. It is not ever going to resolve itself, so they have to try to work together to make sure their communication line is open and active, which is a good step. A lot of time and energy has been spent on communication outreach, branding, or marketing. There are a lot of education pieces in the community like Public Service Announcements (PSA) on problem gambling, responsible gaming, and all of those different pieces, but they do not speak directly to their community, which is really important to them. They need things that speak directly to their community, that the community recognizes them as their own, and that they are associated with them, their clinic, and what they have to offer. One of the first things they wanted to work on was reaching their people.

It was a large process. They created their own poster series, have their own PSAs that are played on closed-circuit TV in their clinic and in other parts of the Tribe, and did a community assessment to see what the problems were and what kind of messages would reach them. They conducted interviews with staff of the Tribe, the Council, and with walk-in patients to the clinic. Then they moved into developing some of those. They traveled around and worked with a lot of other places that have campaigns going on in different communities and casinos. They worked with Harrahs on their responsible gaming campaigns and met with some of their staff that developed it and who keep it ongoing. They went to other Tribal casinos throughout the United States that are doing responsible gaming campaigns and talked to them about what has been successful and not successful in their communities. That information was used to develop their own posters and

PSAs. Once those poster series and PSAs were developed, they did a lot of market testing and put the posters out there and asked if they really reached people, if they looked like it reached their families, if it was specific to their community, and if it would impact people. After they got that information back, it helped the program narrow down where to go. They are committed to ongoing review of that information because they know those kinds of campaigns get outdated really fast. What is relevant to the community today might not be relevant to the community in two or three years, so they did not want to just keep doing the same thing and hoping to get a different result. Once something appears out of date, people start to ignore it. Or if they have seen it too many times, they start to ignore it. A communications specialist is on their team who previously did communications for the banking industry and other industries outside of health care. Health care has a reputation for continuing to let things get out of date and are not really fresh, so it was really important to have a true expert to continually work on that.

The Tribe also has a treatment program brochure and does things in the Tribal News. They have an actual branding guideline that all of these things follow. The idea is that when people in their community see it, they know it is about problem gambling, they know it is coming from the Tribe, and they pay attention to it. Often times in clinics there are lots of things that are printed off a computer and posted all over the walls. They really try to avoid that by having a branding scheme going on. It has taken a long time for this to be sold to their community. The PSA video was too large to include on the PowerPoint, but she offered to send it to anyone who was interested in seeing it. It is not a secret; they do not want to have too much ownership of it, but want it out there for people.

The community assessment came up with the tagline, "By not gambling today, I was able to spend more time with my family." People feel that gambling really draws time away from the family, which is the center of their culture. That seemed to be something that really hit home for people. They have a 1-800 number hotline, but those posted in their community have the clinic phone number. They did not use their community members' pictures in the posters, but consciously went out and got actors to use because of confidentiality and other issues with people everyone knows. They did proof all the pictures of the people and their tone of voice with their community to make sure that, even though this person was not from their community, it still reflected what would connect them to the community.

The Puyallup Tribe serves 10 to 12,000 patients a year from about 250 different tribes around the country. Only about 17 percent of their patient population is Puyallup Tribal members. There are different levels of acculturation in their culture. To really look at the community and find out what resonates with them cannot just be what resonates with this 17 percent. Instead of using people, they tried the traditional use of animals, symbols, and culture in their campaign. There was a lot of concern about the people who gamble because they do not have a big family to spend their time with. The wolf poster is an example of one of the other ways they went. It says, "As I became lost in gambling, the trickster inside of me took over until I asked for help." Culturally, this animal is known as a trickster. Their brochure is tri-fold and follows their branding guideline: green for treatment and with the basket design on the front so that people recognize it and it resonates with the community. Those baskets were woven by a Puyallup Tribal member, and were photographed for this purpose. A Tribal newspaper comes out bi-weekly and is used for education prevention. About once a month, there are different articles in the newspaper on problem gambling and the

treatment program. Treatment counselors provide those articles to the Communications Director who gets them in the Tribal News. It is something that is done to continually reach the Tribal community and goes out to all Tribal members and is available throughout the community for other people. A lot of people in their clinic who are not Tribal members pick up the paper and read it all the time.

Community outreach has set aside one day each quarter where the clinic is open only to Puyallup Tribal elders who are 55 and older. There is a problem gambling table and counselors are there talking to people. It is pretty effective, because the clinic is closed to everybody else so it is not a busy day. It is a very slow, relaxed day, but it reaches their prime population because the elders direct the rest of the community. So if the elders get the message, it impacts whole families. A Tribal youth outreach program works with a lot of youth programs and events. Some of the problems start really young or are impacted by someone else in their family who is doing this behavior. The Chief Leschi School has had programming for education and outreach prevention and a drop-in session for problem gambling education was recently started. The biggest thing they hear people say is "I have a family member, how do I know if it is a problem?" This group is offering more information and a class where they can come and learn. The Tribe is really trying to get people to its door by saying people do not have to have a problem to talk to the counselors or know what is going on. The flyer for the education group has the same branding. The program has been able to implement universal screening for problem gambling in their medical clinic and throughout their behavioral health. A five-question screening tool has been put into an electronic health record, which is shared between behavioral health, chemical dependency, mental health, dental health, medical health, and the pharmacy. Everybody shares the electronic health record, which is a new development. Before, everyone had their own paper chart and nobody knew what the other was doing. Now, if a person is screened in medical, their counselor can see it. It is not used 100 percent of the time, but it is in the record and their providers are being pushed to use it 100 percent of the time. It takes time, and other things seem more important so they skip over it, but it is being pushed on them.

The program is also working on the outcomes of those screenings to turn into referrals. Ten years ago during tobacco cessation, the Tribe learned that people can be asked about it the first 15 times they come in and they will not say anything, but then the 16<sup>th</sup> time they are asked, they will say "yes, actually I will take that referral now." The program also provides outpatient treatment where an assessment is done and they have individual and group sessions. The numbers are very low in those, but they are trying to do all of these other things out in the community to make sure people start to recognize the problem and come forward. The program also refers out for inpatient treatment, which had been done for the Youth Chemical Dependency Treatment. When they started doing referrals for problem gambling, they said they were going to do the same values. The Tribe believes pretty strongly in not sending its people somewhere that none of the counselors have seen. So before it becomes part of a referral network, someone from the clinic has to actually do a site visit with the treatment center because it is never known what the quality is, based on the website or talking to the person who answered the phone. An inpatient preferred referral network is being developed, but it will be slow because each place needs to be visited. That is a protection that is put out there for the Tribe's community members. Ms. LaPointe did not know if that was unique or not, but it seemed like it was to her.

There are a lot of other things that are currently being done, like community-needs assessments that are being done on a three- year cycle. Every three years, at a minimum, the counselors go back to their community and ask whether the program is happening the way that people want it to be, what could be done better, what could be done differently, and if trends in the community have changed. It is important to make sure the program stays fresh and on top because there is no real point in continuing to work to develop something that is not fitting the needs of the community. That is also done in the diabetes program and a lot of other programs because a lot of work can go into something that ultimately is not reaching the community. They are also looking at developing treatment for social media, internet addictions, text messaging, and all those other kind of things that are out there that treatment programs are being developed for. This fits in with where gambling is going with the internet gambling phase, so their program will be able to have more experts on those types of addictive behaviors. That is where the Tribe is headed.

**Senator Conway** asked if their program had non-tribal and tribal counseling in its facilities. **Ms. LaPointe** replied their program serves 250 Tribes. It does not do counseling for non-Natives, but does counseling for non-Puyallup Tribal members. The program generally does not serve non-Natives in its clinic, except that sometimes services are provided to spouses of tribal members and step-children who are non-Natives but are still under the care of their tribal parents. If they are an actual member of a tribal household and their Behavior Health (mental or addictive behavior) is affecting a tribal family, then the Tribe can make an exception and see them. Mainly that is based on capacity because they are serving a very large Native population in Pierce County and are already having a hard time serving all of them. The program has already maxed out on its capacity just serving the people the Tribe is required to serve by Indian Health Service.

**Chair Ellis** asked if there were any other questions; there were none. He thanked Ms. LaPointe for an extremely impressive program.

#### **Approval of Minutes – April 11-12, 2013, Commission Meeting**

**Chair Ellis** asked if there were any suggested changes or corrections to the minutes; there were none.

**Commissioner Amos** made a motion seconded by **Commissioner Gray** to approve the minutes from the April 11-12, 2013, Commission meeting as submitted. *The vote was taken; the motion passed with four aye votes.*

### **ADMINISTRATIVE PROCEDURE ACT PROCEEDINGS**

#### **New Licenses and Class III Certifications**

**Assistant Director Tina Griffin** reported there were no unusual items or anything to draw the Commission's attention to. Staff recommends approval of all licenses and class III certifications listed on pages 1 through 18.

**Commissioner Gray** made a motion seconded by **Commissioner Prentice** to approve the new licenses and class III certifications listed on pages 1 through 18. *The vote was taken; the motion passed with four aye votes.*

**Rule Up For Discussion and Possible Filing**

**Staff Proposed Rule Change: Fingerprinting applicants**

Amendatory Section: **WAC 230-03-060** Fingerprinting of applicants

**Assistant Director Griffin** reported that RCW 9.46.070(7) requires the Commission to fingerprint and conduct national criminal history background checks on any person seeking a license, certification, or permit. It is also required for a person who holds any interest in any gambling activity, building, equipment used in those activities, or who participates as an employee of a gambling activity. The RCW states that the Commission must establish rules to delineate which persons named in the application are subject to the requirements. This rule proposal clarifies who does and who does not need to submit fingerprints and undergo the national criminal history background checks. It also clarifies that staff may fingerprint substantial interest holders when staff has information that the substantial interest holder may not be qualified to be licensed or participate in the gambling activity. It also meets the intent of the Statute and brings Commission rules in line with its current practice. Staff anticipates little to no impact on the licensees or applicants and recommends filing the petition for further discussion.

**Chair Ellis** asked if there were any questions; there were none. He asked if there was anyone in the audience that would like to address this proposed rule change; no one stepped forward.

**Commissioner Prentice** made a motion seconded by **Commissioner Amos** to accept for filing and further discussion WAC 230-03-060. *The vote was taken; the motion passed with four aye votes.*

**PUBLIC MEETING**

**Nominations and Election of Officers** (Effective July 1, 2013, to June 30, 2014)

**Chair Ellis** asked if there was a motion to nominate a Commissioner for the chair position.

**Commissioner Gray** nominated Commissioner Mike Amos as Commission Chair for the term expiring on June 30, 2014. **Commissioner Prentice** seconded the nomination. **Chair Ellis** asked if there were any competing motions to nominate any other candidate to be chair; there were none. *The vote was taken; the motion passed with three aye votes. Commissioner Amos abstained from voting and accepted the position.*

**Chair Ellis** asked if there was a motion to nominate a Commissioner for the vice-chair position.

**Commissioner Amos** nominated Commissioner Prentice as Commission Vice Chair for the term expiring on June 30, 2014. **Commissioner Gray** seconded the nomination. **Chair Ellis** asked if there were any competing motions to nominate any other candidate to be vice chair; there were none. *The vote was taken; the motion passed with three aye votes. Commissioner Prentice abstained from voting and accepted the position.*

**Other Business/General Discussion/Comments from the Public**

**Chair Ellis** opened the meeting for other business, general discussion, and comments from the public.

**Ms. Chiechi**, Recreational Gaming Association (RGA), extended her deep gratitude for Commissioner Ellis' service on the Commission. She said it has been a pleasure getting to know him. She pointed out that he runs a tight ship and that it was very much appreciated because he has conducted it very thoroughly. Although the RGA may have not liked some of the outcomes, they appreciated the ability to come before the Commission and have open dialogue. She wished Commissioner Ellis all the best in whatever is next on his life plan. The RGA will miss him.

**Chair Ellis** thanked Ms. Chiechi for her comments saying he appreciated them very much. He noted that earlier in the meeting, he had mentioned that he had enjoyed working with Ms. Chiechi, the other stakeholders in the industry, and everyone else that has participated in Commission activities.

**Commissioner Prentice** said it has really been a privilege working with Commissioner Ellis and how he approached issues in a very studious, very analytical approach. She said she hoped the Commission intended to carry on that approach, noting that Commissioner Ellis had put a real stamp on this Commission that she hoped would last for a very long time.

**Chair Ellis** recalled mentioning on several occasions the amount of input and education that he had received from Commissioner Prentice through a number of telephone calls and conversations throughout the time he has been on the Commission, particularly in the early years when he desperately needed that education. It has been really valuable to him, and he really appreciated Commissioner Prentice's words.

**Commissioner Gray** said she really appreciated the mentor that Commissioner Ellis has been for her this past year.

**Chair Ellis** thanked Commissioner Gray. He asked if there was any more public comment on any topic; there was none.

**Executive Session to Discuss Pending Investigations, Tribal Negotiations, Litigation, and the Qualifications of Applicants for the Director Position**

**Chair Ellis** explained he expected the executive session to last approximately 90 minutes, and then the meeting would be resumed for the purpose of selecting applicants to be interviewed by the Commission for the Director position. He noted the next meeting was scheduled for July 11 and 12 at the Bellevue Red Lion and suggested checking the Commission website prior to the meeting date for information on whether the meeting would be one or two days. He called for a break at 12:50 p.m. and called the Executive Session to order at 1:00 p.m.

**Chair Ellis** called the public meeting back to order at 3:05 p.m. He reported that in the executive session, Ms. Benavidez provided the Commissioners with applications for eight applicants who met the minimum qualifications for the Director position. They reviewed each of the applications,

including the application from candidate #1 who was deemed to stand out based on qualifications, as well as the applications for candidates #2 through #8 who would be good applicants for many positions. Based on that review, he asked if there was a motion concerning which applicant or applicants should be included in the interview process by the Commission for the position of Director of the Washington State Gambling Commission.

Commissioner Prentice made a motion seconded by Commissioner Amos that Ms. Benavidez schedule candidate #1 for an interview by the Commissioners.

Senator Prentice said it was very clear that, as they looked over the entire field, candidate #1 had many good qualities and believed this one jumped out, particularly with all of the background included.

The vote was taken; the motion passed with four aye votes.

### **Adjourn**

**Chair Ellis** adjourned the meeting at 3:10 p.m.

Minutes submitted to the Commission for approval,

Gail Grate, Executive Assistant

# Exhibit I



**WASHINGTON STATE  
GAMBLING COMMISSION MEETING  
STRATEGIC DISCUSSION  
WEDNESDAY, OCTOBER 9, 2013  
APPROVED MINUTES**

**PUBLIC MEETING**

**Chairman Mike Amos** called the Gambling Commission meeting to order at 9:45 a.m. at the Spokane Davenport Hotel and introduced the members present.

**MEMBERS PRESENT:**     **Commissioner Mike Amos**, Selah  
                                  **Commissioner Margarita Prentice**, Renton  
                                  **Commissioner Kelsey Gray**, Seattle  
                                  **Commissioner Chris Stearns**, Auburn  
                                  **Commissioner Geoff Simpson**, Issaquah  
                                  **Senator Steve Conway**, Tacoma

**STAFF:**                    **David Trujillo**, Director  
                                  **Mark Harris**, Assistant Director – Field Operations  
                                  **Tina Griffin**, Assistant Director – Licensing Operations  
                                  **Julie Lies**, Assistant Director – Tribal & Technical Gambling  
                                  **Amy Hunter**, Administrator – Communications & Legal  
                                  **Callie Castillo**, Assistant Attorney General  
                                  **Gail Grate**, Executive Assistant  
                                  **Michelle Rancour**, Administrative Assistant

**Welcome**

**Director Trujillo** welcomed everyone to the Commissioners' strategic topic discussion. He explained that at the June Special Commission Meeting there was indication of a desire to talk about strategic items and how certain items may impact how the Commission does or should do business in the future. The discussion is scheduled to last until 12:30 p.m. If it looks like it will take more time than that, the Commissioners may decide to continue the discussion at the November Commission meeting. Director Trujillo explained that he had sent a suggestion of various strategic topics to the Commissioners and Ex-Officio members for their consideration.

The first topic simply had to do with technology in general; the second item had to do with working within the legislative environment; the third topic was problem gambling; the fourth topic was conducting the business of the Gambling Commission, which he thought meant not the Commissioners per se, but how staff works; the fifth item was legislative reports; and the sixth item was technical assistance and training. Those topics were ranked by importance, so the four

items that would be discussed at this meeting were technology, working within the legislative environment, problem gambling, and conducting the business of the Gambling Commission. Director Trujillo explained that, because the schedule was quite ambitious, he had previously communicated with Commissioner Gray who has much experience in helping discussions move along.

### **Strategic Discussion**

**Commissioner Gray** explained the goal was to have an open discussion, whether or not a conclusion or decision was made. The ideas and suggestions would be recorded and may turn into decisions later. Commissioner Gray suggested the Commission read the series of questions within the technology topic area (excerpted in text box below). (Handout with questions on all topics is attached and incorporated by reference herein.)

#### 1. **Technology**

The same technological pressures that citizens are placing on state government to modernize the way it conducts business are the same pressures and expectations we are facing as changing technology reinvents the gambling industry every year.

I-582 and I-583 are current initiatives that propose allowing online intrastate poker. How do we prepare for this possibility without looking as if we are promoting it or somehow sanctioning it?

Digital currencies are becoming more common. Some are supported by government, such as the MPeso in South America, and others are not, such as the decentralized Bitcoin. As these become more and more prevalent, how do we keep informed of this technology and how do we ensure this technology does not enter Washington gaming unless the Legislature authorizes it.

How do we continue to plan for rapid advances in technology on mobile gaming devices such as cell phones, notebook/notepad computers, or Google Glass that can impact WA gambling, as well as electronic enhancements to traditional gambling games?

How do we address the gambling industry's desire to be able to enhance their gambling products with advanced technology?

**Senator Conway** indicated he was interested in the whole online gambling issue in terms of what was going on in Delaware, Nevada, and New Jersey, and also to figure out how to anticipate what may be happening as people are online.

**Commissioner Gray** asked Commissioner Simpson if his idea was to really review the RCW.

**Commissioner Simpson** affirmed, noting that the last time the RCW was modified with regard to technology changes was Substitute Senate Bill 6613, which was Senator Prentice's bill in the 2006 legislative session.

**Director Trujillo** thought it was important to step back before the RCW in question, moving straight to the Constitution of the state of Washington. Article 2, Section 24, Lotteries and Divorce, from that Constitution were included in the agenda packet. It is important to understand the foundation from which the Commission began to operate. Section 24 says the legislature shall never grant any divorce. And lotteries shall be prohibited except as specifically authorized upon the affirmative vote of 60 percent of the members of each house of the Legislature, or notwithstanding any other provision of this Constitution by referendum or initiative approved by 60 percent affirmative vote of the electors voting thereon. That is the foundation from which the Gambling Commission came from and from which everything else now flows.

The legislative declaration, which is RCW 9.46.010, describes a little bit about what the Commission is to do. Then there are about 21 sections in RCW 9.46.070 that define the Commission's powers and duties. The Legislature determined the Gambling Commission was a law enforcement agency, which is a healthy distinction from a criminal justice agency. In 1988 came the Indian Gaming Regulatory Act. That framework provided the foundation for the Tribal Compact environment that the Commission operates under. RCW 9.46.240 was brought forward with the change and citizens believed it was only the State Legislature that was making internet gambling illegal. But it was the Constitution that declared that if it was not specifically authorized, it was not legal. This simply clarified it into one of the most clear internet statutes in the nation.

**Senator Prentice** recalled that all the Legislature did was insert the word "internet." She said she was approached by Jerry Ackerman of the Attorney General's office, who asked her to do that legislatively because there was a lawsuit involving the World Trade Organization and they wanted the state to be consistent. It seemed innocuous, but there were a lot of people who thought the Legislature was taking their rights away from them. That was why it was extremely important. If it was not specifically permitted, it could not be done anyway, but the hysterics that went around nationwide was pretty surprising.

**Commissioner Gray** explained that she would like the Commission to have a discussion on these topics, but would like to first get some of the ideas down on paper and then open it up for a discussion. Internet gambling is coming into the United States, whether it comes into Washington or not is another question. To answer the question that Senator Conway proposed, the Commissioners have an obligation to discuss the topic and figure out what the expectations are. Commissioner Gray asked the Commission to write down a couple of their thoughts with respect to the two questions that were asked: what should be one change the Commission would like to see made that would enhance the role of the Commission to deal with this changing environment; and how to anticipate and what to expect with respect to online gambling as it relates to other states.

**Senator Conway** said there was some history around internet interstate compacts and revenues with the Horse Racing Commission who does online gambling on horse racing in

this state. That is something that goes on and the state has a share of that revenue. If this becomes big, and Washington citizens engage in it, revenues will pour into the other states and Washington State is not going to be happy about that. Online gaming came about with horseracing because people were participating in the internet. The Horse Racing Commission went to the Legislature who changed Washington law to ensure that the state captured the revenues to help that industry. He said he was just raising that point as a strategic problem.

**Chair Amos** suggested adding a discussion about how to capture monies for revenue for Washington State when this comes – and it will be here. He thought it would require somebody who had technical knowledge on how to track people on home computers that are online playing poker with somebody in Mississippi. Somebody like Special Agent Dibble, who is really sharp in computers, could tell the Commission how to track that.

**Commissioner Simpson** said that, when looking at the bill that Senator Prentice had passed, one of the things it did was to specifically add the words "the internet," "a telecommunications transmission system," and "or similar means." He thought one clarification that could be made to this RCW was to make it clear that Washington does not allow any kind of new forms of gambling. Currently the RCW says "whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, the internet, a telecommunication transmission system, or similar means." Commissioner Simpson suggested simply changing "or similar means" to say "or any other means." That could end any possibilities that there was some other technological advancement along the horizon that the Commission was not going to anticipate. The other thing that bill did was to change it from a gross misdemeanor for a person guilty of this to a Class C felony. If the state is experiencing difficulties with people who are disregarding the law and conducting illegal online gambling in Washington, then this Commission should consider changing the penalty for that. If it is not appropriate, then the Commission should recommend the language be changed in order to stop the illegal activity.

**Commissioner Gray** asked if Commissioner Simpson was suggesting the Commission look at Substitute Senate Bill 6613 and enhance it so there would not be any internet gambling.

**Commissioner Simpson** replied that was the intention of the bill. It had been silent on internet gambling, so Senator Prentice's bill specifically called out internet gambling. He suggested this discussion be about those things the Commission did not have any way of anticipating. He thought the Commission could strengthen that RCW just by saying Washington State does not allow gambling by any other means than was currently allowed. That would be something for the AG's office to look at. **Commissioner Gray** added that if, as Commissioner Amos said, the Commission anticipates there would be online gambling, it would then require some change in that legislation. **Commissioner Simpson** replied that online gambling was already illegal in Washington and is a Class C felony if convicted.

**Commissioner Gray** asked if he was suggesting changing that, which would require changing the law. **Commissioner Simpson** affirmed, if the state wanted to allow online gambling, which he did not think it should, the Legislature would have to change the law.

**Commissioner Prentice** suggested assessing where the people of Washington State were in terms of gambling before the Commission plunged ahead that far. She explained the Legislature was having hearings all over the state at that time. There was one consistent message that came through, and it was very broad: where the state was, whatever was being done right then, it might be more than some wanted, but it was okay, but do not plunge any further. That was in 2006, and as time has gone on, people may have changed in their acceptance. Commissioner Prentice recalled that when the Lottery first came in the implication was that it was going to go to education, but the actual bill did not say that. So there was always a disconnect between what the public thought and what the Legislature knew. Commissioner Prentice did not want to create that kind of animosity and suggested making it very clear that the Commission was doing this, but that there was acceptance from the people of the state of Washington. The public needs to know what the Commission is doing.

**Commissioner Stearns** commented on the suggestion about how the state captures revenue, how to track it, and what was one change the Commission would like to see to enhance their ability to work in this environment. He thought they should discuss how to allow the Commission to recommend a strategy for the state to authorize and regulate internet gaming, which he thought was the future. He did not want to ignore it; he thought the Commission needed to be experts on it. He said he liked the idea of holding the kinds of hearings where they become experts at the issue. Commissioner Stearns also thought it would be a great idea to have a professional economist work with the Commission so they could better understand the economic environment and the implications for the state.

**Commissioner Gray** agreed with Commissioner Stearns and thought it would be good to become experts on it and perhaps as a Commission look at bringing in an expert to talk to them about the future and how to capture those revenue funds.

**Senator Conway** thought if the Legislature wanted anything, the Gambling Commission could do a strategic study of the impacts of the changes that are going around the internet. He said an example would be what the Legislature was doing with regard to trying to get to a streamlined sales tax and a destination sales tax as a way of capturing the lost revenue going on by people going on the internet and purchasing goods out of state. Congress is considering major legislation around that. The fact is the internet has become the way business is being done. It is obvious that people go online and they do not understand that they cannot do something because they do not know the RCWs. Senator Conway recalled that at the July Commission meeting, the Commission talked about how internet gaming could be tracked and how the Gambling Commission tracks it, which was a very interesting discussion. He thought that, with more states considering online gaming, he anticipates this to start tumbling and much like horse racing, the state will be drawn into it. Senator Conway thought strategic planning by the Commission around this and understanding what was actually going on currently would be very helpful to the Legislature.

**Commissioner Gray** said what she was hearing was that one of the things the Commission could do that would also be helpful to the Legislature would be to undertake a real look at online gambling, what its impact would be, and the possible revenues.

**Senator Conway** added that involved in that, as Commissioner Simpson suggested, was whether the RCWs needed to be changed. He asked if the Commission needed to anticipate further change. He thought it was wise to plan for this because it is here and it is reshaping how the state currently collects sales taxes. The reality is that people are doing more on the internet and they use it constantly; it is becoming part of our world and younger people are always on the internet. It is just good public planning.

**Commissioner Gray** suggested tapping into some of the experts the Commission has to look at online gambling across the country.

**Director Trujillo** thought this discussion illustrated why this was a good topic of discussion. The Commission is fairly knowledgeable of gambling and has such diverse thoughts on it and he could only imagine what the public thinks about it, since they do not really have as much of a background as the Commission does. He shared that having been in this for awhile, he could see that there are technological pressures to be faced at some point. Washington is a very conservative state when it comes to gambling, evidenced by two public opinion surveys that basically said the citizens were okay with where gambling is currently, but they do not want to see it expand. Plus there were the initiatives that were put forward that failed because the people did not vote in favor of them. Knowing that, and recognizing what is happening outside the boundaries of Washington, is something the Commission needs to reconcile a little bit, even if it is just to change the statute to clearly say absolutely no way, or to step on the other side a little bit and provide information that the Legislature could use to make good informed decisions. There is a difference between internet gambling and intranet gambling, which is what the states are moving forward with. Intranet gambling is within the boundaries of the state. Director Trujillo expected to see the states have the ability to enter into compacts with other states. As Washington legislators begin to field questions in the upcoming session, it is good to have this discussion. Staff gets these questions all the time and the Commissioners will also be getting these questions from the public and constituents. It is a good topic from the standpoint of bringing this up as an awareness topic for discussion.

**Ms. Hunter** said she thought it was a testament to this Commission and ex-officio members that they were taking the time to have this discussion. She really appreciated it because it brought up all of these things that people are hearing about. In meetings with legislators, staff is asked very direct questions about what they think about internet gambling. She recalled someone asking her what her best advice would be to the legislators if they were to allow internet gambling. It would be helpful to know where the Commissioners are on that issue. Sometimes in those discussions, Ms. Hunter felt like she was on this line and was not sure which side of it she should be on because she was not sure where the five Commissioners and

the four ex-officio members really were on the issue. The Commission wants the Legislature to make good informed decisions, so some of the discussion about the economic impacts would be really important. It is also important from the perspective of the licensees and the Tribes that are currently involved in gambling to understand how that would impact them, because these are the people the Commission have worked with for a long time. She thought the Commission could appreciate all of the economic impacts of their businesses, regardless of which part of the industry is offering that gambling. Ms. Hunter thought that, particularly with a couple of the initiatives that are out there, legislators want to know what is going on in other states and she was never quite sure how much information the Commission wanted staff to provide in response to those questions. She has had questions about what the Commission thought of the initiatives, about Delaware's approach, about Nevada's approach, and about New Jersey's approach. Ms. Hunter appreciated the discussion, finding it very interesting. She said it was much easier to shop on the internet than to drive to the stores, so there are a lot of purchases made that way; it is true that the internet is where people are going.

**Senator Conway** indicated he thought it would be good to include the article about where, in Nevada, people can use their cell phones to legally gamble. He asked what was going to stop Washington citizens who are using their cell phones in Nevada to gamble from continuing when they get back home in Washington where it is illegal. Nevada's move online with gambling activity is just going to spread. He asked how the enforcement was for this and thought the enforcement side of this was another strategic issue. Senator Conway said he was not trying to judge what the Commission should do here, but he thought they needed to strategically discuss what the impacts would be when people do this. He felt it was fascinating and it was going to spread. He recalled when this internet discussion was started. The federal government had a really clear federal objection to anyone getting involved in internet gaming. It seems like now that legal environment is changing and states are entering into internet gaming. Senator Conway thought the Legislature would need help, and he warned they were looking for revenue in Olympia because of the needs of the state and schools because other things are stripping Washington's revenue capabilities. This is a high issue in Olympia and it is going to come up. He said some guidance on these issues from the Gambling Commission would especially be helpful. Help from the Commission on that issue was going to be critical in the future, and he thought it was strategic planning, as much as anything.

**Commissioner Stearns** said there are these two initiatives that are in various stages, which might create some kind of a timeline. He indicated his preference was that the Commission be able to weigh in and assist the Legislature. There are all these questions and all these issues, and then the Commission makes a recommendation. It looks like there is a timeline and he did not agree that this gets to be studied for five years.

**Assistant Director Harris** responded that his staff is currently tasked with the internet gambling regulation. They are looking at what other states are currently doing to find the good, the bad, and what the problems are. He thought the wait and see approach was good on

the Commission's part to see where the other states jump in, what the shortcomings are, and the different approaches taken. One state is looking at more of a revenue generator and the regulation approach is secondary. They have all had some kinks they are working through, and AD Harris thought that was good to see. When the Commission has to go forward and do something, they can actually find the best method that works for the Commission and learn from the states that jumped in right away. The Commission staff is quite prepared for some of the problems that would be encountered. He said there are ways of determining if people are still gambling on their cell phones inside Washington State, like geo-location etc. He thought a couple of states use two methods to confirm where somebody is, and another state will use three methods. So the more methods they have, the more reliability there is to it. The Gambling Commission has the potential, the experts on staff that could give the Commission an Internet Gambling 101 class – the nuts and bolts of how that actually works.

**Commissioner Stearns** asked if Assistant Director Harris could set something up for the Commissioners. **Assistant Director Harris** replied something could be set up either informally or formally.

**Director Trujillo** said that Gambling Commission agents have had great success in the enforcement of illegal internet gambling because the strategy has not been focused on players, but rather on operators and providers, especially those currently within Washington State. He thought that at one point there were several thousand operators that would accept internet bets from within Washington State. After Gambling Commission enforcement activities partnered with the other states, that number is now under 500, which may still sound like a lot, but it is much less than it was previously. As long as outside operators or vendors have a hope of obtaining a license in another state to conduct this activity, they are likely to look at the Washington State statute and see that it is very clear that they probably should not allow bets coming from Washington citizens because it is illegal. Therefore, if they want to have a chance of obtaining a license in one of these other states, they probably will not accept those bettors. That has also been part of the Gambling Commission's success, because of the clarity of the current Washington State statute.

**Assistant Director Griffin** explained she has been watching and monitoring the licensure activity for the three states that have gone forward with online gambling to see what they are doing in terms of who they are licensing and how that is progressing.

**Assistant Director Julie Lies** said her staff was focusing a lot on online gambling. She thought the Commission needed to focus on the technological advances to existing gambling activities. There are a lot of people out there that are trying to add the bells and whistles as they try to attract the same types of customers in a brick and mortar location as they would online. That was another important part that the Commission needed to keep an eye on as well.



**Commissioner Prentice** pointed out that she thought that, although they were doing this in Nevada, they were broke. She wondered if there was sufficient revenue to make it worth it. She said one of the things that concerned her was that kids were adept at this too and she thought the Commission should take a big look at that. She said she realized that the Commission has tended to be more conservative, but all states were not equal. Washington gambling laws started in different way, so what people tolerate or even know -- and she thought that some of those states that were plunging into it did not really know what they were doing. In some states it was not regulated at all, so Washington is well ahead by having its 1973 law in place even before the Indian Gaming Regulatory Act (IGRA) hit. It was not that Washington State was so grand, it was just that it has been a lot more cautious, which has been fortunate. She always said that the state, with that awful situation in King County where they cheated so much, had a good law. That is where this state is, and it is better regulated than a lot of other states.

**Commissioner Gray** captured some of what has been brought up so the Commission could continue with their discussion: look at a study of the impacts of internet gambling, both economic and the full range of impacts; look at some other states and what they are doing, how they are regulating, and whether it works, including the good and bad of that – there may be some folks within the Commission that could help with that; review the legislation and see what might be needed in terms of changes; connect with the Commission’s partners, clients, and the people that staff currently work with, both in terms of tribes and house-banked card rooms; and look at enforcement. She also heard that the timeline was pretty close and that this needed to begin shortly since there were at least two initiatives currently concerning online gambling, and that the Commission needed to study this and become more aware in terms of their own knowledge about internet gambling and its impacts.

**Commissioner Simpson** said he thought it would be a mistake for Washington State to begin to allow internet and online gambling. Not only would it negatively impact those people that are conducting brick and mortar operations here in state, it would transfer money out of state, and it would be much more difficult to enforce winnings and whether they were conducting it legally – are those people in the Cayman Islands who are running poker games cheating the people here in Washington. He said the Commission, as it moves forward, should be very cautious about those things. Another topic he thought deserved consideration was a broader discussion of what gambling is. People can go online and find a site that lets them play some kind of gambling operation, like an online slot machine, which does not cost them anything. They can buy credits and can continue to play. He did not know if that was actually gambling. He did not think Washington State statute was very clear about what exactly does constitute gambling. Is it the purchase of credits online? Is it the ability to win something of value? People are always dreaming up new ways of doing things on the internet. He asked if Director Trujillo thought that was something the Commission should discuss.

**Director Trujillo** affirmed that was correct. People are creative and staff receive questions all the time about whether this online game, or free play, or if social gaming qualifies as

gambling. Staff looks at prize, consideration, and chance. If any of those elements are not included, then it is not considered gambling. However, as time goes on and people become more creative, the lines become blurred. Some of the questions staff receive from legislators are from other questions they receive from their constituents who would like to come do business in Washington State, but they are not sure if what they are doing is gambling or not. Generally speaking, staff does not look at social gaming and make a determination that it is not gambling, but instead staff does the reverse by providing the three components of gambling. Then if it meets the definition of gambling, staff lets them know it is gambling and they will enforce the law. Part of that is because there is a whole exploding realm of technology that is a resource impact. Another part is that every single case is unique and there are always different nuances to every scheme. Director Trujillo pointed out this was one of the topics that was included for later.

**Commissioner Gray** said that Commissioner Simpson was pretty clear about not allowing online gambling and asked if he would be willing to have the Commission look at and examine the economics and the kinds of impacts on both Gambling Commission clients and partners, and the kind of enforcement issues.

**Commissioner Simpson** agreed he thought it was worth looking at. He added that he would also like to discuss the impacts on problem gambling and the economic impacts on families and underage gambling. He thought it was a real problem because it was too easy for somebody to just get online and gamble away the rent money. It takes more effort to get in the car and go down to the nearest gambling facility.

**Senator Conway** added to his earlier comment about people being able to use their cell phone to gambling in Nevada. They are going to allow access to online poker with the cell phone, but what about after they have used their cell phones on vacation in Nevada, is that signal going to be blocked? Are they going to suddenly say those cell phones are now outside of Nevada and so the signal is blocked? He asked if that was a federal law, if it was interstate commerce. **Assistant Director Harris** replied they do have that capability. Part of one of the aspects in Nevada is geo-location, so if that person's cell phone shows they are outside of Nevada, then they would not be able to participate. The trouble Nevada is running into is with people that live a couple miles inside the border of Nevada not being allowed to gamble because they are close to the border and the geo-location cannot determine where those people are located. They would rather exclude somebody as opposed to include them.

**Senator Conway** asked if they had the capability to put a block on a bet coming from outside Nevada. **Assistant Director Harris** affirmed, adding that just as with any technology, if someone wants to spend enough money and be creative enough they could probably get around it. **Director Trujillo** added that he believed those were operator or vendor blocks – it is not the government imposing those blocks. **Assistant Director Harris** affirmed.

**Commissioner Prentice** said she thought one of the things being overlooked, even since the 2006 law that was referred to, was at that time it seemed like life was simple. It was against federal law. Times have changed. The rug has sort of been pulled out from under and they said now it was up to the states to decide, which is why that proliferation is being seen out there. She thought the Commission needed to keep their bearings as they plunge ahead and see where they fit in and if there were going to be other stuff being done at the federal level.

**Commissioner Stearns** asked if Commission staff work with Senators Cantwell and Murray or the Representatives and whether they ask about the internet gaming. **Director Trujillo** replied that, generally speaking, Gambling Commission staff has not worked with Washington State representation in Washington, D.C. Contact has been with local legislators here in Olympia. Staff often tries to balance how to approach something without appearing to drag the Commission along and over-step staff's authority, which then translates to a HB1295 initiative like last year. It is all an interesting balancing act.

**Commissioner Gray** asked if it was possible to ask staff to basically put together a study where the Commission could add some of these questions; maybe have an economist or someone familiar with online gambling to come in and provide that data so the Commission can move forward to come up with recommendations for the Legislature or ideas for the staff. **Director Trujillo** replied that staff could do something; although, he was not exactly sure how complete it would be based upon the timeline. He thought that providing factual data versus recommendations at this point would be advisable. **Assistant Director Harris** pointed out there might not be a lot of data out there, since this is a fairly new activity, and the states have only been conducting it for less than a year at this point. That might be a little bit of a constraint on what is available within the United States. He said he knew there were a couple of provinces in Canada that have been doing it a little bit longer, but within the United States, it would be a very short period of time for assessing that data. There is not going to be much data available.

**Commissioner Stearns** thought there was a lot of pre-packaged information put together that is out there. For instance there was a whole online gaming association in Congress at the G2E.

**Assistant Director Harris** indicated that, if the Commission was looking for statistics inside the United States, only a small amount might be available at this point because the activity has not been conducted for very long.

**Commissioner Gray** thought it might be helpful to the staff if each of the Commissioners gave their ideas of where they might look for information to the staff. For example, some of the Commissioners may know some congressional people who might have staff that is aware of some of the internet gambling. They could go to them and ask them to come in fill the Commission in on what they see as the future. She asked about the online gaming association

that Commissioner Stearns mentioned. **Commissioner Stearns** he replied it was a daylong session at G2E, that the AGA's annual conference had a whole day session on it.

**Commissioner Gray** said, to wrap this topic up, she was sensing there was a conclusion that the Commission needed to look further into internet gaming and that they would ask staff to put together some kind of factual information on potential economic impacts, social impacts, and enhanced internet. They would be reviewing the legislation and providing the Commission with an opportunity to talk with some of the clients that they currently serve.

**Director Trujillo** said AAG Castillo said a motion was not necessary because this was just a discussion and that a suggestion is just fine.

**Commissioner Gray** asked if there were any other comments on technology or internet gaming. She knew there was at least one question about digital currencies and asked if staff was familiar with that. She asked if Director Trujillo wanted to talk a little bit about internet currencies.

**Director Trujillo** responded it was just another example of what is proliferating out there. Eventually, digital currencies such as Bitcoin, which is probably one the Commission may be familiar with because it has been in the news recently, is a decentralized digital currency that is used to purchase goods from one person to another and has the value of whatever people decide its value is. Because it is decentralized, there is no one place for federal agencies to step in and regulate. However, they have had recent meetings with the Department of Justice. Another one is called MPeso, which is changing life in South America. He thought that one was a government-sanctioned digital currency. There are more out there and it will be interesting to see how that manifests itself in Washington State. People will go to legislators or Commissioners and ask if they think it is something that can be utilized in Washington State. The answer would be “probably not.”

**Senator Conway** pointed out an ad he has seen where someone transfers money from their banking account directly to another person using their cell phone. He asked if that was what Director Trujillo meant by “digitized.” **Director Trujillo** replied that was probably not the same thing. That would simply be electronically transferring money from one account to another account. That is money; this is something that does not have the foundation as tangible money but is more like a barter system that has the value that people determine the value is.

**Commissioner Simpson** explained it would be like a group of people getting together and deciding that certain rocks were worth a certain amount and the more rocks someone had, the more currency they had. **Director Trujillo** agreed. It is essentially utilized on the internet and is making its way into various gambling arenas as well with all the technology there is out there. Part of what Washington State is looking at is how to utilize this technology to best serve its citizens who, for the most part, will begin accessing services on mobile devices. That

encourages repackaging of computers and cell phones, which then encourages repackaging of electronic gambling, which has changed so much in the past few years and will continue to change.

**Commissioner Gray** thought that was another topic area was how the Commission addresses the gaming industry's desire to be able to enhance their gambling products with advanced technology, which comes before the Commission regularly. How does the Commission address that regularly in either a new game, or an update on a current game, or a new way to play an existing game?

**Commissioner Simpson** said that, as a new Commissioner, he had a hard time envisioning a method or some broad policy that the Commission could employ that would work. Because every new technology is individual in its nature, the Gambling Commission, by necessity, needs to examine each one and determine whether they believe it is something that should be allowed in Washington State. Aside from his general belief that the Washington State should not allow online gambling, some of the proposals the Commission has received to allow different types of games shows they are highly individualized, and he did not know how the Commission would take a shotgun approach to that.

**Commissioner Prentice** said she was looking at what she saw as a consistently slippery slope. There was a time not so long ago, when Congressman Barney Frank was the advocate for internet gambling. He is now retired and not there anymore. But at the time it was against federal law, but that was changed. The President was approached about that and then they said it was up to the states. So there are things changing that people really have no control over. The political discussions are out there and the Commission has to live with them also. She thought she knew what the law was, and then the rug was pulled out from under her. She said the Commission needed to pay attention to what was happening out there and what the stresses and the urges were. She also kept thinking she did not know who it was that was getting rich because she saw some states really struggling. She recalled the last initiative that failed by 61 percent, so she was concerned with the receptiveness of the public and whether they really wanted this. She admitted she had no idea how the signature gathering was going on with the initiatives that are currently out there because she has not seen any of them. She asked if Ms. Hunter knew.

**Ms. Hunter** replied she assumed Commissioner Prentice was referring to the poker initiative. She said she did not know, but staff did contact the Secretary of State's office to see if there were any types of check-in processes and there are not. The Secretary of State's office did not know how many signatures had been gathered; although, one of the organizations put out a statement to their members letting them know they needed more money in order to work on signature gathering and that they did not have that funding. **Commissioner Prentice** said she has not seen any signature gatherers at the grocery stores or any place else, which indicated to her that it was kind of sluggish with no momentum for it.

**Commissioner Simpson** asked if it was possible to hear from the public about that. **Director Trujillo** replied that would be the prerogative of the Commission. **Commissioners Simpson and Prentice** both said they would be interested in hearing what anybody had to say.

**Commissioner Gray** asked if there was anybody in the audience that would like to speak to this issue of technology and what they think would be coming forward. **Commissioner Prentice** added she was sure the public had opinions on this issue.

**Mr. Victor Mena**, Chief Operating Officer for Washington Gold Casinos said the topic being discussed is a very broad in scope. The topic in his mind in terms of what is – they are kind of linked. The Commission is discussing how the online gaming aspect is somehow in time going to be part of reality. He thought that, in time, things that are done in his industry would have to evolve as well as part of that reality. There are some products that we use that he has found could be a little antiquated; pull-tabs is an example of something that is fairly archaic and very cumbersome to deal with from the standpoint of being able to accurately determine that the product's integrity is still there. Something as simple as opening up a bag of pull-tabs and having the humidity factor of that bag's tickets evaporate over the course of two weeks to show that now they have fewer tickets than they originally started with, but that bag had never been touched. He thought that type of issue was one of inaccuracy that lends itself to the question of gambling; the integrity of what takes place gets questioned based on the fact that somebody could say they have a shortage, but the reality was that they did not have a shortage. The reality was that the product itself was flawed from the standpoint of being able to monitor the product. It is cumbersome to do it correctly because it is a bag of 6,000 tickets and somebody has to take the time to count those tickets. Those types of things could absolutely be looked at as ways to enhance and change, and control and regulate much more accurately. That was just one example, but obviously there are other examples of how the integrity of certain products could be corrected.

He said he has looked at things in the industry as far as table games that are completely electronic. And this Commission, a few years ago, looked at a product that was very similar to that. The integrity of that game gets controlled by technology so they would not have a card missing, per se. And this happens in his world when a dealer makes a mistake washing a deck on a table and a card slips under the rail because the dealer was unaware, brought the cards back in, and started to deal a game. Now the integrity of that game was compromised. It is human error; it happens, and it is not intentional. A table game like what was demonstrated to the Commission a few years back would actually control those types of human errors. So, in retrospect to the Commission's question, he thought that, in time, technology would be needed to keep gambling safe and honest.

**Commissioner Gray** thanked Mr. Mena and asked if there were any other comments from the audience; there were none. She moved on to the next topic.

## 2. *Working Within the Legislative Environment*

We are responsible for regulation and enforcement of licensed gambling activities, unlicensed but authorized gambling activities, and illegal gambling crimes. However, our funds only come from licensed activities, a declining revenue source. Every time we stop an illegal or unauthorized venue, theoretically, gamblers move back into the legal regulated environment. Also, free online games are becoming prevalent resulting in legislators and staff continually faced with vendors who want a determination that their product is not gambling. How do we connect our funding source to our legislative mandate and changes in stakeholder expectations?

How can we build confidence in the Legislature that the Commission can regulate gambling without additional legislative restrictions?

Today, we can effectively enforce the laws against illegal online/electronic gambling but if our funding is declining how do we remain effective in this role as well as be poised to regulate it should the Legislature wish to authorize online gaming?

**Commissioner Gray** asked the Commission to read the paper on working with the Legislature, (excerpted in text box above) which includes an introduction that says “the Commission is responsible for regulation and enforcement of the licensed gaming activities, unlicensed but authorized gambling activities, and illegal gambling crimes. However, Gambling Commission funds only come from licensed activities, which is a declining revenue source. Theoretically, every time the Commission stops an illegal or unauthorized venue, gamblers move back into the legal regulated environment.” Also included in this topic were two or three questions, and an RCW. She asked the Commission to jot down some ideas around the question of how the Commission could enhance the confidence of the Legislature that the Commission is effectively regulating gaming. The RCW has to do with working with the Legislature, building confidence in the Legislature, and effectively enforcing the laws against illegal gaming.

**Chair Amos** called for a break at 10:55 a.m. and reconvened the meeting at 11:15 a.m.

**Commissioner Gray** pointed out that one of the questions asks how the Commission could build the Legislature’s confidence in the Commission that it can regulate gambling without additional legislative restrictions. Today, the Commission can effectively enforce laws against illegal online electronic gaming, but its funding is declining. She asked how the Commission could remain effective in this role, as well as be posed to regulate it, should the Legislature wish to authorize online gaming. She asked Director Trujillo to provide some information about RCW 9.46.070 for fees and how those are established.

**Director Trujillo** reported the Commission has an interesting fee structure, which the licensees would probably say was probably the most complex fee structure they deal with

when it comes to city, county, and state governments. An initial applicant has to look at that fee structure and try to guess how they were going to operate in a given year because the license fee is based on a class activity, which is based on the actual gambling that is conducted throughout the year. Then they have to renew their license prior to their year end, which means they have to look at their numbers to determine if they will come close and whether they need to pay more to increase the license fee class or less to decrease the license fee class. That can be problematic because the Gambling Commission sends out a renewal notice based on what staff estimated that person's license class was going to be at the end of the year. But staff does not actually know what their license class is until they report their activity for the year, which is after the fact. So it is an interesting structure that has been in place for many years.

When it comes to how best to utilize the fee structure in a declining license scenario, which is what staff is undergoing right now, staff has looked at restructuring the fee schedule, but with any restructure, some fees go up and some go down. The Commission has a broad mandate, which is unlicensed and authorized activities, licensed activities, and illegal activities. But the Gambling Commission's funding source only comes from licensed activities. So, as the Commission moves forward into the future, the question comes up on how best to operate that. Within the Commission's powers and duties is their authority to set fees or a schedule that covers Commission activities. That has changed over the years, but basically the fee structure has remained the same. It is a complex fee structure that is not easy to work through.

**Commissioner Prentice** wondered if it was possible to put together a brief summary that would answer some of the things being discussed today, particularly with all the questions that have come up as to who the Commission is and what the Legislature knows about it. She recalled that in her early days on the Commission, the legislators thought they were supporting the Commission and were surprised that was not the case. She noted that most of the legislators were extremely ignorant, even those that thought they knew. They think they know, and they sort of like it or do not like it. The Commission could at least give them something accurate for now to say this is how it is done. Commissioner Prentice suggested the Commission start sharing the information with the Commerce and Labor committee, which she thought still had gambling within them, and then see where that leads. She knew they have had some big discussions at some time or another, like a "Gambling 101," but only those that have a high interest attend.

**Commissioner Simpson** agreed there were so many things that legislators have to try to be knowledgeable about that it is very difficult, especially when they are first starting. He thought it would be good for legislators to have a clear understanding that this agency is totally dependent on fees. Every day, the average legislator probably gets thousands of pages of information given to them. But all the Commission can do is provide the information and hope they understand. **Commissioner Prentice** suggesting putting the information in a notebook and they could look it up when they need it.



**Commissioner Gray** explained she would like the Commission to discuss the questions about how to build confidence in the Legislature that the Commission is doing the job that it needs to do and how best to do that, given the lack of knowledge, the lack of updates, and the changing environment.

**Director Trujillo** thought it came on the heels of the legislation that was introduced last year. While the Commission and staff are very conservative, deliberate, and methodical in their approach, it certainly did not appear that way in the legislation that was introduced, which he thought was kind of the origin of this particular thought topic.

**Senator Conway** said he thought at times there has been an issue of communication with the between the Commission and the Legislature. So often that occurred around some gambling expansion type of issues that were in the Commission and then the legislators heard about them, which then creates mistrust. Keep in mind, the state has a pretty high bar when it comes to gambling expansion. Even in the Legislature, nothing is passed without a high bar of votes. Something as controversial as the expansion of gambling cannot be passed, for example, three to two at the Commission meeting because then the Legislature is going to say “wait a minute. You know, we have a much higher bar when it comes to the expansion of gambling in our voting.” Senator Conway thought that was where some of the suspicion in recent years around what was going on with the Commission came from. He said he wanted to share that with the Commission because the Legislature really feels it is their role to expand gambling, not through a Commission decision. He said in his years here, that was one major issue he has seen in Olympia.

**Commissioner Gray** asked if they knew what expansion of gambling was.

**Senator Conway** replied they usually have to have a ruling by the Secretary of the Senate currently as to whether a particular decision is an expansion of gambling. He said he was not sure what that means at the Commission’s level, but assumed their legal counsel would be evaluating whether a decision would constitute an expansion of gambling. Of course, the Legislature has many bills that come to the floor that are challenged on the grounds that it is an expansion of gaming. It is a high bar in the state Legislature. It is an issue the Commission has to be sensitive about when they are talking about relationships with the Legislature. Because if the thought is to move a gambling expansion issue through this Commission, then they are going to run right into the Legislature and efforts to curb or roll back the authority of the Gambling Commission. He said those are the kinds of issues recently that have come up.

The other piece is interaction with the Legislature through the Gambling Commission. For years Senator Conway said he chaired the House Commerce and Labor Committee. At the time, it was great because then Representative Alex Wood was on the Gambling Commission and would report back to the chairman of the committee about what was going on with the Gambling Commission. And then Senator Margarita Prentice played that role completely with the Senate. But the Commission has no control over the ex-officio members who are the

ones that provide the linkage to the Legislature. It is important to try and build that linkage if the Commission is involved in that. Senator Conway thought that, as long as the Commission had those linkages, everyone knew what was going on and what debates were going on, and that works. Sometimes legislators that are not on the committees that deal with the gambling issues get appointed to the Gambling Commission. Senator Conway has observed through the years that, when that happens, there is a breakdown of communication. He pointed out that he had no knowledge of what they are currently doing at the Lottery Commission or the Fish and Wildlife Commission – commissions really exist in a world of their own. Even though legislators do not read every report that comes to them unless they are very interested in the issue, there needs to be some way of communicating with the Legislature what is being done on the Commission level.

**Ms. Hunter** agreed with what Senator Conway said about the link between the ex-officio members being really critical. She thought there have been a couple of things in the past few years that have made more things that the Commission has to do. When Senator Conway was in the House, he chaired the Commerce and Labor Committee for many years before he was elected to the Senate. The Gambling Commission had two years where it went to the State Government and Tribal Affairs Committee before that was changed to the Government Accountability and Oversight Committee. Staff was constantly building those relationships with legislators and staff. At meetings with legislators, staff give them a two-page legislative newsletter that is put out twice a year and includes what has been going on at the Commission. Staff also gives them a brochure that answers those basic questions about the Commission that staff gets from legislators. She thought the role of the ex-officio member was critical and it was great when they were able to help convey that, which was easier when they were on the committee. Three of the current ex-officio members are on the committees. Representative Hurst is the chair of the House committee where the gambling bills go and Senators Conway and Hewitt are both on the Senate committee, which really helps a lot. Ms. Hunter said she has some good information available on those rulings in the Senate about expansion of gambling. It comes up definitely in the Legislature, but it does not come up for the Commission in the same way. Jerry Ackerman had talked about that quite a bit as the Commission has had different decisions before them dealing with expansion of gambling.

**Commissioner Gray** said she had a question that deals with the Legislature and really goes back to the discussion about the technological changes. Proposals for technological changes have come before the Commission and they have to ask if that would be an expansion of gambling, if enhancing the technology of a game meant that was enhanced gambling. She thought it would be really nice to have access to the Legislature to help them understand what it was that the Commission was being faced with and were being asked to make those kinds of decisions as to whether a technological change was enhanced gambling.

**Commissioner Stearns** asked if Ms. Hunter felt the Commission's reputation in terms of law enforcement was really strong and solid and what its reputation was with the Legislature.

**Ms. Hunter** replied she thought it was good. She said she had talked with staff about this last week at some staff training. It was sometimes actually good when the legislators did not know exactly who someone is because that means that people have not been complaining about you. She explained the first thing she usually covered was that the Gambling Commission was not the Lottery or the Horse Racing Commission. She has had many legislators tell her over the years that they know the Gambling Commission is a small agency that regulates a big industry, and that people do not complain about the Gambling Commission to them, which is good. She thought that, overall, it was pretty positive and she felt good about what staff does. Elections occur every two years, so there was always a new wave of people coming in. Ms. Hunter said she has done legislative work for the Commission for about 15 years and so those faces have changed a lot. When there is a big election with a lot of new people, then staff is out meeting with those new people and letting them know who we are. Staff does a lot more in the legislative outreach each year. Ms. Hunter explained she works on legislative issues almost every single day. Staff gets a good reception when they meet with legislators, regardless of their party.

**Chair Amos** asked if Senator Conway considered the request yesterday for an increase in the bet on a Baccarat game as an expansion of gambling. **Senator Conway** replied it was the sort of issue that comes up and they have to seek legal counsel on it. He gave an example of a bill that the Gambling Commission was neutral on – the Special Olympics raffle bill – that bill was a major change in how raffle was conducted in this state, was subject to a challenge on the floor of the Senate, came through committee without being challenged, got to the floor of the Senate and it was challenged as an expansion of gaming. The President of the Senate ruled it to be an expansion of gaming and so that was the sort of thing that goes on – would a particular game be subject to that challenge if it had to be authorized by the Legislature? That is where legal counsel is critical in terms of their evaluation. He said the House and Senate are a little different. The Lieutenant Governor, President of the Senate, has very distinct rulings. A bill could get passed through the House without a challenge, but then when it gets to the Senate it could get challenged, and probably vice-versa too. So this issue of expansion of gaming is a big issue in the Legislature. In answer to Chair Amos' question, that is where legal counsel comes in – to determine if a certain type of gaming constitutes a major change in the way the state does gaming and, as a result, would it be considered an expansion of gaming. That is what happens with those rulings in the House and Senate. It is important for the Commission to understand that process. He assumed the Attorney General was here for that very reason, in part to evaluate those issues. The enhanced raffle was considered to be an expansion of gambling and the state has had raffle businesses forever. This new way of conducting that raffle was considered a gambling expansion by the President of the Senate, and as a result, it was subject to a 60 percent rule. Senator Conway said that, because it was hard to know exactly how those rulings were going to come, but it was an issue the Legislature looks at very carefully.

**Commissioner Prentice** responded it truly depends on whether they believe it is or not, where they are coming from, and what their perspective is. She recalled one of the initiatives where

the proponents of it here said it was just a shift from one kind of gambling to another, and then it failed. At the Commission meeting in Yakima, she overheard the proponents at the next table say they did not get their message out. She recalled thinking the public felt it was an expansion of gambling. Whatever legal counsel might have said, they believed it was and that was why it went down. The Commission can be very technical about it, but they did not accept it, they did not want it, and it did not fly.

**Commissioner Simpson** said he was not on the Commission at the time, but understood there was something that concerned some legislators that the Gambling Commission did last year prior to the legislative session that prompted this legislation. He thought that was part of the checks and balances of the system here. The Legislature set up the Gambling Commission to be a separate entity that has specific authority and if the Legislature feels the Gambling Commission oversteps that authority, they can communicate in ways like dropping legislation to abolish the Gambling Commission. He said he once co-sponsored a piece of legislation with Steve Conway's seat-mate to make it a Class C felony to commit fiscal note fraud because it felt like some agencies were manipulating fiscal notes so that the legislation would not pass. So there are lots of reasons people file bills. He said the Commission had to be cognizant of the fact there was a wide variety – there are probably at least 98 different points of view in the House on gambling and 49 in the Senate – so it has to be recognized that the Legislature has their authority, and the Commission has theirs along with mandates they are subject to.

**Commissioner Gray** said she thought the way the Commission approached an issue, the kind of questions they asked – for example, Commissioner Prentice had said if the Commission asked the public if they wanted gambling to expand in Washington State, they may say no. On the other hand, if the Commission asked how the tax revenue from gambling or new technology in gambling could be accessed, the Commission may get an entirely different answer. It all depends on the question that was asked and how the question was asked. She asked if it was appropriate for the Commission to go through Senator Conway to ask the Legislature or the Committee a question. **Senator Conway** replied he did not recall, but he thought Commissioner Simpson was probably right about the Commission having their authority. He did not remember the Gambling Commission ever coming to him, even informally, asking if he would see whether something was going to be considered an expansion of gaming. **Senator Conway** referred to the mini-baccarat the Commission was looking at yesterday. He said part of the role of the Attorney General's representative was to play that role with the Commission to evaluate whether a particular proposal would be considered a gambling expansion. And then, within the Commission's authority, he assumed they would use that legal counsel for that purpose. Then the Legislature would look at it with their checks and balances, and if they considered it to be a gambling expansion, that would be when the Commission would probably see legislation appear. But that is a big issue. Gambling expansion is probably the biggest issue this particular Commission has to manage. From the legislative perspective, he thought the statute was pretty clear that was a legislative prerogative. Whether something is considered to be an expansion of gaming is the key issue.

**Director Trujillo** added that he certainly welcomed Commissioner Simpson as an addition to the Commission. He thought that what also may have occurred was that the rule process that was behind the legislation that was introduced last year was not a quick rule process, by any means. It was not three months, or six months, or nine months – it was at least two years. Commissioners and staff recognized that it was somewhat controversial. The petitioner withdrew it, made some corrections, and brought it back. That was the type of process the legislators were not a part of – not the Commission ex-officio members, but the committee members that then went to hear that particular bill. So the Commission, with Senator Prentice as a long-serving ex-officio, has been very methodical in its approach. The Commission does depend heavily on staff, initially, to look at their expertise to see whether something is compliant with current rules. If staff has any doubts whatsoever, they look to our legal representatives. It is really only then that something comes before the Commission for their thoughts. So, it is a check and balance system even before it makes its way to the Legislature.

**Commissioner Prentice** thought it was really important to remember the history of where the ex-officio members came from and why they are on the Commission. At the time when the Indian Gaming Regulatory Act (IGRA) came about, there was discussion within the Legislature as to how they were going to deal with it. One of the things that was brought up by Senator Jeannette Hayner, who was in charge, was that they did not want the whole Legislature voting on tribal compacts, and it made a lot more sense to have somebody from each caucus on the Commission. Commissioner Prentice said she was the first ex-officio to start attending the Commission meetings regularly. She said she was viewed at first with great suspicion and she was not necessarily welcome. But, those were necessary positions; it was not as if it was all cut and dried and the ex officio members understood what they were about. Commissioner Prentice thought that the ex officio members have been enhanced by regular attendance. It is their role to keep the Legislature informed as to what the Commission was doing. She said opening it up made a huge difference, which she has been around and watched it evolve.

**Commissioner Gray** said what she heard was the way to be sure the Legislature had confidence in the work the Commission does is to make sure they understand the work the Commission does, how they approach their work, and the limits the Commission undertakes, and to use their ex-officio members as much as possible to relay that information because that was the reason they were on the Commission.

**Commissioner Simpson** commented that Ms. Hunter does an outstanding job of outreach to the Legislature. That was his experience – he saw Ms. Hunter lots of times this last session up there working every day.

**Senator Conway** agreed, adding the continuity of having Ms. Hunter there has been really important.

**Commissioner Gray** asked if there were other comments about how the Commission might interact with the Legislature.

**Senator Conway** suggested talking a little bit about the funding of the Gambling Commission. He thought it was a major problem and very important on how it was funded. There have been a number of sweeps of the gambling account during bad state budget times, which raises a whole different perspective than what has been talked about. The other piece of this, of course, is the license fee issue that is always one that gets generated inside. It is important to understand that in the Legislature, there are very separate committees that deal with these things too. The Gambling Commission's budget gets swept by Ways and Means staff who does not always talk with the ex-officio members when they do that. Margarita Prentice was lucky because she was the ex-officio and she was on the Gambling Commission.

**Commissioner Prentice** replied she did not know how lucky that was because she could only fight it off one year. It looked as if the Commission was protecting this huge amount of money and everybody else was hurting, so it happened anyway.

**Senator Conway** suggested keeping in mind that, whenever the Commission raises license fees, the legislators hear about it because they have constituents who go to them and say what they see going on at the Commission. That is a whole other process, aside from gambling policy. The funding of the Gambling Commission is another major issue of legislative involvement and he urged the Commission not to lose perspective on that. He thought Ms. Hunter might like to comment on that. She is the one that has to run by the Ways and Means Chairs to ask what they are doing sweeping the gambling fund again this year. The people that pay for those fees are the ones who actually should be a little alarmed because they pay their money for enforcement purposes. The basic reason the Commission has license fees is to pay for enforcement activity. He thought that was in the statute. When the Legislature sweeps those funds, they are sweeping the funds that are used for enforcement. In Olympia, there are also several levels of policy involvement, especially in funding. There is the Ways and Means staff, which is OPR staff, and there is also the staff that serves the committee from the partisan perspective. It is important to have a relationship with this full staff to understand clearly what is going on. It is a very complicated challenge, but one of the reasons the Gambling Commission has been struggling with funding is the Legislature has been sweeping the gambling fund, and there lies part of the reason for fee increases, which everyone here probably has some concerns about. Senator Conway said he just raised this because he thought it was another critical relationship with the Legislature.

**Commissioner Gray** said the Gambling Commission has declining revenues because of the declining operations.

**Commissioner Simpson** explained that, as he read the statute, he thought it was the responsibility that was given to the Commission when the Gambling Commission was created to make sure there was the provision of the funding necessary to carry out the mission of

keeping corruption out of gambling and so forth in Washington. It is a responsibility of this Commission to provide that funding, but there are a lot of moving pieces. In some cases, there are increasing costs, like health care costs rising every year. For employers, that is a big cost driver, and some portions of the gambling that is legal in the state has seen a decline. Commissioner Simpson said it reminded him of a game one of his kids had called something like SimCity where the person who is operating the city is able to set the level of taxation. If they make taxes too high, then their citizens start revolting, but if they are too low, then they do not have enough. It is a delicate balancing act to be able to accomplish what is needed to be accomplished and not be too oppressive with the fees. He said he did not know enough yet to be able to make good decisions about the structure or about who is being taxed and how much. He looked forward to learning more about that and having a much greater understanding of the Commission's existing structure and who was paying for it. He has visited the Gambling Commission offices and discussed these things with the staff, and thought they have done a very good job of working hard to become more efficient and do more with less. Commissioner Simpson said he believed that the Commission is reaching a point where they can no longer continue along the path of not hiring additional people when someone leaves or allowing positions to go unfilled. So the Commission has a responsibility. He thought he needed a better understanding of the existing structure and the history of it, so that he could make a reasoned decision about how to proceed and how to adequately fund the activities the Commission is responsible for taking care of in the future.

**Commissioner Stearns** agreed the Gambling Commission was getting close to the point where its funding was affecting its ability to do what it is supposed to do. He also thought the funding and the revenue issue in terms of at what point does the Commission endanger the public by not doing its job. He knew there were similar questions when looking at the military and how much they could cut before it started creating problems for the country's safety. It is important to be aware that there probably is a threshold and if the Commission goes under that, it is not going to be able to carry out its mission.

**Commissioner Gray** wondered if there were additional ways to enhance the revenue of the Gambling Commission, which is currently done through fees.

**Senator Conway** responded that one perspective he has shared with a number of folks was that he believed the Gambling Commission was in charge of a large chunk of industry in this state. These are businesses and a lot of people have employment through these businesses. In Pierce County, their casino employment is probably one of their biggest categories right now. It used to be the tide flats. Between health care and the casino, that is where a lot of the employment is, which requires the Commission to examine its responsibilities in that arena. A lot of people get their jobs there and depend upon those jobs. It is not just enforcement activity anymore; it is also responsibility for a chunk of people who are working at jobs and people at businesses as well. Senator Conway thought that was something that has changed considerably from the 1970s, 1980s, and 1990s. The employment at their major casinos is huge in the communities now. This is an enhanced role that is being played by the growth of

the gambling industry, which is probably worthy of saying, given that, is there more that the Commission needs to be doing. And if so, do fees solely for enforcement by statute meet the need. He said the Commission could ask the tribes how many people were employed at these casinos, but there are a huge number of people who are working and getting jobs from these casinos. It varies, but by virtue of that, this has become a major industry in this state for employment.

**Commissioner Prentice** commented that she hoped time did not run out before they really get to what she saw as one of the major stresses, which is because of the Indian Gaming Regulatory Act. IGRA is a federal act and the Commission had to deal with it. The tribes were able to have whatever gambling was occurring within Washington State, so because casino nights were allowed, that was what really brought it all in. She remembered it was an attempt at having some equity. Card rooms were allowed five tables at the time and then were expanded to 15 tables. They never were intended to be the same thing, but it was also trying to deal with some of the hostility that was seen from communities that were going to have tribal gambling. It was very real in those days and people kind of act like that never happened, but it did. The Commission also has to keep in mind that it has to deal with the federal law; it cannot be avoided. It does not matter who hates it, it is just simply there and the law must be abided. Commissioner Prentice said one of the things she wanted to comment on earlier was that the Commission does deal with the Attorney General's office, but she could remember one time where the Commission felt strongly enough, and that was the Quinault Tribe and whether or not there had been an unbroken ownership in a flea market, which was where their big casino is. The Commission disagreed with the AG's office and did it anyway, and the Governor at that time agreed with the Commission. So there was plenty of give and take. They were not the same thing, and Commissioner Prentice thought the Commission had to remember that the federal law applies, and they have attempted to live with it. Washington is in a lot better shape than some states because there was already a Gambling Commission attempting to deal with those things. Commissioner Prentice said she was not astute enough to tell the industry what efficiencies were necessary. Obviously, they are concerned or they would not be here. She thought the Commission was open to any ideas that might be given and the industry can help with this.

**Director Trujillo** referred to talking about the openness of the Commission and said one of the questions in topic number 4, which will not be covered today, was how the Commission staff does business. Within that was a suggestion Chris Kealy made last month that had to do with independent audits and whether staff could do something there or not. Director Trujillo said he wanted to share with Mr. Kealy that his suggestion did make it into the list of discussion topics although it was probably not going to make it into today's discussion. He did not want Mr. Kealy to have to repeat himself if he did not need to.

**Commissioner Gray** called for public comment.



**Mr. Chris Kealy** operator of the Iron Horse Casino in Auburn, a former president of the Recreational Gaming Association (RGA), and the current past-president, said so many subjects had been covered today and he was sitting there wondering if the Commission was going to let the public comment, and now he was not sure how to cover them all. He explained they were in a phase of what he called re-regulation, which was his new buzz word, and he was going to sell it to the Commission today. This Gambling Commission in 2001 supervised approximately 21,000 people. Today, tribal gaming units in general have done a good job themselves and are regulating a huge portion of this activity. Mr. Kealy said, to Senator Conway's point, that the activity being seen in Pierce County is enormously under the purview of the Puyallup Tribal Nation and under their regulatory body. The Commission helps that body, so is now a supplemental agency, where in 2002 it was that regulatory body. He thought that after seeing that re-regulation shift, this body lost a significant portion of its mission. That is just the reality of it. So this agency has gone from 170 or 190 people to about 146 FTEs today, and it was his thorough suggestion that it needs to be about 80 FTEs because the mission has shifted and public demand on gambling was and is huge. It was, and it was ignored, but now it is acknowledged and taxed, or organized in ways that policy makers have chosen to let the activity occur. So there is no particular interest in running an illegal gambling operation because they do not have a customer base. They have a source for what they want to do. So the regulation, or the need for the Gambling Commission in their mission surrounds money laundering and protecting our country's assets via terrorism, drug money laundering, and other activities that clearly are not even really a part of, but people are vulnerable to, because it is heavy cash businesses. Mr. Kealy said understanding what the mission is today versus ten years ago is the first step to then identifying what this agency really needs to look like. As they watched the mini-casinos melt down, it was not just that. It was a policy decision on where the activity would occur and then who, in fact, would regulate it, which happens to be their tribal partners in this process. He said the Commission has got to identify the problem before they start guessing at solutions. He said he has heard the Commission ask several times, what do they do to increase revenue. The market has shifted, and the people that are responsible for that activity are not the Commission anymore.

**Ms. Dolores Chiechi**, Executive Director of the Recreational Gaming Association, stated this process was very encouraging and, in fact, it appears as one of the vision statements on the website that states "anticipating and responding to the evolving gambling industry," is actually coming to bear now. She has been watching that statement on the website for a number of years and saying when might that happen. As Mr. Kealy mentioned, there has been a lot of statements made, and conversations and topics. And as her mind was buzzing, she finally just started jotting down some things. In regard to the initiatives and them being touted as public opinion, or what the public wanted at that time, if you look back to history, the tribes ran two initiatives and both of them were defeated by over 70 percent. The public said no, they did not want them to have slot machines. The tribes negotiated through the friendly lawsuit and they obtained slot machines. When the card room industry, along with another entertainment industry, ran Initiative 892, they got it on the ballot and were all excited about that, but they did not have any money left. There was \$6.7 million spent to defeat the Initiative. That was

the adjustment of the public opinion. Had the industry had \$6.7 million of its own to run its own “yes” campaign, it may have come out a little differently. So it was much easier to get a no vote than it was to get a yes vote. Ms. Chiechi wanted to make clear that it should not be touted as a public opinion and what the public wanted, because the public got one message, they did not get the other message.

As far as expansion of gambling, it has been stated what is an expansion of gambling, but it has never been defined. Past attorneys from this Commission have attempted to define it, the Attorney General's office attempted to put it in a category, and the President of the Senate has certainly made rulings on a number of occasions. But when the house-banked card room legislation was passed, that issue was never raised, nobody asked the question, and the card room industry was created to be what it is. Every time the Commission approves a new location, is that an expansion of gambling? Every time they approve a new game, for example the third bet on the mini-baccarat, is that an expansion of gambling? She thought it was really a squishy subject. Unless and until somebody challenges it in court and there is an outcome, it is really a squishy outcome of what that looks like, who is defining it, and what does it mean. Ms. Chiechi said she did not know how to answer that unless there was a court battle on that issue, but she did not think anybody had the money or the desire to go into court and get that outcome.

Ms. Chiechi noted that Commissioner Simpson had stated that it was the design of the Legislature to create a separate agency that was separately funded and was not part of the Legislature. And that has worked. For 30 plus years, this agency has done what it has done under the guise of the powers and duties that have been handed down by the Legislature to say this is what they want the Commission to do, this is what they do not want the Commission to do. All it takes is someone to write a letter or call a legislator and say, “Do you know what they're doing over there? No, I don't; tell me. Well here's what they're doing.” That's what they learn, and they knee-jerk react, and the Commission gets a letter saying cease and desist or else. What they do not get is the other side of the story, or sitting in the room of the ex-officio members who actually hear the full picture of the two-year dialogue that occurred. All it takes is for a legislator to hear from an opposing view that they should be concerned. And guess what? The legislator is going to come to the Commission and say “What are you doing? I don't really know the whole story, but I just know I'm being told I shouldn't like it.” So that is where the politics of this Commission and the Legislature get kind of merged together.

As far as what the Commission's duties should be or what their relationship in the legislative environment should be, Ms. Chiechi thought what Ms. Hunter, the past director, and the current director have done in meeting with legislators and informing them and educating them, that has to take place just within this Commission. There are five Commissioners who come from all walks of life who do not understand a lot about gambling. She said she would not use the word ignorant, they just do not know what they do not know. When it comes to mini-baccarat, they do not know how it is played. Ms. Chiechi thought that, perhaps monthly they have a “game of the month” and set it up at the back with the layout, and either the licensees

or the staff shows the Commission how it is played. Ms. Chiechi said she would benefit from that because she does not know how mini-baccarat is played. That was the purview of her members to know how that operates. But it makes sense for this Commission to have that education level. And it cannot be expected for 149 people in Olympia to understand it, when some of the Commissioners and staff do not understand it. So there is a good symbiotic relationship that could take place with the industry. There are decades of experience in the audience that come and sit, and just cringe when somebody asks about a mini-baccarat game and the Commission is regulating it. Ms. Chiechi thought there was an opportunity there for a lot of shared information and a lot of education that could take place within this Commission. She said the industry does its best to try to educate legislators as well. So, when the Commission's bill comes up, they have a reason to go talk to the legislators. If there is no bill to talk about, it is likely they legislators are not really interested to have a conversation with Commission staff.

Ms. Chiechi thought the path this Commission appears to be on is taking a more proactive approach to the Legislature in getting to them and saying they would like to come and inform them about what the Commission is up to, rather than waiting for staff to be asked to come forward and give a presentation at a hearing or a work session. Perhaps having conversations that are more broad and specific as well would give the legislators a better understanding of what this Commission does and that it knows what it is doing. When the bill was up for a hearing, there were some mis-statements made by some testimony. And the staff of that committee had no idea that they were mis-statements so the legislators walked away believing what those statements were. It just goes to show if that bill were to pass – they get a mini-baccarat bill, the Commission has how many weeks to get ten legislators that are on that committee to understand and the staff of that committee to understand what that bill would do and what the game would do. It makes Ms. Chiechi very concerned that the Legislature would consider shifting the authority away from this body. The Gambling Commission has the methodical approach of months of discussion, staff analysis, staff presentations, questions and answers, and demonstrations that help the Commission to make an informed decision. By no means would Ms. Chiechi say that this Commission has been knee-jerk or not methodical in its approach to making those decisions. She wanted to just say, as well, the ex-officio roles are huge because it helps the committee; it helps the Commission when they attend, and listen, and pay attention, and then go back and report to their committee what is going on. That committee is a little bit more informed than if that ex-officio chose not to attend and not to communicate back what was happening. Ms. Chiechi thought there were some of those processes that could be reinforced, but she was also very encouraged by this process and the fact that the audience, the public, and the industry are allowed to comment and participate. She thanked the Commission for their time.

**Commissioner Stearns** said he wanted to follow-up on Ms. Chiechi's comments. When he worked in Congress on the committee that dealt with gaming, there was no way they could have done their job except for the fact that they traveled the entire country and exhaustively studied security, the money, and the games. He did not know how many casinos and how

many other operations he visited, in addition to holding hearings on it, but just having that knowledge was absolutely critical.

**Commissioner Gray** repeated what she had heard. One of the effective ways of dealing with the Legislature is to make sure the Commission was informed, that they understand the games, and that they take advantage of anything they can, and to use the legislative liaisons to get information to the Legislature.

**Mr. Martin Durkan Jr.**, representing the Muckleshoot Tribe, stated there was obviously a diverse opinion on these issues. He said he was not interested in rewriting history or having a different understanding of what has taken place in gaming and initiatives over the past 20 years. The Commission itself has done independent surveys. They speak on their behalf on their own. A survey obviously is only a point in time. The Commission could certainly do another one, but Mr. Durkan thought they would find that the numbers were relatively the same in terms of where the public is on the amount of gaming that is taking place in the state of Washington. Mr. Kealy and Ms. Chiechi are quite correct in that everyone knows internet gaming is coming. And if it is about new revenue, the opportunity for new revenue for Washington State and for the Commission is with new games and new market sectors. And so the Commission's preparation for that is very wise because it certainly is coming eventually and they have to be prepared for it.

Mr. Durkan said he worked hard with Ms. Hunter last session trying to get the salary freeze lifted for the gaming agents because the Commission was not retaining some very well-qualified staff. And the Legislature needs to be aware that the Gambling Commission has to be competitive in the wage market to retain these people because they are going to go to other police agencies to get better compensation. So there is a lot of brain trust here and it functions well, and they have done a great job regulating the state of Washington. But if the Commission loses more people, there is going to be a problem. The tribes are concerned about the overlap with the Tribal Gaming Agency because they have their own gaming commissioners and their own gaming agency. There is a duplicated process that is going on with the Commission, and as they move forward in the next few years, if the tribes begin to open Compacts, the Commission is going to see a number of tribes wanting to regulate themselves. And that will be a big loss of funding for the Commission. So the Commission has to look at those issues. And Compacts are going to be reopened and renegotiated, and things are going to change, probably more than Mr. Durkan realized and more than the Commission realized. He said he had a small comment on the mini-baccarat. He was not alluding that it was an expansion of gaming, and he did not believe it was. He said he had a problem with somebody that was not licensed in the state proposing a game. He would think that someone would need to be licensed to propose a game, to even evaluate a game, a game that is not licensed anywhere else. The letter from Nevada said they did not license him – they said they did not require a license. Mr. Durkan said his tribe's gaming officials were concerned that nobody would play it and it would be hard to regulate, so they would not do it. That was his comment and that was what he meant. He did not think it was an expansion of

gaming. Like Senator Conway said, it was an evolving issue with the Legislature. He thought the reason the raffles were scoped was because of the size of the prize. It was a major prize and a major change. Mr. Durkan believed the Commission was going to see a lot more expansion of raffles and a lot of nonprofits wanting to do that. So that raffle business has to be watched; not that it impacts the tribes, the card rooms, or anybody else, but it is a big number. Mr. Durkan asked what happens if they never sell enough tickets or they never win the condo. It is very interesting. He thanked the Commission.

**Commissioner Gray** asked if there were any other comments on this topic; there were none.

### 3. **Problem Gambling**

These days, it seems almost everyone knows of someone with a gambling problem. What is our role in this area?

There is a massive increase in online play for points. Such vendors are positioning themselves should internet gambling become legal. Does this tie to problem gambling? Even though there is no charge for the activity, players often buy enhancements that increase their activity. While there may be a legal distinction between such a purchase and a gambling activity, the problem gambler may not see a difference. Is this something we should be looking at?

Online Penny Auctions are not considered gambling by the letter of the law; however, many people consider the activity to be very similar to gambling. This may result in increased problem gambling. Is this something we should be looking at?

**Commissioner Gray** introduced the third topic (excerpted in text box above): problem gambling, both in terms of the kinds of problem gambling that is seen today and the continued – and again it goes back to internet gambling and if it becomes legal, what kind of problem gambling would there be. There are penny auctions now that are not considered gambling, but is that in fact enhancing the gambling problems? She opened it up to a discussion about problem gambling and the role the Commission might have in that issue.

**Chair Amos** asked what online penny auctions were. **Director Trujillo** replied it was something he did not quite understand, and asked if Assistant Director Harris would like to try to explain it in a way that might be understandable. **Assistant Director Harris** explained there have been some ads on TV for penny auctions. Basically, they start out by giving people a certain number of free bids and each bid goes up by a penny. After that, each time someone places a bid there is a fee charged for placing the penny bid. So, technically someone could win something like a cellphone for \$5 if they happened to be the last bidder. But then they also have paid the fees to place the penny bids. Basically, it is like an auction, but people are paying a fee each time they bid, and the bids usually just go up a penny.

**Chair Amos** asked if it was basically like buying off eBay. **Assistant Director Harris** replied it was similar to that, except there was a fee for each time someone places a bid on the item that they might not necessarily win. So, even if someone has placed a couple bids, they get charged for those bids – even if they are not the end winning person for the item, they are still paying that fee to place those bids. **Director Trujillo** asked if that fee could be several dollars. **Assistant Director Harris** affirmed. **Director Trujillo** said it may cost someone to bid a penny, \$3, \$4, or \$5. And then if they want to bid that again, it would cost them that fee again, so it just continues to go up. So in the end, it may cost \$5 for the item, but that was not the true cost because it cost \$5 in pennies, plus all the fees that were paid for the bids. And in the end they win the prize. **Chair Amos** asked if that was going on in this state. **Director Trujillo** affirmed, adding that it is currently a consumer protection issue under the Attorney General's office. **Director Trujillo** said it was very similar to gambling and there were not a lot of people who report those items to Commission staff as gambling issues. Staff would then refer them to the Attorney General's office, but as Commissioner Gray talked about, it may be enhancing a gambling problem.

**Commissioner Gray** asked if there were any comments about the gambling problems that are in Washington.

**Director Trujillo** said Dolores Chiechi and Maureen Greeley from Problem Gambling have made presentations to the Commission. Tribal representatives have described the programs that they are in charge of, and Ms. Chiechi and Ms. Greeley have partnered with them a couple of times.

**Commissioner Gray** thought the question for the Commission was whether there were attempts to deal with problem gambling within the gambling industry. She opened the discussion up to what the role of the Gambling Commission was with respect to problem gambling.

**Senator Conway** said that, having been in Olympia, Commissioner Prentice and he both were there when the problem gambling issue really took off in the 1990s. That was when the Legislature finally got around to putting together some funding mechanisms for problem gambling. And keep in mind that that became the method. Then the Compacts picked up on it and started placing problem gambling into the Compacts. He thought one way in which an industry ensures the public that it is sensitive to the problems it creates is to be engaged fundamentally in the problem gaming issue. The stories are sad – stories of people who have lost their home, lost their lives, or been put in jail because of a problem gambling problem. Senator Conway said the gambling industry is expanding in Washington State and the question was whether sufficient resources and strategies were being generated to address it. As a legislator involved in this for years, Senator Conway thought the Legislature was looking for that kind of role. When he looked at the statute, he did not think it says the Gambling Commission will be the agency that manages problem gambling. He thought it was almost a health care issue, a DSHS issue in fact. But the gambling dollars are not with DSHS, and he

thought it was their game really to bring together the parties to work on problem gambling. **Director Trujillo** affirmed there was no specific mandate in the statute that the Gambling Commission shall be in charge of a problem gambling program.

**Senator Conway** said he was reminded a little bit about liquor. Liquor has all of its consequences. And of course what has happened very carefully with the liquor issue is that the liquor tax revenue was used to address the problem drinking and everything that came from all of that. He said that, to him, problem gambling was a similar kind of challenge, because it was critical. The public thinks the revenues to address problem gambling issues are generated by the industry that was created the problem. Senator Conway thought therein lies the issue that the Commission is trying to get at here, what the role of the Gambling Commission is in this. To some degree, it was the responsibility of the state to address the problem, but he did not think anyone was saying that problem gambling was not with us. One of our legislative bodies saw what happened here just recently, and it is not as if problem gambling was not out there. The question is the industry needs to be responsible and to ensure that their resources are being developed to address those problems and help control them.

**Commissioner Gray** asked if there were any other comments, or any comments from the audience.

**Ms. Chiechi** introduced herself again and stated that on behalf of the Problem Gambling Advisory Committee, of which she had been the Chair for a number of years, it was the advisory committee that works within the Department of Social and Health Service's (DSHS) program to monitor, direct, and make recommendations to the state agency with regard to the program that is funded by the industry. The industry pays that .13 percent--horse racing, lottery, bingo, charities, pull-tabs, and card rooms. And then the tribal revenues by way of their Compact agreements also contribute. These are ways which help the public with problem gambling. As far as what role the Commission should play, she thought the Commission has played a tremendous role in coordinating and collaborating with not only the Problem Gambling Advisory Committee and the state program, but also the Evergreen Council on Problem Gambling, which is the nonprofit entity in our state, which is internationally known as one of the top go-getters after this issue. Ms. Chiechi said she would encourage a similar communication, shared information, and also offer the opportunity for the Council, as well as the state program, to come with ideas and concepts to staff and present those as opportunities where there can be partnerships between the Gambling Commission and the programs that currently exist. She then explained that the state program had recently done a sole service contract with Evergreen Council to provide much of the services, the treatment, the training, the awareness campaigns and prevention. The program is successful, the funding is there, and if there was more money that could be contributed, it certainly would be put to good use. She thought a continued collaboration with the Gambling Commission would be a benefit, and thanked the Commissioners.

**Commissioner Simpson** asked if Ms. Chiechi could give an example of someone who was being assisted by the Problem Gambling and how they become engaged with the program and the process.

**Ms. Chiechi** replied there was a 1-800 number that was required by all gambling entities. They are required to have one as it is in the statute. The Gambling Commission has the fliers, brochures, and posters that are to be put near all of the gambling activities that occur in the state. For example, a person calls the 1-800 number 24-hour hotline and is referred either to a Gamblers Anonymous, or to a counselor, or a treatment center. In fact, treatment is free. If a problem gambler calls the state and says they have a problem, they will communicate and work with the Evergreen Council. The Evergreen Council has sent a number of people out of state because currently they do not have an in-state residential treatment center. The Evergreen Council has counselors that will see someone two or three times a week. They also supplement that with Gamblers Anonymous meetings. But the Evergreen Council has the funding through the tribal contributions and other contributions that actually send people away for a 30-day out-of-state inpatient intensive treatment.

The Evergreen Council has also created what they are calling therapeutic justice in Pierce County. For example, if someone who embezzled funds can show that the reason and the cause was because they had a gambling addiction, they could actually get a reduced sentence, and it is kind of like drug court where if you can prove that you are not using, and you are going to treatment, and you are staying off the drugs, they can diminish your fine, or diminish your penalty. Of course, problem gamblers are still going to have to pay restitution and do not get off the hook. It is challenging, however, because there is no drug test for problem gambling. Evergreen Council is talking about doing a lie detector or stress test to see if a person is telling the truth if they have gambled or not. Progress is being made and Ms. Chiechi is hoping they are expanded around the state, as well as tribal court systems. The only program that utilizes the lie detector test that exists in the nation is actually in Amherst, New York. It is a tremendous program. They have had a great deal of success with folks that have gone through that program.

The Council is making progress towards those types of processes. And as Senator Conway mentioned, it is a mental health issue. Recently the DSM-5, which is the diagnosis for the mental health community, has determined problem gambling could be an addiction and it is not just this weakness that people have. Take into consideration how far the medical profession has come with alcohol and drug addiction into believing that it is not just a weakness and admitting it is a brain chemistry thing, and they have found the same thing with problem gambling. Even though the program has come a long way, it is still further behind alcohol and drug addiction. There are advocates out there that are promoting that problem gambling is an issue and the public needs to be cognizant of it and do what is right for the people that are affected. Ms. Chiechi affirmed that families are also allowed for treatment, and that family members could call. But a person cannot be committed to a treatment unless they want to go. Next month their industry is going to be doing problem gambling training for



its employees to become responsible gaming certified. And they are doing that in concert with the Evergreen Council, who would be happy to come as regularly as they are invited and present to the Commission updates on those activities.

**Commissioner Prentice** suggested that the Evergreen Council come periodically to update the Commission. She referred to the hearings in which she participated in a number of years ago regarding problem gambling where it only skimmed the surface. The problem is extremely serious and it destroys lives. **Ms. Chiechi** replied that the Problem Gambling Advisory Board was also offering those updates in communication with the legislative committees as well to keep them abreast of what is happening out there. **Commissioner Gray** agreed with Ms. Chiechi.

**Senator Conway** asked if the problem gambling mission had some national notoriety. **Ms. Chiechi** replied, absolutely. **Senator Conway** commented that the statewide organization had its meeting in Seattle recently. He asked if the Evergreen Council has the staff support to be doing the kind of background that other countries are doing to address problem gambling as far as the best practices initiative. **Ms. Chiechi** responded that the conference was a National Conference, and Seattle was the host for the National Conference. There were attendees from Australia, Canada, New Zealand, and all over the world. And, the Evergreen Council's Executive Director, Maureen Greeley, was recently elected their president of the National Council. There is a great deal of resources and information sharing, and the excitement around that conference, and people networking, and sharing those best practices so they know what is happening in other areas so that they are not reinventing the wheel. That is absolutely taking place. The Council is expanding its staff to manage that. It is a tremendous thing to see because five years ago, staff was ready to close the doors at the Council because there was not enough money. Now they are looking at buying a building to be able to operate out of and have come that far. And it goes to say too that the tribes have been a great contributor to those programs by way of their Compacts. They have given more money to the Council than has gone to the state, but now that there is a sort of shared collaboration. It really does not matter where the money goes because it is all being spent on the proper things.

**Senator Conway** commented that according to Ms. Chiechi, regarding the regulatory side, there is great cooperation between the tribes and the Evergreen Council's programs on the issue of problem gambling. **Ms. Chiechi** replied yes, absolutely. That is one area they can all agree on.

### **Closing**

**Commissioner Gray** thanked Dolores Chiechi for her comments and mentioned they were almost out of time. Commissioners and staff covered three topics and she said she would write a summary on the strategic topic of technology. Although there was not a vote, there was an agreement that the Commissioners need to have more education on the economics and all the impacts of what the new technology might bring; to look at what other states are doing; review the legislation; talk with our partners and clients about the new technology and online gambling. She

asked that staff put together some kind of information so the Commissioners' could have some facts and these facts could then also be shared with the legislature and our legislative representatives. While working within the legislative environment, there is still the question of the definition of the expansion of gambling; this would come directly from Legislature. Commissioners would look for a better understanding of funding, and be able to understand and look at connecting our representatives with the Legislature to make sure that the Legislature understands what the Commissions' role would be, and understand what the Legislature expects from the Commission. There was a suggestion from Commissioner Prentice to assemble a one-page document that could be modeled after the brochure that Ms. Hunter has to hand out to legislators.

**Commissioner Simpson** commented that he was going to be in Olympia working as well during the session, and he would be pleased to assist Ms. Hunter. If there was a circumstance where she had to testify on legislation from a staff point-of-view and would like one of the Commissioners to be there to answer questions or testify from a Commissioner point-of-view, he would be happy to help. **Commissioner Gray** thought it would be really helpful, and asked if others would be willing to assist Ms. Hunter with the Legislature.

**Commissioner Prentice** replied she would be happy to help, but did not want to overlook the potential for help from the Attorney General's office. **Commissioner Gray** agreed they should include Assistant Attorney General Callie Castillo to provide some information on the expansion of gambling. As discussed, the third topic was on problem gaming, and what they learned was that there is a lot being done now, both in cooperation between the tribes and the house-banked card rooms. The discussion will be reflected in the Commission meeting minutes and when they are done it would be useful to have a one-page summary as Commissioner Prentice mentioned. Commissioner Gray said she would be willing to work with staff on it. Commissioner Gray also stated there were two more topics that they did not have time to cover today, but they could discuss in the future. She then asked if there were any comments about this process or anything else.

**Commissioner Prentice** thanked Commissioner Gray for her preparation for the meeting. She also stressed the importance of the strategic session and understanding it would bring to the Commissioners.

**Commissioner Gray** thanked Director Trujillo for all the preparation work for this portion of the meeting.

**Chair Amos** thanked Commissioner Gray and asked if there was anything else from Director Trujillo. **Director Trujillo** replied there was nothing further.

### **Adjourn**

**Chair Amos** thanked the Commissioners for their good work and adjourned the meeting at 12:40 p.m.

Minutes were submitted to the Commission for approval by:  
Michelle Rancour, Acting Executive Assistant

# Exhibit J

**Edelson PC**

350 North LaSalle Street, 13th Floor, Chicago, Illinois 60654  
t 312.589.6370 | f 312.589.6378 | www.edelson.com

May 12, 2016

**VIA ELECTRONIC MAIL**

Jessica Quiles  
Washington State Gambling Commission  
jessicaq@wsgc.wa.gov

**Re: *Public Records Request***

Dear Ms. Quiles:

I write to request copies of the following records from the Gambling Commission pursuant to the Washington Public Records Act, RCW 42.56:

- All records related to the creation, drafting, preparation, or publication of the pamphlet attached hereto as Exhibit A.
- All records related to the creation, drafting, preparation, or publication of the slide deck attached hereto as Exhibit B (the "Slide Deck").
- All records related to any presentation, meeting, or other event at which the Slide Deck was displayed or otherwise distributed.

Please notify me before copying if the charges will exceed \$300. If the copying charges will be less than that amount, please send the copies and invoice me at the above address. If you require payment for the copies in advance of sending me the documents, please contact me to arrange a method of prompt payment satisfactory to you. As this request is time-sensitive, please call me when the documents are ready for production so that we can discuss appropriate delivery or shipment options.

As you know, RCW 42.56.520 requires a response to this request within five business days. If you have any questions or would like any clarification regarding this request, please do not hesitate to contact me by phone at (312) 589-6379 or by email at [atievsky@edelson.com](mailto:atievsky@edelson.com).

Sincerely,

EDELSON PC



Alexander G. Tievsky

**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Internet Gambling Brochure - version 3  
**Date:** June 29, 2016 at 3:34 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov

---



---

**From:** Trujillo, Dave (GMB)  
**Sent:** Friday, December 27, 2013 11:39 AM  
**To:** Dibble, Jim (GMB) <jim.dibble@wsgc.wa.gov>; Harris, Mark (GMB) <mark.harris@wsgc.wa.gov>; Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>  
**Subject:** Internet Gambling Brochure - version 3

Here is a newer version of the Social Gaming Brochure. I tried to make it more generic, used some Microsoft Clip Art pictures, and used smaller words.

Please provide feedback and edit as you feel is appropriate. What I am unsure about is the use of the proprietary site information and trademark issues. If we can use it great; I was not able to come up with an alternative.



Internet Gambling  
Brochure - ...s on 3.docx

**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Internet Gambling Brochure - version 3  
**Date:** June 29, 2016 at 3:34 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov

---



---

**From:** Trujillo, Dave (GMB)  
**Sent:** Friday, December 27, 2013 11:39 AM  
**To:** Dibble, Jim (GMB) <jim.dibble@wsgc.wa.gov>; Harris, Mark (GMB) <mark.harris@wsgc.wa.gov>; Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>  
**Subject:** Internet Gambling Brochure - version 3

Here is a newer version of the Social Gaming Brochure. I tried to make it more generic, used some Microsoft Clip Art pictures, and used smaller words.

Please provide feedback and edit as you feel is appropriate. What I am unsure about is the use of the proprietary site information and trademark issues. If we can use it great; I was not able to come up with an alternative.



Internet Gambling  
Brochure - ...s on 3.docx

**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: New Social Gaming Brochure  
**Date:** June 29, 2016 at 3:34 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov

---



---

**From:** Newer, Susan (GMB)  
**Sent:** Thursday, March 06, 2014 12:58 PM  
**To:** Dibble, Jim (GMB) <jim.dibble@wsgc.wa.gov>; Buckley, Dan (GMB) <dan.buckley@wsgc.wa.gov>; Stewart, Donna (GMB) <donna.stewart@wsgc.wa.gov>  
**Cc:** Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>; Herrington, Rick (GMB) <rick.herrington@wsgc.wa.gov>  
**Subject:** New Social Gaming Brochure

Hi Jim, Attached is the finalized social gaming brochure. It has been forwarded to Dan to post on the agency website under brochures. If there is an additional place on our website you feel this should be posted, just let us know.

Donna, here's the new brochure in PDF and I will send it to you in Publisher as you requested.

I will distribute this in the next staff newsletter.

If you have any questions, please let me know.

Thank you!

Susan



on ne soc a gam ng  
brochure 2-13-14.pdf



**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: New Social Gaming Brochure  
**Date:** June 29, 2016 at 3:34 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov

---



---

**From:** Newer, Susan (GMB)  
**Sent:** Thursday, March 06, 2014 12:58 PM  
**To:** Dibble, Jim (GMB) <jim.dibble@wsgc.wa.gov>; Buckley, Dan (GMB) <dan.buckley@wsgc.wa.gov>; Stewart, Donna (GMB) <donna.stewart@wsgc.wa.gov>  
**Cc:** Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>; Herrington, Rick (GMB) <rick.herrington@wsgc.wa.gov>  
**Subject:** New Social Gaming Brochure

Hi Jim, Attached is the finalized social gaming brochure. It has been forwarded to Dan to post on the agency website under brochures. If there is an additional place on our website you feel this should be posted, just let us know.

Donna, here's the new brochure in PDF and I will send it to you in Publisher as you requested.

I will distribute this in the next staff newsletter.

If you have any questions, please let me know.

Thank you!

Susan



**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)  
**Date:** June 29, 2016 at 3:33 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Newer, Susan (GMB)  
**Sent:** Thursday, January 30, 2014 8:15 AM  
**To:** Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>  
**Subject:** RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

I would be happy to make these updates and format as well. I was going to email you just now about the double space formatting (I didn't want to be too picky yesterday, but decided I would this morning ;-). Thanks Amy!

---

**From:** Hunter, Amy (GMB)  
**Sent:** Wednesday, January 29, 2014 8:36 PM  
**To:** Newer, Susan (GMB)  
**Subject:** RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

This is great...thank you!

I'm hoping you'll be up for making these changes. I think that would work better than me passing your comments onto Jim & having him make them, especially w/ the switching of the columns.

Thank you again,  
Amy

---

**From:** Newer, Susan (GMB)  
**Sent:** Wednesday, January 29, 2014 4:30 PM  
**To:** Hunter, Amy (GMB)  
**Subject:** RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Thanks for the opportunity to look this over. My suggestions are below:

Seems the title should include "Online", i.e. Online Social Gaming.

This sentence is missing the word "the"  
Because of this, there is no prize and **the** activity is not considered gambling.

The warning signs under the red flag are great. However, what does the title "Social games are not always **social**" mean? where is the second *social* defined in the brochure? Instead, perhaps:

- Some social gaming sites offer illegal gambling.
- Social games may be illegal gambling.
- Or just remove the header above the red flag.

For how this brochure folds, I would switch the red flag column with the triple 7 column. This allows the "this is not gambling" items in the triple 7 column to flow after "these activities are not

allows me this is not gambling items in the triple / column to now after these activities are not considered gambling” in the middle column. This will also make the red flag page stand out more when the flyer is first opened.

WordRake suggested the following edits:

**Be sure to Read the website’s Rules or Terms of Use page to determine if at least one of the elements of gambling is missing.**

***This The information ~~is intended to~~ should give general guidance. You may wish to contact an attorney if you are unsure whether your game has all three elements of gambling.***

Social gaming encompasses a number of several different types of games including Role Playing Games, Adventure Games, Arcade Style Games, Casual Games, and Casino Style games.

---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:43 PM  
**To:** Newer, Susan (GMB)  
**Subject:** FW:Social Gambling Brochure - For Your Review (Plain Talking Guru)

Hi, Susan.

Can you please take a look at this brochure this week & let me know what you think? Jim Dibble took the lead on this w/ Dave, Mark & I giving various edits. The intended audience is the “video gaming industry” (meaning people who create games & don’t want to accidentally make a product that is gambling).

Thanks so much!  
Amy

---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:40 PM  
**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's (last) comments

Hi, Jim.

Arlene checked & 4 of the symbols below are either trademarked or copyrighted (Zynga, Ubisoft, Pop Cap & Tapjoy). She couldn’t read the other 3 to confirm whether they are or not; they look generic to me, but I can’t read them either.

I think it would be best to just remove the clipart; that would be faster than trying to come up w/ different symbols. Dave & I are anxious to get this to the legislator who asked about it.

Let me know if you need anything else. In the meantime, I’m going to have Susan look at this version, as I don’t think there have been any other changes (please correct me if I’m wrong on that).

Thanks again for your work on this brochure!

Thanks again for your work on this brochure:

Amy



---

**From:** Hunter, Amy (GMB)

**Sent:** Friday, January 10, 2014 3:54 PM

**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)

**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's comments

I think this is looking very good & almost ready for distribution. I made a few small changes. Arlene did some research on the trademark question. The good news is we can probably make some references to popular social games, but should probably avoid using the trademarks themselves. I'll work w/ her more on that & will have a few changes based on that. And I will likely have Susan take a look at this, too, as she is excellent at Plain Talking docs.

Thanks so much!

Amy

**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)  
**Date:** June 29, 2016 at 3:33 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Newer, Susan (GMB)  
**Sent:** Wednesday, January 29, 2014 4:30 PM  
**To:** Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>  
**Subject:** RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Thanks for the opportunity to look this over. My suggestions are below:

Seems the title should include “Online”, i.e. Online Social Gaming.

This sentence is missing the word “the”  
Because of this, there is no prize and **the** activity is not considered gambling.

The warning signs under the red flag are great. However, what does the title “Social games are not always **social**” mean? where is the second *social* defined in the brochure? Instead, perhaps:

- Some social gaming sites offer illegal gambling.
- Social games may be illegal gambling.
- Or just remove the header above the red flag.

For how this brochure folds, I would switch the red flag column with the triple 7 column. This allows the “this is not gambling” items in the triple 7 column to flow after “these activities are not considered gambling” in the middle column. This will also make the red flag page stand out more when the flyer is first opened.

WordRake suggested the following edits:

**Be sure to Read the website’s Rules or Terms of Use page to determine if at least one of the elements of gambling is missing.**

**~~This~~ The information ~~is intended to~~ should give general guidance. You may wish to contact an attorney if you are unsure whether your game has all three elements of gambling.**

Social gaming encompasses **a number of several** different types of games including Role Playing Games, Adventure Games, Arcade Style Games, Casual Games, and Casino Style games.

---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:43 PM  
**To:** Newer, Susan (GMB)  
**Subject:** FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Hi, Susan.

Can you please take a look at this brochure this week & let me know what you think? Jim Dibble took the lead on this w/ Dave, Mark & I giving various edits. The intended audience is the “video gaming industry” (meaning people who create games & don’t want to accidentally make a product that is gambling).

Thanks so much!  
Amy

---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:40 PM  
**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's (last) comments

Hi, Jim.

Arlene checked & 4 of the symbols below are either trademarked or copyrighted (Zynga, Ubisoft, Pop Cap & Tapjoy). She couldn’t read the other 3 to confirm whether they are or not; they look generic to me, but I can’t read them either.

I think it would be best to just remove the clipart; that would be faster than trying to come up w/ different symbols. Dave & I are anxious to get this to the legislator who asked about it.

Let me know if you need anything else. In the meantime, I’m going to have Susan look at this version, as I don’t think there have been any other changes (please correct me if I’m wrong on that).

Thanks again for your work on this brochure!  
Amy



---

**From:** Hunter, Amy (GMB)  
**Sent:** Friday, January 10, 2014 3:54 PM  
**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's comments

I think this is looking very good & almost ready for distribution. I made a few small changes. Arlene did some research on the trademark question. The good news is we can probably make some references to popular social games, but should probably avoid using the trademarks themselves. I’ll work w/ her more on that & will have a few changes based on that. And I will likely have Susan take a look at this

more on that & will have a few changes based on that. And I will likely have Susan take a look at this, too, as she is excellent at Plain Talking docs.

Thanks so much!

**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)  
**Date:** June 29, 2016 at 3:33 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Hunter, Amy (GMB)  
**Sent:** Wednesday, January 29, 2014 8:36 PM  
**To:** Newer, Susan (GMB) <susan.newer@wsgc.wa.gov>  
**Subject:** RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

This is great...thank you!

I'm hoping you'll be up for making these changes. I think that would work better than me passing your comments onto Jim & having him make them, especially w/ the switching of the columns.

Thank you again,  
Amy

---

**From:** Newer, Susan (GMB)  
**Sent:** Wednesday, January 29, 2014 4:30 PM  
**To:** Hunter, Amy (GMB)  
**Subject:** RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Thanks for the opportunity to look this over. My suggestions are below:

Seems the title should include "Online", i.e. Online Social Gaming.

This sentence is missing the word "the"  
Because of this, there is no prize and **the** activity is not considered gambling.

The warning signs under the red flag are great. However, what does the title "Social games are not always **social**" mean? where is the second *social* defined in the brochure? Instead, perhaps:

- Some social gaming sites offer illegal gambling.
- Social games may be illegal gambling.
- Or just remove the header above the red flag.

For how this brochure folds, I would switch the red flag column with the triple 7 column. This allows the "this is not gambling" items in the triple 7 column to flow after "these activities are not considered gambling" in the middle column. This will also make the red flag page stand out more when the flyer is first opened.

WordRake suggested the following edits:

~~Be sure to~~ **Read** the website's Rules or Terms of Use page to determine if at least one of the elements of gambling is missing.

~~This~~ **The** information ~~is intended to~~ **should** give general guidance. You may wish to contact an



*attorney if you are unsure whether your game has all three elements of gambling.*

Social gaming encompasses a number of several different types of games including Role Playing Games, Adventure Games, Arcade Style Games, Casual Games, and Casino Style games.

---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:43 PM  
**To:** Newer, Susan (GMB)  
**Subject:** FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Hi, Susan.

Can you please take a look at this brochure this week & let me know what you think? Jim Dibble took the lead on this w/ Dave, Mark & I giving various edits. The intended audience is the “video gaming industry” (meaning people who create games & don’t want to accidentally make a product that is gambling).

Thanks so much!  
Amy

---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:40 PM  
**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's (last) comments

Hi, Jim.

Arlene checked & 4 of the symbols below are either trademarked or copyrighted (Zynga, Ubisoft, Pop Cap & Tapjoy). She couldn’t read the other 3 to confirm whether they are or not; they look generic to me, but I can’t read them either.

I think it would be best to just remove the clipart; that would be faster than trying to come up w/ different symbols. Dave & I are anxious to get this to the legislator who asked about it.

Let me know if you need anything else. In the meantime, I’m going to have Susan look at this version, as I don’t think there have been any other changes (please correct me if I’m wrong on that).

Thanks again for your work on this brochure!  
Amy





---

**From:** Hunter, Amy (GMB)

**Sent:** Friday, January 10, 2014 3:54 PM

**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)

**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's comments

I think this is looking very good & almost ready for distribution. I made a few small changes. Arlene did some research on the trademark question. The good news is we can probably make some references to popular social games, but should probably avoid using the trademarks themselves. I'll work w/ her more on that & will have a few changes based on that. And I will likely have Susan take a look at this, too, as she is excellent at Plain Talking docs.

Thanks so much!

Amy

**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)  
**Date:** June 29, 2016 at 3:33 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:43 PM  
**To:** Newer, Susan (GMB) <susan.newer@wsgc.wa.gov>  
**Subject:** FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Hi, Susan.

Can you please take a look at this brochure this week & let me know what you think? Jim Dibble took the lead on this w/ Dave, Mark & I giving various edits. The intended audience is the "video gaming industry" (meaning people who create games & don't want to accidentally make a product that is gambling).

Thanks so much!  
Amy

---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:40 PM  
**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's (last) comments

Hi, Jim.

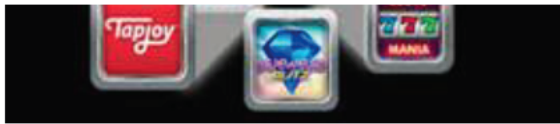
Arlene checked & 4 of the symbols below are either trademarked or copyrighted (Zynga, Ubisoft, Pop Cap & Tapjoy). She couldn't read the other 3 to confirm whether they are or not; they look generic to me, but I can't read them either.

I think it would be best to just remove the clipart; that would be faster than trying to come up w/ different symbols. Dave & I are anxious to get this to the legislator who asked about it.

Let me know if you need anything else. In the meantime, I'm going to have Susan look at this version, as I don't think there have been any other changes (please correct me if I'm wrong on that).

Thanks again for your work on this brochure!  
Amy





---

**From:** Hunter, Amy (GMB)

**Sent:** Friday, January 10, 2014 3:54 PM

**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)

**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's comments

I think this is looking very good & almost ready for distribution. I made a few small changes. Arlene did some research on the trademark question. The good news is we can probably make some references to popular social games, but should probably avoid using the trademarks themselves. I'll work w/ her more on that & will have a few changes based on that. And I will likely have Susan take a look at this, too, as she is excellent at Plain Talking docs.

Thanks so much!

Amy



**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's (last) comments  
**Date:** June 29, 2016 at 3:33 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:40 PM  
**To:** Dibble, Jim (GMB) <jim.dibble@wsgc.wa.gov>; Trujillo, Dave (GMB) <dave.trujillo@wsgc.wa.gov>; Harris, Mark (GMB) <mark.harris@wsgc.wa.gov>  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's (last) comments

Hi, Jim.

Arlene checked & 4 of the symbols below are either trademarked or copyrighted (Zynga, Ubisoft, Pop Cap & Tapjoy). She couldn't read the other 3 to confirm whether they are or not; they look generic to me, but I can't read them either.

I think it would be best to just remove the clipart; that would be faster than trying to come up w/ different symbols. Dave & I are anxious to get this to the legislator who asked about it.

Let me know if you need anything else. In the meantime, I'm going to have Susan look at this version, as I don't think there have been any other changes (please correct me if I'm wrong on that).

Thanks again for your work on this brochure!  
Amy



---

**From:** Hunter, Amy (GMB)  
**Sent:** Friday, January 10, 2014 3:54 PM  
**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's comments

I think this is looking very good & almost ready for distribution. I made a few small changes. Arlene did some research on the trademark question. The good news is we can probably make some references to popular social games, but should probably avoid using the trademarks themselves. I'll work w/ her more on that & will have a few changes based on that. And I will likely have Susan take a look at this, too, as she is excellent at Plain Talking docs.

Thanks so much!

Amy

---

**From:** Dibble, Jim (GMB)  
**Sent:** Thursday, January 09, 2014 12:10 PM  
**To:** Trujillo, Dave (GMB); Harris, Mark (GMB); Hunter, Amy (GMB)  
**Subject:** RE: Internet Gambling Brochure - version 3

Dave,

I made some minor modifications to what you sent me. See what you think.

Jim

---

**From:** Trujillo, Dave (GMB)  
**Sent:** Friday, December 27, 2013 11:39 AM  
**To:** Dibble, Jim (GMB); Harris, Mark (GMB); Hunter, Amy (GMB)  
**Subject:** Internet Gambling Brochure - version 3

Here is a newer version of the Social Gaming Brochure. I tried to make it more generic, used some Microsoft Clip Art pictures, and used smaller words.

Please provide feedback and edit as you feel is appropriate. What I am unsure about is the use of the proprietary site information and trademark issues. If we can use it great; I was not able to come up with an alternative.



**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's comments  
**Date:** June 29, 2016 at 3:33 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Hunter, Amy (GMB)  
**Sent:** Friday, January 10, 2014 3:55 PM  
**To:** Dibble, Jim (GMB) <jim.dibble@wsgc.wa.gov>; Trujillo, Dave (GMB) <dave.trujillo@wsgc.wa.gov>; Harris, Mark (GMB) <mark.harris@wsgc.wa.gov>  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's comments

I think this is looking very good & almost ready for distribution. I made a few small changes. Arlene did some research on the trademark question. The good news is we can probably make some references to popular social games, but should probably avoid using the trademarks themselves. I'll work w/ her more on that & will have a few changes based on that. And I will likely have Susan take a look at this, too, as she is excellent at Plain Talking docs.

Thanks so much!  
Amy

---

**From:** Dibble, Jim (GMB)  
**Sent:** Thursday, January 09, 2014 12:10 PM  
**To:** Trujillo, Dave (GMB); Harris, Mark (GMB); Hunter, Amy (GMB)  
**Subject:** RE: Internet Gambling Brochure - version 3

Dave,

I made some minor modifications to what you sent me. See what you think.

Jim

---

**From:** Trujillo, Dave (GMB)  
**Sent:** Friday, December 27, 2013 11:39 AM  
**To:** Dibble, Jim (GMB); Harris, Mark (GMB); Hunter, Amy (GMB)  
**Subject:** Internet Gambling Brochure - version 3

Here is a newer version of the Social Gaming Brochure. I tried to make it more generic, used some Microsoft Clip Art pictures, and used smaller words.

Please provide feedback and edit as you feel is appropriate. What I am unsure about is the use of the proprietary site information and trademark issues. If we can use it great; I was not able to come up with an alternative.







**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Internet Gambling Brochure - version 3  
**Date:** June 29, 2016 at 3:33 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Harris, Mark (GMB)  
**Sent:** Friday, January 03, 2014 10:24 AM  
**To:** Trujillo, Dave (GMB) <dave.trujillo@wsgc.wa.gov>; Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>; 'Jim Dibble' <jrdibble1@msn.com>  
**Subject:** FW: Internet Gambling Brochure - version 3

I had two questions/comments in the body of the document. Mark

---

**From:** Trujillo, Dave (GMB)  
**Sent:** Friday, December 27, 2013 11:39 AM  
**To:** Dibble, Jim (GMB); Harris, Mark (GMB); Hunter, Amy (GMB)  
**Subject:** Internet Gambling Brochure - version 3

Here is a newer version of the Social Gaming Brochure. I tried to make it more generic, used some Microsoft Clip Art pictures, and used smaller words.

Please provide feedback and edit as you feel is appropriate. What I am unsure about is the use of the proprietary site information and trademark issues. If we can use it great; I was not able to come up with an alternative.



**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: New Social Gaming Brochure  
**Date:** June 29, 2016 at 3:33 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Dibble, Jim (GMB)  
**Sent:** Tuesday, July 22, 2014 9:35 AM  
**To:** Herrington, Rick (GMB) <rick.herrington@wsgc.wa.gov>  
**Subject:** FW: New Social Gaming Brochure

Here is the brochure that was developed.... What the heck else am I supposed to be working on????

Jim

---

**From:** Newer, Susan (GMB)  
**Sent:** Thursday, March 06, 2014 12:58 PM  
**To:** Dibble, Jim (GMB); Buckley, Dan (GMB); Stewart, Donna (GMB)  
**Cc:** Hunter, Amy (GMB); Herrington, Rick (GMB)  
**Subject:** New Social Gaming Brochure

Hi Jim, Attached is the finalized social gaming brochure. It has been forwarded to Dan to post on the agency website under brochures. If there is an additional place on our website you feel this should be posted, just let us know.

Donna, here's the new brochure in PDF and I will send it to you in Publisher as you requested.

I will distribute this in the next staff newsletter.

If you have any questions, please let me know.

Thank you!

Susan



on ne soc a gam ng  
brochure 2-13-14.pdf

**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: New Social Gaming Brochure  
**Date:** June 29, 2016 at 3:33 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Dibble, Jim (GMB)  
**Sent:** Tuesday, July 22, 2014 9:35 AM  
**To:** Herrington, Rick (GMB) <rick.herrington@wsgc.wa.gov>  
**Subject:** FW: New Social Gaming Brochure

Here is the brochure that was developed.... What the heck else am I supposed to be working on????

Jim

---

**From:** Newer, Susan (GMB)  
**Sent:** Thursday, March 06, 2014 12:58 PM  
**To:** Dibble, Jim (GMB); Buckley, Dan (GMB); Stewart, Donna (GMB)  
**Cc:** Hunter, Amy (GMB); Herrington, Rick (GMB)  
**Subject:** New Social Gaming Brochure

Hi Jim, Attached is the finalized social gaming brochure. It has been forwarded to Dan to post on the agency website under brochures. If there is an additional place on our website you feel this should be posted, just let us know.

Donna, here's the new brochure in PDF and I will send it to you in Publisher as you requested.

I will distribute this in the next staff newsletter.

If you have any questions, please let me know.

Thank you!

Susan



**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)  
**Date:** June 29, 2016 at 3:32 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov



---

**From:** Dibble, Jim (GMB)  
**Sent:** Thursday, January 30, 2014 8:32 AM  
**To:** Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>  
**Subject:** RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

I am good with it..thanks Amy and have a wonderful weekend!

Jim

---

**From:** Hunter, Amy (GMB)  
**Sent:** Thursday, January 30, 2014 8:29 AM  
**To:** Dibble, Jim (GMB)  
**Subject:** Fwd: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Hi Jim. I asked Susan to make these changes. I assume you are fine with that but if not please let me know. We'll make sure you get the final version. Thanks.

Sent from my Verizon Wireless 4G LTE Smartphone

----- Original message -----

**From:** "Newer, Susan (GMB)"  
**Date:** 01/29/2014 4:29 PM (GMT-08:00)  
**To:** "Hunter, Amy (GMB)"  
**Subject:** RE: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Thanks for the opportunity to look this over. My suggestions are below:

Seems the title should include "Online", i.e. Online Social Gaming.

This sentence is missing the word "the"  
Because of this, there is no prize and **the** activity is not considered gambling.

The warning signs under the red flag are great. However, what does the title "Social games are not always **social**" mean? where is the second *social* defined in the brochure? Instead, perhaps:

- Some social gaming sites offer illegal gambling.
- Social games may be illegal gambling.
- Or just remove the header above the red flag.

For how this brochure folds, I would switch the red flag column with the triple 7 column. This allows the "this is not gambling" items in the triple 7 column to flow after "these activities are not

considered gambling” in the middle column. This will also make the red flag page stand out more when the flyer is first opened.

WordRake suggested the following edits:

**Be sure to Read** the website’s Rules or Terms of Use page to determine if at least one of the elements of gambling is missing.

**~~This~~ The** information **is intended to should** give general guidance. *You may wish to contact an attorney if you are unsure whether your game has all three elements of gambling.*

Social gaming encompasses **a number of several** different types of games including Role Playing Games, Adventure Games, Arcade Style Games, Casual Games, and Casino Style games.

---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:43 PM  
**To:** Newer, Susan (GMB)  
**Subject:** FW: Social Gambling Brochure - For Your Review (Plain Talking Guru)

Hi, Susan.

Can you please take a look at this brochure this week & let me know what you think? Jim Dibble took the lead on this w/ Dave, Mark & I giving various edits. The intended audience is the “video gaming industry” (meaning people who create games & don’t want to accidentally make a product that is gambling).

Thanks so much!  
Amy

---

**From:** Hunter, Amy (GMB)  
**Sent:** Tuesday, January 28, 2014 3:40 PM  
**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)  
**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's (last) comments

Hi, Jim.

Arlene checked & 4 of the symbols below are either trademarked or copyrighted (Zynga, Ubisoft, Pop Cap & Tapjoy). She couldn’t read the other 3 to confirm whether they are or not; they look generic to me, but I can’t read them either.

I think it would be best to just remove the clipart; that would be faster than trying to come up w/ different symbols. Dave & I are anxious to get this to the legislator who asked about it.

Let me know if you need anything else. In the meantime, I’m going to have Susan look at this version, as I don’t think there have been any other changes (please correct me if I’m wrong on that).

Thanks again for your work on this brochure!

Amy



---

**From:** Hunter, Amy (GMB)

**Sent:** Friday, January 10, 2014 3:54 PM

**To:** Dibble, Jim (GMB); Trujillo, Dave (GMB); Harris, Mark (GMB)

**Subject:** FW: Internet Gambling Brochure - version 3 - Amy's comments

I think this is looking very good & almost ready for distribution. I made a few small changes. Arlene did some research on the trademark question. The good news is we can probably make some references to popular social games, but should probably avoid using the trademarks themselves. I'll work w/ her more on that & will have a few changes based on that. And I will likely have Susan take a look at this, too, as she is excellent at Plain Talking docs.

Thanks so much!

**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Internet Gambling Brochure - version 3  
**Date:** June 29, 2016 at 3:32 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov

---



---

**From:** Dibble, Jim (GMB)  
**Sent:** Thursday, January 09, 2014 12:10 PM  
**To:** Trujillo, Dave (GMB) <dave.trujillo@wsgc.wa.gov>; Harris, Mark (GMB) <mark.harris@wsgc.wa.gov>; Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>  
**Subject:** RE: Internet Gambling Brochure - version 3

Dave,

I made some minor modifications to what you sent me. See what you think.

Jim

---

**From:** Trujillo, Dave (GMB)  
**Sent:** Friday, December 27, 2013 11:39 AM  
**To:** Dibble, Jim (GMB); Harris, Mark (GMB); Hunter, Amy (GMB)  
**Subject:** Internet Gambling Brochure - version 3

Here is a newer version of the Social Gaming Brochure. I tried to make it more generic, used some Microsoft Clip Art pictures, and used smaller words.

Please provide feedback and edit as you feel is appropriate. What I am unsure about is the use of the proprietary site information and trademark issues. If we can use it great; I was not able to come up with an alternative.



**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: Internet Gambling Brochure - version 3  
**Date:** June 29, 2016 at 3:32 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov

---



---

**From:** Dibble, Jim (GMB)  
**Sent:** Thursday, January 09, 2014 12:10 PM  
**To:** Trujillo, Dave (GMB) <dave.trujillo@wsgc.wa.gov>; Harris, Mark (GMB) <mark.harris@wsgc.wa.gov>; Hunter, Amy (GMB) <amy.hunter@wsgc.wa.gov>  
**Subject:** RE: Internet Gambling Brochure - version 3

Dave,

I made some minor modifications to what you sent me. See what you think.

Jim

---

**From:** Trujillo, Dave (GMB)  
**Sent:** Friday, December 27, 2013 11:39 AM  
**To:** Dibble, Jim (GMB); Harris, Mark (GMB); Hunter, Amy (GMB)  
**Subject:** Internet Gambling Brochure - version 3

Here is a newer version of the Social Gaming Brochure. I tried to make it more generic, used some Microsoft Clip Art pictures, and used smaller words.

Please provide feedback and edit as you feel is appropriate. What I am unsure about is the use of the proprietary site information and trademark issues. If we can use it great; I was not able to come up with an alternative.



Internet Gambling  
Brochure - ...s on 4.docx



**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: please post this new brochure as  
**Date:** June 29, 2016 at 3:31 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov

---



---

**From:** Buckley, Dan (GMB)  
**Sent:** Thursday, March 06, 2014 1:20 PM  
**To:** Newer, Susan (GMB) <[susan.newer@wsgc.wa.gov](mailto:susan.newer@wsgc.wa.gov)>  
**Subject:** RE: please post this new brochure as

OK, it has been posted.

---

**From:** Newer, Susan (GMB)  
**Sent:** Thursday, March 06, 2014 11:49 AM  
**To:** Buckley, Dan (GMB)  
**Subject:** please post this new brochure as

Online Social Gaming on the agency website. thank you, Susan



**From:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov  
**Subject:** FW: brochure..  
**Date:** June 29, 2016 at 3:49 PM  
**To:** Quiles, Jessica (GMB) jess.ca.quiles@wsgc.wa.gov

---

-----Original Message-----

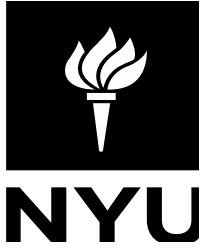
**From:** Newer, Susan (GMB)  
**Sent:** Tuesday, May 12, 2015 9:15 AM  
**To:** Stewart, Donna (GMB) <donna.stewart@wsgc.wa.gov>  
**Subject:** brochure..

Hi Donna,

I didn't see this brochure in the 3rd floor lobby.  
<http://www.wsgc.wa.gov/publications/brochures/5-027-online-social-gaming.pdf>

Do people still come by and take brochures from the lobby? If so, we may want to have a few available there. (Or perhaps it's there and I just didn't see it) ;-)

Thanks! Susan



**Natasha Dow Schüll, Ph.D.**  
Associate Professor | Media, Culture, and Communication

---

New York University, Steinhardt  
239 Greene Street, 8<sup>th</sup> floor | New York, NY 10003  
o: 212.998.5806 | c: 646.326.3604  
natasha.schull@nyu.edu | www.natashaschull.org

August 1, 2018

To: Brian Considine, legal director of the Washington State Gambling Commission  
From: Natasha Dow Schüll, Ph.D.  
Re: Big Fish Games, Inc.

Since the early 1990s I have researched the design of gambling technology, including its historical evolution, current trends, and problematic consequences for players. My prize-winning 2012 book, *Addiction by Design*, details the various ways in which contemporary games, particularly the design of their mathematical algorithms, are designed to increase what they refer to as players' "time on device" (or, alternately, "continuous gaming productivity") as a way to increase their revenue.

In my capacity as a expert on gambling technology and gambling addiction, I am contributing these comments to emphasize the absurdity of any claim by Big Fish Games that its mobile slots are different in any significant or consequential way from traditional gambling machines. Especially for players vulnerable to compulsive play, the games offer an identical experience – and an identical set of associated dangers:

- First there is the simple, obvious fact that the mobile phone game presents itself to players as a slot machine, looks like a slot machine, and functions like one.
- Second is the fact that players of the mobile phone game *and* players in casinos use real money to buy virtual "chips" or credits that they can then bet for the chance to win more chips / credits (and thus to continue play – which is the main aim of the regular and the problem machine gambler). It is rare that contemporary slot machines accept coins directly; upwards of 85% of slot machine play in the US is conducted via "player cards" containing purchased credits, and much of the rest is conducted via paper tickets containing credits. *Although Big Fish Games wants legislators to view the purchase of virtual chips as a point of distinction from traditional slot machines – in fact, that is exactly how traditional slot machines are played today.*

It should also be noted that virtual chips and credits, whether they are purchased within a bricks-and-mortar casino or online, most certainly have “value,” for both parties with stakes in the activity: for players, credits are valuable because they buy more “time on device”; for purveyors, credits have value because they lead players to spend more “time on device” (and therefore, more money).

- Third, just like traditional casinos managers, staff of Big Fish Games track different player “tiers” and reach out personally to those who play at the higher tiers, often prompting them to return to play.
- Fourth, Big Fish Casino is a game that uses incentive strategies identical to those used in casinos on traditional slots – for instance, the free initial allotment of chips. *Although Big Fish Games points to free play to argue that its game is not a form of gambling like a slot machine, in fact the offering of “free play” has become a common feature of casino slot machines—because it is a proven way to further invest players in the game, increase their time on device, and thus increase game revenue over time.*
- Fifth, Big Fish Casino and games like it draw from the same repertoire of mathematical game algorithms as traditional slot machines do, including such compelling effects as “false wins” (where players are given a chance to bet on multiple lines and, when they win on only one or two of those lines, are given the audio-visual feedback of “winning” when, in fact, they have net lost – by earning back fewer chips than they bet). This mathematical design is profitable to gambling purveyors because it masks the slow erosion of player credits (money) over time, giving the impression that credits are being replenished to allow more play when, in fact, credits are steadily diminishing. *Games like Big Fish Casino are designed according to a algorithmic formula that has been honed for years, and that serves the purpose of extracting continuous value from customers.*
- Finally, Big Fish Games alleges that its games are not gambling because people can’t “cash out” their winnings during play. As a longtime researcher of slot machine technology and gambling addiction, I find this to be the *weakest* of the company’s arguments, for one key reason that often escapes legislators and the public: Namely, the fact that for regular players of slot machines and mobile games alike (and most certainly for addicts of those games), *winning money is not the point*; rather, the point is *continuing to play*.

Over years of interviewing gamblers, it became clear to me that regular gamblers are seeking exactly what the purveyors are offering: time on device, or as gamblers often call it “the machine zone.” The machine zone is a psychologically compelling

dissociative state in which players are suspended, as if out of time and space, free of worldly concerns and anxieties as long as they stay in motion and continue to play. To that end, players purchase credits to keep playing until they have none left; even winnings along the way are a means to that end. When regular casino slot machine players are interrupted before their credits have run out, they will typically keep those credits on their player cards, or on a paper ticket that the machine ejects, and will then return to play them another time.

To emphasize: *in the case of traditional slot machines, the act of cashing out is neither gamblers' intention nor game designers' intention; the game, played as intended by designers, means that it is played until credits have run dry—so that more will be purchased. Just as on mobile apps.*



August 2, 2018

*By email – [brian.considine@wsgc.wa.gov](mailto:brian.considine@wsgc.wa.gov)*

Commissioner Bud Sizemore, Chair  
Commissioner Julia Patterson, Vice-Chair  
Commissioner Chris Stearns  
Commissioner Ed Troyer  
Commissioner Alicia Levy  
Brian Considine, Legal and Legislative Manager

Washington State Gambling Commission  
4565 7th Avenue S.E.  
Lacey, WA 98503

**Re: Petition of Big Fish Games, Inc. for Declaratory Order**

Dear Mr. Chairman, Commissioners, and Mr. Considine:

The Entertainment Software Association (“ESA”) welcomes this opportunity to share our perspective on this important matter. The ESA is the U.S. trade association that represents the business and public affairs needs of companies that publish computer and video games for video game consoles, handheld devices, personal computers, and the internet.<sup>1</sup> ESA supports the Petition by Big Fish Games, Inc. for a declaratory order confirming that the Big Fish Casino suite of online video games (“BFC”) does not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237 (“Petition”), and therefore is not subject to the Commission’s regulatory or enforcement jurisdiction.

1. The Petition sets forth the facts, procedural history, and legal arguments for why the BFC is not gambling. The ESA agrees with the conclusions in the Petition and will address in this letter some additional legal arguments and important policy considerations. First, however, the ESA would like to provide more context about the video game industry.
2. Many of today’s video games incorporate non-convertible play currencies into the game experience. As players progress through a game, they collect points for achieving tasks (e.g., capturing an enemy stronghold or winning a race), and those points can be used

---

<sup>1</sup> Game developers and publishers directly employ over 6,000 people in the State of Washington who work on a variety of game platforms and game genres, including, among others, social or casual games played on mobile devices. *See Video Games in the 21<sup>st</sup> Century: The 2017 Report*, ENTERTAINMENT SOFTWARE ASSOCIATION (2017), p. 15, Table C-4, available at [http://www.theesa.com/wp-content/uploads/2017/02/ESA\\_EconomicImpactReport\\_Design\\_V3.pdf](http://www.theesa.com/wp-content/uploads/2017/02/ESA_EconomicImpactReport_Design_V3.pdf).

within the game to acquire virtual items that may be attractive or useful for the player, such as a new car for a racing game, a powerful crossbow for an assassin, or health potions that restore a player in the midst of heated battle. In some games, players can choose to enhance their experience by purchasing points that they can then use to acquire virtual items. These point systems add a dynamism and flexibility to the game play experience. Many mobile games are based upon a “free-to-play” business model, in which there is no cost to download the game, and players have the option to buy points if they wish; but they need not do so to play the game. In fact, only a tiny fraction of gamers who use “free-to-play” mobile games buy *any* virtual items.<sup>2</sup> Critically, these play currencies, whether earned or purchased, are only usable within the game universe, cannot be converted into cash, and have no monetary value.

3. We agree with Big Fish Games that the BFC does not constitute gambling under the Washington Gambling Act (“WGA”). For there to be gambling, one requirement is that the virtual tokens distributed in the game would have to be a “thing of value.” The BFC virtual tokens do not fit into any of the four categories of “thing of value,” according to the Petition.<sup>3</sup> This non-convertible play currency does not qualify as “money or property,” nor is it exchangeable for “money or property.”<sup>4</sup> The applicable terms that govern BFC’s usage clearly specify that the tokens are non-convertible into cash and have no monetary value.<sup>5</sup> Additionally, the terms prohibit transfer or resale of the tokens, and for that reason these tokens do not qualify as a “form of credit” that “contemplate[s] the transfer of money or property.”<sup>6</sup> The fourth category, “extension of a service . . . without charge,” is best understood as implying that the initial experience otherwise involves a charge, and here that is not the case. Because Big Fish Games continually replenishes players’ accounts with free virtual tokens, the player need not incur any charge to play the game.<sup>7</sup>
4. If the virtual chips are deemed to be a thing of value, this would lead to an absurd result that runs contrary to the stated policy of the WGA (“WGA Policy”).<sup>8</sup> If the chips “won” are a thing of value, then even playing with chips that the user acquires *for free* (and for which she never risks a cent) would be gambling. Under this scenario, the user plays chips (presumptively “a thing of value”) for a chance to win more chips (presumptively “a thing of value”). It is inconceivable that the WGA was intended to find gambling where a player risks no money and has no chance to make a profit. Yet, if this result were adopted, it could impact many other apps and games that undoubtedly are not the types of activities that would be considered gambling under the traditional principles that have guided that analysis.

---

<sup>2</sup> See Lauren Keating, *Report Finds that Only 1.9 Percent of Mobile Gamers Make In-App Purchases*, TECHTIMES (March 26, 2016), <https://www.techtimes.com/articles/144329/20160325/report-finds-1-9-percent-mobile-gamers-make-app-purchases.htm> (last visited Aug. 2, 2018).

<sup>3</sup> Petition at Par. 17.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at Par. 18.

<sup>8</sup> See RCW 9.46.010 (stating explicitly the “public policy of the state of Washington on gambling”).

5. The WGA Policy is to keep the criminal element of professional gambling out while preserving the freedom to engage in social pastimes.<sup>9</sup> Video games fall squarely within this description. Games of all types, including video games, have long been a social pastime and “are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.”<sup>10</sup> Additionally, games clearly do not involve “the evils induced by common gamblers and common gambling houses engaged in professional gambling” as proscribed by the WGA Policy.<sup>11</sup>
6. Video games provide rich, engaging entertainment and have evolved into a popular social pastime for a wide range of demographics, as demonstrated by the following facts:
  - **64** percent of American households own a device that they use to play video games.
  - **60** percent of Americans play video games daily.
  - The average gamer is **34** years old, and gamers 18 or older represent more than 70 percent of the video game playing population.
  - Most parents (**70** percent) say video games have a positive influence on their child’s life.
  - Most parents (**67** percent) also play video games with their child at least once weekly and **94** percent say they pay attention to the video games played by their child.<sup>12</sup>
7. There is no question that the BFC is for amusement and not for the player’s profit. The BFC can be played for free solely for entertainment purposes. The players cannot make a profit by playing the game (*i.e.*, end up with more money than when they started). Players are contractually restricted from selling the chips for cash or other property; the chips cannot be cashed out; and the Terms of Use make clear that the chips have no real-world value.<sup>13</sup> Even the Ninth Circuit acknowledged these valid contractual terms.<sup>14</sup>
8. This stands in stark contrast to gambling. For example, in one form of gambling, a gambler plays casino games against the house. When a gambler walks into a casino, the gambler has a certain amount of money. The gambler plays the casino games and—win or lose depending upon the outcome of play—the gambler leaves the casino with a different amount of money. If the gambler wins, the casino loses; if the casino wins, the gambler loses. In contrast, when a player buys non-convertible points in a video game, his or her “loss,” if any, is complete with that transaction. Through game play, the player can earn additional points and thus increase his or her points balance, but there is no possibility of cashing out those points for real money under the rules of the video game.

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *2018 Essential Facts About the Computer and Video Game Industry*, ENTERTAINMENT SOFTWARE ASSOCIATION, available at [http://www.theesa.com/wp-content/uploads/2018/05/EF2018\\_FINAL.pdf](http://www.theesa.com/wp-content/uploads/2018/05/EF2018_FINAL.pdf).

<sup>13</sup> Petition at Par. 17.

<sup>14</sup> See *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 788 n. 2 (9th Cir. 2018) (addressing BFC’s Terms of Use).



9. Other courts have distinguished playing games for entertainment and gambling devices that have a payout. One court stated:

A pinball game, such as the defendant game in this case, would unquestionably fall within the prohibition of the statute if it returned money to the player. However, whereas a slot machine or a craps table entails no skill whatever, affords no amusement beyond that which the player enjoys when he is paid money, and within a few seconds parts the player from his money through his expectation of winning additional money, a pinball game is essentially an amusement game which can be, and frequently is, played for long periods of time with no reward to the player beyond the enjoyment of playing. A pinball game which does not pay out money or anything else of value and therefore on which money cannot be staked, hazarded, bet, won or lost, is not a gambling device and does not fall within the prohibition of the statute.<sup>15</sup>

10. More recently, a federal court in Maryland dismissed claims alleging that use of virtual gold in a casino-style online game constituted illegal gambling, concluding that players of such services pay for the pleasure of entertainment *per se*, not for the prospect of economic gain. It likened the transaction involving the payment of money for chips to other entertainment transactions, such as purchasing cinema or amusement park tickets. Once the player has swapped real money for play currency, the court reasoned, the player's "loss," if any, is complete. The court continued:

Plaintiff could spend her 'gold' as she pleased within the bounds of Defendant's [Terms of Service]. ... What she could *not* do is cash out of the game. In this respect, while the casino function aesthetically resembles classic games of chance, the underlying transaction is more akin to purchasing cinema or amusement park tickets. Consumers of such services pay for the pleasure of entertainment *per se*, not for the prospect of economic gain.<sup>16</sup>

11. Other courts have distinguished between paying for an entertainment service (such as games) and gambling. With the former, the service provider does not participate in the game and has no stake in the outcome (*i.e.*, no chance of winning or losing). With gambling (*e.g.*, against a house), there is typically a winner and a loser. Indeed, the general principle that wagering requires at least two parties (a winner and a loser) has

---

<sup>15</sup> *People v. One Mechanical Device*, 142 N.E.2d 98, 100 (Ill. 1957).

<sup>16</sup> *Mason v. Machine Zone, Inc.*, 140 F. Supp. 3d 457, 465 (D. Md. 2015).

long ago been established: “In a wager, each party ‘has a chance of gain and takes a risk of loss.’”<sup>17</sup>

12. Other gambling cases have found that an entertainment service operator (like Big Fish Games) is not a gambling winner or loser. For example, in *Humphrey v. Viacom*, a gambling loss recovery case, the court found that fees paid to a fantasy sports game operator were payment for services pursuant to an enforceable contract and thus the player had no “gambling loss.”<sup>18</sup> It also found that the fantasy sports operator was not a gambling winner, stating:

Defendants plainly are not “winners” as a matter of law, but merely parties to an enforceable contract. . . . At no time do Defendants participate in any bet. Absent such participation, Defendants cannot be “winners” as a matter of law. To suggest that one can be a winner without risking the possibility of being a loser defies logic and finds no support in the law.<sup>19</sup>

13. In *Langone v. Kaiser*, another fantasy sports gambling loss recovery case, the court reached a similar conclusion. It stated: “[The game operator] risks nothing when it takes entry fees from participants in its fantasy sports games.”<sup>20</sup> Based on this, the court concluded that “because [the game operator] itself . . . does not participate in the risk associated with its fantasy sports games, it is not a ‘winner’ for the purposes of the Loss Recovery Act.”<sup>21</sup>
14. These principles have been followed in other recent cases involving alleged gambling in games. In *Phillips v. Double Down*, the court explained: “To be a winner, a person must have ‘a direct stake in the outcome of the gambling.’”<sup>22</sup> It found Double Down was not a winner, stating: “Double Down never directly participated in the games, nor did it have a direct stake in the outcome of any games. . . . Simply put, once the chips are paid for, there is no way for Double Down to lose that money.”<sup>23</sup>

---

<sup>17</sup> *Gaming Comm’n v. GNLV Corp.*, 834 P.2d 411, 413 (Nev. 1992) (quoting *Las Vegas Hacienda v. Gibson*, 359 P.2d 85, 86 (Nev. 1961)). “Now, according to the definition of ‘wager,’ there must be two or more contracting parties, having mutual rights in respect to the money or other thing wagered, or, as sometimes said, ‘staked,’ and each of the parties necessarily risks something, and has a chance to make something upon the happening or not happening of an uncertain event.” *Las Vegas Hacienda*, 359 P.2d at 86-87 (quoting *Misner v. Knapp*, 9 P. 65, 66 (Ore. 1885)).

<sup>18</sup> *Humphrey v. Viacom, Inc.*, 2007 U.S. Dist. LEXIS 44679 (D.N.J. June 20, 2007).

<sup>19</sup> *Id.* at \*25-26 (citing *Las Vegas Hacienda*, 359 P.2d at 86).

<sup>20</sup> *Langone v. Kaiser*, 2013 WL 5567857, at \*19-20 (N.D. Ill. Oct. 9, 2013).

<sup>21</sup> *Id.* at \*21.

<sup>22</sup> *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731, 740 (N.D. Ill. 2016) (quoting *Fahmer v. Tiltware LLC*, 2015 U.S. Dist. LEXIS 36806, at \*7 (S.D. Ill. Mar. 24, 2015)).

<sup>23</sup> *Id.*

15. A similar result was reached in *Ristic v. Mach. Zone, Inc.*<sup>24</sup> and *Mason v. Machine Zone*.<sup>25</sup>
16. In the BFC, no one else has a chance to win based on the players using chips to play. When the player plays the chips, only the player can “win” or “lose” chips based on the outcome of the game play. Neither Big Fish Games nor anyone else stands a chance to win or lose any money or anything else of value based on the “outcome” of a player using her chips to play the game. Playing games for entertainment value with no chance of profit does not violate the WGA Policy and is not gambling.
17. The ESA agrees with Big Fish Games’ assertion that the Commission should resolve the ambiguity created by the Ninth Circuit decision. In resolving this ambiguity, it is imperative that the Commission evaluate the WGA Policy considerations in this context.
18. Interpreting gambling to cover non-convertible play currencies used in free-to-play games and other video games with optional add-on content could have a detrimental impact on video games and other entertainment-based applications with in-app purchases. For example, it may discourage game publishers from incorporating these harmless point systems into future games, which would be unfortunate for both publishers and gamers. This optional content adds a more flexible, dynamic element to the game play experience. These present uses of play currencies are far afield from the sorts of activities intended to be captured by the WGA Policy. Like transactions for the purchase of cinema or amusement park tickets, these are bona fide business transactions where people pay money for entertainment, not for profit.
19. In fact, the definition of “gambling” expressly excludes “bona fide business transactions valid under the law of contracts.”<sup>26</sup> The use of the BFC and the purchase and use of virtual chips is governed by the BFC Terms of Use,<sup>27</sup> which is a binding contract between Big Fish Games and its players. Even the Ninth Circuit acknowledged this. When rejecting one of the Plaintiff’s arguments regarding “a thing of value,” the court noted that the contractual restrictions in the Terms of Use prohibit the transfer or sale of chips.<sup>28</sup> As the purchase of virtual chips is a bona fide business transaction, subject to a

---

<sup>24</sup> 2016 U.S. Dist. LEXIS 127056, at \*7 (N.D. Ill. Sept. 19, 2016) (“Ristic does not plausibly allege that Machine Zone was the ‘winner’ of his alleged gambling losses. A gambling winner is the person to whom a gambling loser has lost.”).

<sup>25</sup> 851 F.3d 315, 319 (4th Cir. 2017) (“[W]e observe that the requirement in the Loss Recovery Statute that a person ‘lose[ ] money’ suggests that a claim cognizable under the Statute also involves a winner of the money that Mason seeks to recover.”).

<sup>26</sup> RCW 9.46.0237.

<sup>27</sup> Petition at Par. 17.

<sup>28</sup> *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 788 n. 2 (9th Cir. 2018) (“Big Fish Casino’s Terms of Use prohibit the transfer or sale of virtual chips. As a result, the sale of virtual chips for cash on a secondary market violates the Terms of Use.”).

valid contract, it is expressly excluded from the scope of gambling. A similar conclusion was reached in *Humphrey v. Viacom*.<sup>29</sup>

20. The Ninth Circuit decision departs from a recent line of cases where courts found no gambling in similar circumstances. In fact, to the best of our knowledge, all other decided cases alleging gambling in video games, based on virtual items that cannot be cashed out, have found there to be no gambling.<sup>30</sup> The Ninth Circuit disregarded these decisions on the premise that the Washington state gambling statute defines “a thing of value” differently than the other jurisdictions. Nevertheless, these other decisions are instructive because they do not turn solely on that distinction but on other factors that overlap with the Washington legal test. They merit consideration by the Commission.
21. The Ninth Circuit’s decision conflicts with and ignored the Washington State Gambling Commission’s interpretation and enforcement practices related to gambling. For reasons set forth in paragraph 25 of the Petition, the Commission has already determined that the BFC, and other similar games, do not constitute gambling under the Washington statute. The Ninth Circuit declined to consider this, despite the evidence of record.

For at least these reasons, the ESA supports the Petition.

Sincerely,



Stanley Pierre-Louis  
Senior Vice President & General Counsel  
Entertainment Software Association

---

<sup>29</sup> 2007 U.S. Dist. LEXIS 44679, at \*25-28 (D.N.J. June 20, 2007) (determining that the fees paid to the fantasy sports game operator were payment for services pursuant to an enforceable contract, and thus the player had no “gambling loss”).

<sup>30</sup> See *Mason v. Mach. Zone, Inc.*, 851 F.3d 315 (4th Cir. 2017); *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731 (N.D. Ill. 2016); *Soto v. Sky Union, LLC*, 159 F. Supp. 3d 871 (N.D. Ill. 2016); *Ristic v. Mach. Zone, Inc.* 2016 U.S. Dist. LEXIS 127056 (N.D. Ill. Sept. 19, 2016). Three of the cases (*Sky Union, Mason and Ristic*) were strategy-based games that had different chance-based mechanics, where players could win virtual items for use in the game. The other game (*Double Down*) was a casino-style social game, where players could periodically receive virtual currency to play the casino-style games and if they ran out, could buy more or wait to receive more.

Dear Commissioners:

I live in Puyallup, Washington. In the last six months, I've lost more than \$20,000 playing HUUUGE Casino (one of the most popular "social casino" games, along with Big Fish Casino). I'm planning to come to the hearing in Pasco on Thursday to tell you my story, but I wanted to send this letter first in case you don't have time to hear from me in Pasco.

Earlier this year I had back surgery and was laid up on the couch for a couple months. To pass the time, I downloaded the HUUUGE Casino app. I have a history of casino gambling addiction (at the Muckleshoot and the Emerald Queen), and thought that using a "free" online casino would help me stop going to the "real" casinos. I thought it could be like Suboxone to a heroin addict or Chantix to a smoker. This was supposed to help me, not make me worse off. Boy, was I wrong.

Phone-based "social casino" games like HUUUGE Casino are absolutely gambling. When you first download the app and start spinning the slots, it seems like everyone wins and plays for free for a little while. But after you play for a bit, everyone's "luck" seems to fade, and you run out of chips pretty quickly. Honestly, it seems like they can figure out once you are "hooked," and then they start making you lose so you have to keep buying chips.

At the start, the chip packages they offer cost \$.99 or \$1.99. But as you play more, the cheapest chip packages you can buy get more and more expensive. Within a month of starting to play, the cheapest "special" purchase I could make in HUUUGE casino was for \$99.99. I even created new accounts just so I could buy smaller chip packages (instead of ones \$99.99 and up). But it seemed like as soon as they figured out that the new accounts were connected to my same Google or Facebook account, they knew they already had a sucker, so the chip packages got expensive and I'd lose quickly.

When I would ask HUUUGE to block me from buying any more chips, they said they couldn't do that. I know I should have just stopped myself, but I was hooked. I still don't understand why they couldn't just block my account.

In my opinion, games like HUUUGE are way more addictive than regular casinos. And I know – I've spent way too much time and money playing the slots at the "real" casinos. But HUUUGE is worse: all you have to do to start gambling is to take out your phone. It lets me gamble at home, at work on breaks, morning, noon, night. I can't bring the Emerald Queen or the Muckleshoot Casino home with me or carry it around in my purse. But I can bring HUUUGE with me anywhere. It's just too convenient.

Worse, I am absolutely certain that HUUUGE knows once you're addicted, and changes the odds on you (to make you buy more chips) after they figure it out. On top of all that, the whole structure of VIP "clubs" adds to the addiction. You have to belong to a club to get any real amount of "free" chips. But in the end the clubs are just another way that you get pressured into buying more chips because you quickly get kicked out of your club if you aren't "contributing" enough on a daily basis.

This game has ruined me, both financially and emotionally. For months, I sat inside my house and did nothing but spin slots inside a phone game I was addicted to. I've spent every dollar to my name on that stupid game. When I look at my Google purchases and bank statements I am just disgusted with myself. But I know that I'm not alone, and I'm hoping that by speaking up I might help other people from going through what I have.

Online casinos like Huuuge aren't anything like normal games – even ones with in-app purchases like Candy Crush. Online casino games literally mimic the real casinos, both in terms of the look and feel and in terms of the games they offer (slots, roulette, blackjack, etc.). If they were not trying to mimic a casino, they wouldn't be making games that are identical to the same ones you find in the casinos. And they even call themselves casinos! Yet they want to say they that the games aren't "gambling." The truth is that these games are a perfect way for companies like Huuuge to lure in the weak and hope to get someone with money. Basically, if it looks like a casino, functions like a casino, makes games just like the casino, is named as a casino, takes money like a casino, destroys someone financially and emotionally like a casino ... then it's a casino!

Huuuge Casino, Big Fish Casino, and all the rest of these app companies need to be regulated just like regular casinos. And they need to be responsible for addiction counseling for the people—like me—who they have preyed upon and ruined.

I look forward to telling you more about my experience next week.

Sincerely,

P.M.

48 year old resident of Puyallup, WA

To the Washington State Gambling Commission:

I understand the Washington State Gambling Commission is investigating whether or not online games and apps like Big Fish Casino should be considered illegal gambling. I would like to offer my personal experience with Big Fish Casino for your consideration.

My name is Suzie Kelly. I'm 60 years old, and I live in Plano, Texas. I'm married and have 2 adult sons, and one granddaughter who is 5.

In May of 2014, after seeing TV commercials for Big Fish Casino—"play for fun, play for free"—I downloaded the "free" app on my iPhone. At first, my game play was nothing more than a few minutes a day. I would log on, collect a small daily bonus, spin the slots a few times, then put my phone down.

Within days of starting, I started spending money to buy chips. The prices for chip packages are quite expensive. However, the higher your VIP tier, the more chips you would receive in a package. Within a month of downloading the app I was spending hundreds, then thousands of dollars on chip packages. Over the next four years, I spent more than \$300,000 gambling on Big Fish Casino.

After spending hundreds of thousands of dollars, I surpassed the supposedly-top-tier VIP 15 rank to the "mystery" VIP 16 rank, achieving Big Fish Casino's "you are royalty to us" status. Big Fish Casino assigned me a personal VIP host, Byron Scott. Byron personally called me; sent me his direct email address; responded to all of my emails (in the beginning) within minutes; took the time to get to know me personally; knew more about me than most of my friends did; even had flowers sent to my home when my mother passed away in 2016. He sent me free chips regularly, although sometimes he and other VIP hosts told me that I hadn't spent enough money recently for them to be allowed to send me any. All in all, I have hundreds of emails and messages from Byron.

I had literally lost sense of reality. My reality became the app. My reality became withdrawing funds from my husband's 401(k), and taking two home equity loans on our residence to pay off the credit card charges for the chip purchases. More importantly, I almost lost my husband due to this addiction. I finally told him about everything last month, and I am unbelievably lucky that my addiction to Big Fish Casino didn't cost me my marriage. But financially, we've lost everything and don't know how we're ever going to recover.

You might ask yourself, how could anyone get to this point? The answer is that Big Fish Casino and its competitors (like Double Down and Huuuge, which I've also played) are digital casinos, and just like regular casinos, are designed to be as addictive as possible. Just like regular slot machines, the games have bright colors and flashing lights and exciting noises. But its more than that. With Big Fish Casino, you don't ever have to get in your car and drive, you can just pick up your phone and start playing anytime and anywhere—which for me was all of the time and everywhere.

There is one major difference between Big Fish Casino and regular casinos. While—just like a regular casino—you can lose hundreds or even thousands of dollars’ worth of chips per spin, you can never actually win real money. As it turns out (and as I learned the hard way), you don’t need the possibility of winning real money to get hooked playing Big Fish Casino.

The social aspect of Big Fish Casino makes it even more addictive. Everyone who spends a lot of money on Big Fish belongs to a “club,” which helps you get extra chips. But when you don’t play for a little while, the other members in your club message you to try to get you back into the game (so they can get extra chips). And everyone can always see your chip count, how much you’ve won for the day, your status, whether you’ve won any trophies for the club lately, and things like that.

When I would ask Big Fish Casino to ban my account, or ban my credit card, or say that I thought I needed to take a break from playing because of how much money I was spending, Byron would tell me how much he and the other VIP hosts would miss me, and that they would be sad to see me go.

My experience is not unique. Over the last 4 years, I’ve gotten to know a lot of other “VIP” players on Big Fish Casino – many of them would talk about how they were retired, widowed, or on a fixed income. People would talk about how they couldn’t pay their bills but they kept buying chips anyway. I also know several other VIPs who, like me, kept their addiction a secret and were afraid their spouses would find out how much money they had lost playing Big Fish Casino.

There is nothing “free” about Big Fish Casino. To prevent even more people from falling into this same trap, I ask you to please regulate Big Fish Casino (and other games like it) as online gambling.

Sincerely,

Suzie Kelly





**STATE OF WASHINGTON  
GAMBLING COMMISSION**

**“Protect the Public by Ensuring that Gambling is Legal and Honest”**

October 1, 2018

**TO:** COMMISSIONERS:  
Bud Sizemore, Chair  
Julia Patterson, Vice Chair  
Christopher Stearns  
Ed Troyer  
Alicia Levy

**FROM:** Haylee P. Mills, Staff Attorney  
Legal and Records Division

**SUBJECT: Cum Inn Bar & Grill, Inc. d/b/a Cum Inn Bar & Grill, CR 2017-01455  
Final Order – October 18, 2018 Commission Meeting**

Cum Inn Bar & Grill, Inc. d/b/a Cum Inn Bar & Grill had a gambling license authorizing Punchboard/Pull-Tab activity in the State of Washington. The license expired on September 30, 2018, and was issued subject to the Licensee’s and its substantial interest holder’s compliance with state gambling laws and Commission rules at all times after receiving its gambling license.

Dennis J. Bennett was a substantial interest holder and owner of the Licensee. On September 21, 2017, Mr. Bennett was charged by the Washington State Attorney General’s Office with two counts of Theft in the First Degree, Class B Felonies, for fraudulent activity related to the state’s worker compensation system and federal disability benefits. The criminal case is pending in Spokane County Superior Court.

Director Trujillo issued a Notice of Administrative Charges on January 10, 2018 to the Licensee by regular and certified mail to the last address the Gambling Commission had on file. The Commission received a request for hearing on January 30, 2018. A prehearing was scheduled for August 14, 2018, and Mr. Bennett was sent notice of the prehearing to the last address the Gambling Commission had on file on May 9, 2018 and July 13, 2018. Licensee failed to attend the August 14, 2018 prehearing conference and an order dismissing appeal was issued on August 15, 2018. As of the date of this memo, the Commission has received no further communication from Licensee indicating the desire to proceed with appeal.

Cum Inn Bar & Grill, Inc. d/b/a Cum Inn Bar & Grill’s failure to attend or participate in a hearing or other stage of an adjudicative proceeding is a waiver of its right to a hearing in Case No. CR 2017-01455. You may take final action against its gambling license. Based on the conduct of its sole substantial interest holder, Cum Inn Bar & Grill, Inc. d/b/a Cum Inn Bar & Grill cannot show by clear and convincing evidence that it is qualified to keep its gambling license. Therefore, staff

Default Hearing – Cum Inn Bar & Grill

October 1, 2018

Page 2

recommends that the Commission sign the proposed final order and revoke Cum Inn Bar & Grill, Inc. d/b/a Cum Inn Bar & Grill's Punchboard/ Pull-Tab Activity License, Number 05-20848.



STATE OF WASHINGTON  
GAMBLING COMMISSION

**“Protect the Public by Ensuring that Gambling is Legal and Honest”**

October 1, 2018

**TO:** COMMISSIONERS:  
Bud Sizemore, Chair  
Julia Patterson, Vice Chair  
Christopher Stearns  
Ed Troyer  
Alicia Levy

**FROM:** Haylee P. Mills, Staff Attorney  
Legal and Records Division

**SUBJECT: Sonny R. Noudaranouvong, CR 2017-01511**  
**Final Order – October 18, 2018 Commission Meeting**

Mr. Sonny R. Noudaranouvong had a gambling license authorizing Public Card Room Employee activity at Royal Casino in Everett, Washington. His license expired on September 5, 2018.

In September, 2017, the gambling Commission opened an investigation into Mr. Noudaranouvong based on an anonymous complaint. Between December, 2017 and June, 2018, Mr. Noudaranouvong facilitated illegal sports betting while he worked as a dealer at Royal Casino. The case was referred criminally. No charges have yet been filed.

Director Trujillo issued a Summary Suspension and a Notice of Administrative Charges on July 23, 2018, to Mr. Noudaranouvong by personal service. As of the date of this memo, the Commission has not received any response from Mr. Noudaranouvong.

Mr. Noudaranouvong's failure to respond to the charges or request a hearing is a waiver of his right to a hearing in Case No. CR 2017-01511. You may take final action against his gambling license. Based on his conduct, Mr. Noudaranouvong cannot show by clear and convincing evidence that he is qualified to keep his gambling license. Therefore, staff recommends that the Commission sign the proposed final order and revoke Sonny R. Noudaranouvong's Public Card Room Employee License, Number 68-33794.



STATE OF WASHINGTON  
GAMBLING COMMISSION

**“Protect the Public by Ensuring that Gambling is Legal and Honest”**

October 1, 2018

**TO:** COMMISSIONERS:  
Bud Sizemore, Chair  
Julia Patterson, Vice Chair  
Christopher Stearns  
Ed Troyer  
Alicia Levy

**FROM:** Haylee P. Mills, Staff Attorney  
Legal and Records Division

**SUBJECT: Thuan Q. Phan, CR 2018-00555**  
**Final Order – October 18, 2018 Commission Meeting**

Mr. Thuan Q. Phan had a gambling license authorizing Public Card Room Employee activity at Great American Casino in Des Moines, Washington. His license expired on July 27, 2018.

Between May 2017 and April 2018, Mr. Phan was employed as both a dealer and a floor supervisor at the Great American Casino.

On March 23, 2018, Mr. Phan provided four (4) promotional cash drawing entry tickets each to four patrons at the floor supervisor workstation, giving the four patrons a winning advantage in the drawing that they did not earn and that he was not authorized to provide them. Due to these actions, Mr. Phan was suspended by the casino on March 30, 2018, and was subsequently terminated as a result of the findings and facts related to this case. The matter was not referred criminally.

Director Trujillo issued a Notice of Administrative Charges on July 16, 2018, to Mr. Phan by regular and certified mail to the last address the Gambling Commission had on file. The regular mail was returned on July 26, 2018 as “Return to Sender, Not Deliverable as Addressed, Unable to Forward.” The certified mail was also returned on July 26, 2018 as “Return to Sender, Not Deliverable as Addressed, Unable to Forward.” As of the date of this memo, the Commission has not received any response from Mr. Phan.

Mr. Phan’s failure to respond to the charges or request a hearing is a waiver of Mr. Phan’s right to a hearing in Case No. CR 2018-00555. You may take final action against his gambling license. Based on his conduct, Mr. Phan cannot show by clear and convincing evidence that he is qualified to keep his gambling license. Therefore, staff recommends that the Commission sign the proposed final order and revoke Thuan Q. Phan’s Public Card Room Employee License, Number 68-32470.



**STATE OF WASHINGTON  
GAMBLING COMMISSION**

**“Protect the Public by Ensuring that Gambling is Legal and Honest”**

October 1, 2018

**TO:** COMMISSIONERS:  
Bud Sizemore, Chair  
Julia Patterson, Vice Chair  
Christopher Stearns  
Ed Troyer  
Alicia Levy

**FROM:** Haylee P. Mills, Staff Attorney  
Legal and Records Division

**SUBJECT: Meisean Teurn, CR 2018-01076  
Final Order – October 18, 2018 Commission Meeting**

Ms. Meisean Teurn has a gambling license authorizing Public Card Room Employee activity at Freddie’s Club in Renton and Great American Casino in Des Moines, Washington. Her license expires on March 27, 2019.

On January 31, 2018, Ms. Teurn was indicted in the United States District Court for the District of Montana, Missoula Division, with three felonies: one count of Conspiracy to Possess with Intent to Distribute Oxycodone, one count of Fraudulent Acquisition of Oxycodone, and one count of Conspiracy to Attempt Fraudulent Acquisition of Oxycodone. Ms. Teurn chose not to notify the Gambling Commission of the felony charges on her March 26, 2018 renewal application.

On June 19, 2018, Ms. Teurn pled guilty to Conspiracy to Possess with Intent to Distribute Oxycodone. Ms. Teurn never disclosed the charges or her conviction to the Gambling Commission

Director Trujillo issued a Summary Suspension and Notice of Administrative Charges on July 23, 2018, that was personally served on Ms. Teurn on July 27, 2018. As of the date of this memo, the Commission has not received any response from Ms. Teurn.

Ms. Teurn’s failure to respond to the charges or request a hearing is a waiver of Ms. Teurn’s right to a hearing in Case No. CR 2018-01076. You may take final action against her gambling license. Based on her conduct, Ms. Teurn cannot show by clear and convincing evidence that she is qualified to keep her gambling license. Therefore, staff recommends that the Commission sign the proposed final order and revoke Meisean Teurn’s Public Card Room Employee License, Number 68-34110.



**Petition for Rule Change to**  
 WAC 230-15-610 Preparing to conduct a count  
 WAC 230-15-615 Conducting the count

**October 2018 – Further Discussion**  
**September 2018 – Discussion and Possible Filing**  
**April 2018 – Soft Count Demonstration**  
**March 2018 – Request to Initiate Rule-Making**

Tab 5: OCTOBER 2018 Commission Meeting Agenda.	Statutory Authority 9.46.070
<b>Who Proposed the Rule Change?</b>	
Stacy Hess, Great American Gambling Corporation, Tukwila, WA.	
<b>Background</b>	
<p>Ms. Hess requested a rule change to allow a card room to have two people, instead of the currently required three people, conduct a soft count if the licensee uses an automated bill counter.</p> <p>The Commission accepted the petition at the March 15, 2018 public meeting. A demonstration of how an automated bill counter is used during soft count occurred at the April 12, 2018 public meeting.</p>	
<b>Rule Changes and Licensees Impacted</b>	
<p>Currently all 46 house-banked card rooms must use a three member soft count team. With the proposed rules, soft count requirements would be based on the card room’s gross gambling receipts in their previous license year.</p> <p>We looked at the soft count team requirements in ten states. Six states require a three-member soft count team; the other four allowed two member teams. The proposed rule changes for discussion and possible filing this month align with the soft count requirements of other states and our tribal facilities while still meeting the petitioner’s needs.</p> <p>On August 3, 2018, we sent a summary of the rule changes and the proposed rule language to the house-banked card room licensees (HBCR).</p> <p>Attachments:</p> <ul style="list-style-type: none"> <li>• August 3, 2018 email to HBCR licensees with a summary of the rule changes and proposed rule language.</li> <li>• Email from Phil Ziegler, Manager, Emerald Downs.</li> </ul>	

Summary of proposed rule changes:

Card Room Gross Gambling Receipts in the Previous Fiscal Year	Rule Changes	Requirements for Currency Counter Used with a Two Person Count Team	Changes to the Count Process if a Currency Counter is Used with a Two Person Count Team	Number of HBCRs Based on 2016 Fiscal Year Reporting Information
Less than \$5 million	<ul style="list-style-type: none"> <li>• Two person team allowed with approval.</li> <li>• The approval process for a two person count team.</li> <li>• A surveillance employee must observe the entire count process.</li> </ul>			27
Between \$5 million and \$15 million	<ul style="list-style-type: none"> <li>• Two person count team allowed, with approval, if a currency counter is used as outlined in the rule.</li> <li>• The approval process for a two person count team.</li> <li>• A surveillance employee must observe the entire count process as it occurs.</li> <li>• New requirements for currency counters used with a two person count team.</li> <li>• Changes to the count process if a currency counter is used with a two person count team.</li> </ul>	<ul style="list-style-type: none"> <li>• Must automatically provide two separate counts of the funds at different stages in the count process.</li> <li>• Display the total bill count and dollar amount on a screen that will be recorded by surveillance during the count.</li> </ul>	<ul style="list-style-type: none"> <li>• Prior to each count, the accuracy of the currency counter must be verified.</li> <li>• Able to combine currency from a drop box to be counted by currency counter.</li> <li>• A surveillance employee must record in the surveillance log the currency verification amount prior to the count, the total bill and dollar count of each drop box and the combined dollar count of all drop boxes as the count is occurring.</li> </ul>	21
More than \$15 million	<ul style="list-style-type: none"> <li>• A surveillance employee must observe the entire count process as it occurs.</li> </ul>			1
New HBCR	<ul style="list-style-type: none"> <li>• Must have a three person count team until the licensee submits financial statements to us indicating their card room gross gambling receipts in their previous license year.</li> </ul>			

**Stakeholder Feedback**

Phil Ziegler from Emerald Downs sent an email in support.

**Staff Recommendation**

Staff recommends final action for November.

**WAC 230-15-610 Preparing to conduct a count.** (1) House-banked card game licensees must assign licensed employees to conduct the count. ~~((The count team must be made up of three or more licensed employees.))~~ The count team must not include anyone who works in the surveillance department or whose duties included preparing, approving, or reviewing records used in ~~((that))~~ the specific count process. ~~((2))~~ Count team requirements are based on the licensee's card room gross gambling receipts in their previous fiscal year:

<b><u>Card Room Gross Gambling Receipts</u></b>	<b><u>Minimum Count Team Requirements</u></b>
<u>Less than \$5 million.</u>	<u>Two person count team.</u>
<u>\$5 million to \$15 million.</u>	<u>Three person count team or two person count team if a currency counter is used as outlined in this chapter.</u>
<u>More than \$15 million.</u>	<u>Three person count team.</u>
<u>A new house-banked card room whose financial statements have not yet been submitted to us.</u>	<u>Three person count team.</u>

(2) Prior to using a two person count team, the licensee must receive approval from the director or their designee. The approval will be based on the licensee:

(a) Meeting the card room gross gambling receipts requirements in their previous fiscal year; and

(b) Having internal controls in place to prevent both under-reporting and misappropriation of funds; and

(c) Having demonstrated following their internal controls to prevent both under-reporting and misappropriation of funds based on their administrative history; and

(d) Having a currency counter, which complies with commission rules, and internal controls for the use of the currency counter. This applies for those licensees with card room gross gambling receipts of \$5 million to \$15 million.

(3) Licensees must accurately count and record the contents of drop boxes to ensure the proper accountability of all gambling chips, coin, and currency. The count must be done at least once each gambling day.

~~((3))~~ (4) If a cage cashier completes the opener, closer, fills, and credits portions of the master game report, the cashier sends the original master game report to the count team for completion. The cage cashier must immediately send a copy directly to the accounting department.

~~((4))~~ (5) A count team member must notify the surveillance room observer that the count is about to begin. The surveillance employee must then observe the count as it occurs and make a video and audio recording of the entire count process.

~~((5))~~ (6) Before opening drop boxes, the count team must lock the door to the count room. Licensees must permit no person to enter or leave the count room, except for a normal work break or an emergen-



cy, until the count team has completed the entire counting, recording, and verification process for the contents of drop boxes.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

**WAC 230-15-615 Conducting the count.** (1) All house-banked card room licensees must have a three person count team except as set forth in subsections (2) and (3) of this section. The three person count team must conduct the count as follows:

(a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

~~((2))~~ (b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

~~((3))~~ (c) A count team member must empty the contents onto the count table; and

~~((4))~~ (d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

~~((5))~~ (e) Count team member(s) must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and currency and by type of form, record, or document; and

~~((6))~~ (f) At least two count team members must count, either manually or mechanically, each denomination of coin, chips, and currency separately and independently. Count team members must place individual bills and coins of the same denomination on the count table in full view of the closed circuit television cameras, and at least one other count team member must observe and confirm the accuracy of the count orally or in writing; and

~~((7))~~ (g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, and currency counted (the drop) on the master games report; and

~~((8))~~ (h) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

~~((9))~~ (i) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(2) The two person count team for licensees with card game gross gambling receipts of less than \$5 million in their previous fiscal year must conduct the count as follows:

(a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(c) A count team member must empty the contents onto the count table; and

(d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(e) A count team member must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and currency and by type of form, record, or document; and

(f) One count team member must count, either manually or mechanically, each denomination of coin, chips, and currency separately and independently. The count team member must place individual bills and coins of the same denomination on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, and currency counted (the drop) on the master games report; and

(h) As the count is occurring, a surveillance employee must record in the surveillance log the total chip and currency count of each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(i) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(j) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(3) The two person count team for licensees with card game gross gambling receipts between \$5 million and \$15 million in their previous fiscal year and use a currency counter must conduct the count as follows:

(a) The currency counter to be used must meet the following requirements:

(i) Automatically provides two separate counts of the funds at different stages in the count process. If the separate counts are not in agreement during the count process and the discrepancy cannot be resolved immediately, the count must be suspended until a third count team member is present to manually complete the count as set forth in subsection (1) of this section until the currency counter is fixed; and

(ii) Displays the total bill count and total dollar amount for each drop box on a screen, which must be recorded by surveillance.

(b) Immediately prior to the count, the count team must verify the accuracy of the currency counter with previously counted currency

for each denomination actually counted by the currency counter to ensure the counter is functioning properly. The test results must be recorded on the table games count documentation and signed by the two count team members performing the test; and

(c) The currency counter's display showing the total bill count and total dollar amount of each drop box must be recorded by surveillance during the count; and

(d) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(e) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and be recorded by the audio recording equipment; and

(f) A count team member must empty the contents onto the count table; and

(g) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to the other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(h) Count team member(s) must combine all currency into one stack and separate the contents of each drop box into separate stacks on the count table by denomination of coin and chips, by type of form, record, or document; and

(i) Count team members must place all of the currency from a drop box into the currency counter which will perform an aggregate count by denomination of all of the currency collected from the drop box; and

(j) One count team member must count each denomination of coin and chips separately and independently by placing coins of the same denomination on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(k) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, and currency counted (the drop) on the master games report; and

(l) As the count is occurring, a surveillance employee must record in the surveillance log the currency counter accuracy information in (b) of this subsection, currency verification amount, total bill and dollar count of each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(m) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(n) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

**From:** [DONOTREPLY \(GMB\)](#)  
**To:** [Griffin, Tina \(GMB\)](#)  
**Subject:** Gambling Commission seeks comments on petition for rule change  
**Date:** Friday, August 3, 2018 3:25:31 PM  
**Attachments:** [Rules.pdf](#)  
[image002.png](#)  
[image003.gif](#)  
[image004.png](#)  
[image005.jpg](#)  
[image007.png](#)

---



August 3, 2018

Dear Licensee,

We are seeking your feedback on a petition for rule change to the soft count procedures. Earlier this year, we received a petition for rule change to allow a house-banked card room to have two people, instead of three, conduct the count if the licensee used an automated bill counter. On March 15, 2018, the Commissioners agreed to initiate rule-making.

The proposed rules are attached. The count requirements under the proposed rules would be based on the house-banked card room's gross gambling receipts in their previous license year. A summary of the proposed rule changes are as follows:

<b>Card Room Gross Gambling Receipts in the Previous Fiscal Year</b>	<b>Rule Changes</b>	<b>Requirements for the Currency Counter Used with a Two Person Count Team</b>	<b>Changes to the Count Process if a Currency Counter is Used with a Two Person Count Team</b>	<b>Number of HBCRs Based on 2016 Fiscal Year Reporting Information</b>
Less than \$5 million	<ul style="list-style-type: none"> <li>• Two person count team allowed with approval.</li> <li>• The approval process for a two person count team.</li> </ul>			27

	<ul style="list-style-type: none"> <li>• A surveillance employee must observe the entire count process as it occurs.</li> </ul>			
Between \$5 million and \$15 million	<ul style="list-style-type: none"> <li>• Two person count team allowed, with approval, if a currency counter is used as outlined in the rule.</li> <li>• The approval process for a two person count team.</li> <li>• A surveillance employee must observe the entire count process as it occurs.</li> <li>• New requirements for currency counters used with a two person count team.</li> <li>• Changes to the count process if a currency counter is used with a two person count team.</li> </ul>	<ul style="list-style-type: none"> <li>• Must automatically provide two separate counts of the funds at different stages in the count process.</li> <li>• Display the total bill count and total dollar amount for each drop box on a screen that must be recorded by surveillance.</li> </ul>	<ul style="list-style-type: none"> <li>• Prior to each count, the accuracy of the currency counter must be verified.</li> <li>• Able to combine currency from a drop box to be counted by currency counter.</li> <li>• A surveillance employee must record in the surveillance log the currency verification amount prior to the count, the total bill and dollar count of each drop box and the combined dollar count of all drop boxes as the count is occurring.</li> </ul>	21
More than \$15 million	<ul style="list-style-type: none"> <li>• A surveillance employee must observe the entire count process as it occurs.</li> </ul>			1
New HBCR	<ul style="list-style-type: none"> <li>• Must have a</li> </ul>			

	three member count team until the licensee submits financial statements to us indicating their card room gross gambling receipts in their previous license year.			
--	---	--	--	--

Your feedback is important to us. To submit your comments or questions, please send an email to [Tina.Griffin@wsgc.wa.gov](mailto:Tina.Griffin@wsgc.wa.gov) or give me a call at 360-486-3546.

We anticipate presenting these rule changes at the September Commission meeting for discussion and possible filing. Meeting information will be posted on our [public meetings webpage](#) about a week prior to the meeting.

Sincerely,

**Tina Griffin**  
Assistant Director  
Washington State Gambling Commission



## Amended

### WAC 230-15-610

#### Preparing to conduct a count.

(1) House-banked card game licensees must assign licensed employees to conduct the count. ~~The count team must be made up of three or more licensed employees.~~ The count team must not include anyone who works in the surveillance department or whose duties included preparing, approving, or reviewing records used in that specific count process. Count team requirements are based on the licensee's card room gross gambling receipts in their previous fiscal year:

<u>Card Room Gross Gambling Receipts</u>	<u>Minimum Count Team Requirements</u>
<u>Less than \$5 million</u>	<u>Two person count team</u>
<u>\$5 million to \$15 million</u>	<u>Three person count team or two person count team if a currency counter is used as outlined in this chapter.</u>
<u>More than \$15 million</u>	<u>Three person count team</u>
<u>A new house-banked card room whose financial statements have not yet been submitted to us</u>	<u>Three person count team</u>

(2) Prior to using a two person count team, the licensee must receive approval from the director or their designee. The approval will be based on the licensee:

(a) Meeting the card room gross gambling receipts requirements in their previous fiscal year; and

(b) Having internal controls in place to prevent under-reporting and misappropriation of funds; and

(c) Having demonstrated following their internal controls to prevent under-reporting and misappropriation of funds based on their administrative history; and

(d) Having a currency counter, which complies with commission rules, and internal controls for the use of the currency counter. This applies for those licensees with card room gross gambling receipts of \$5 million to \$15 million.

(3) Licensees must accurately count and record the contents of drop boxes to ensure the proper accountability of all gambling chips, coin, and currency. The count must be done at least once each gambling day.

(4) If a cage cashier completes the opener, closer, fills, and credits portions of the master game report, the cashier sends the original master game report to the count team for completion. The cage cashier must immediately send a copy directly to the accounting department.

(5) A count team member must notify the surveillance room observer that the count is about to begin. The surveillance employee must then observe the count as it occurs and make a video and audio recording of the entire count process.

(~~65~~) Before opening drop boxes, the count team must lock the door to the count room. Licensees must permit no person to enter or leave the count room, except for a normal work break or an emergency, until the count team has completed the entire counting, recording, and verification process for the contents of drop boxes.

[Statutory Authority: RCW [9.46.070](#). WSR 07-09-033 (Order 608), § 230-15-610, filed 4/10/07, effective 1/1/08.]



## Amended

### **WAC 230-15-615 Conducting the count.**

(1) All house-banked card room licensees must have a three person count team except as set forth in subsection (2). The three person count team must conduct the count as follows:

(a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(c) A count team member must empty the contents onto the count table; and

(d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(e) Count team member(s) must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and currency and by type of form, record, or document; and

(f) At least two count team members must count, either manually or mechanically, each denomination of coin, chips, and currency separately and independently. Count team members must place individual bills and coins of the same denomination on the count table in full view of the closed circuit television cameras, and at least one other count team member must observe and confirm the accuracy of the count orally or in writing; and

(g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, and currency counted (the drop) on the master games report; and

(h) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(i) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(2) House-banked card room licensees may use a two person count team if their card game gross gambling receipts in their previous fiscal year were:

(a) Less than \$5 million; or

(b) Between \$5 million and \$15 million and as part of the count process they use a currency counter that meets the following requirements:

(i) Automatically provides two separate counts of the funds at different stages in the count process. If the separate counts are not in agreement during the count process and the discrepancy cannot be resolved immediately, the count must be suspended until a third count team member is

present to manually complete the count as set forth in subsection (1) until the currency counter is fixed; and

(ii) Display the total bill count and total dollar amount for each drop box on a screen that must be recorded by surveillance.

(c) The two person count team must conduct the count as follows:

(i) Immediately prior to the count, the count team must verify the accuracy of the currency counter with previously counted currency for each denomination actually counted by the currency counter to ensure the counter is functioning properly. The test results must be recorded on the table games count documentation and signed by the two count team members performing the test; and

(ii) The currency counter's display showing the total bill count and total dollar amount of each drop box must be recorded by surveillance during the count; and

(iii) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(iv) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(v) A count team member must empty the contents onto the count table; and

(vi) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to the other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(vii) Count team member(s) must combine all currency into one stack and separate the contents of each drop box into separate stacks on the count table by denomination of coin and chips, by type of form, record, or document; and

(viii) Count team members must place all of the currency from a drop box into the currency counter which will perform an aggregate count by denomination of all of the currency collected from the drop box; and

(ix) One count team member must count each denomination of coin and chips separately and independently. Count team members must place coins of the same denomination on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(x) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, and currency counted (the drop) on the master games report; and

(xi) A surveillance employee must record in the surveillance log the currency counter accuracy information in (2)(c)(i) above, currency verification amount, total bill and dollar count of each drop box and the combined dollar count of all drop boxes as the count is occurring; and

(xii) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(xiii) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

[Statutory Authority: RCW [9.46.070](#). WSR 07-09-033 (Order 608), § 230-15-615, filed 4/10/07, effective 1/1/08.]

**From:** Phil Ziegler  
**To:** [Griffin, Tina \(GMB\)](#)  
**Subject:** Re: Gambling Commission seeks comments on petition for rule change  
**Date:** Friday, August 3, 2018 3:47:13 PM  
**Attachments:** [image002.png](#)  
[image003.gif](#)  
[image004.png](#)  
[image005.jpg](#)  
[image007.png](#)

---

Tina,

We are in favor of these changes. Thanks.

Phil Ziegler

---

**From:** DONOTREPLY (GMB) <donotreply@wsgc.wa.gov>  
**Sent:** Friday, August 3, 2018 3:25 PM  
**To:** Griffin, Tina (GMB)  
**Subject:** Gambling Commission seeks comments on petition for rule change



August 3, 2018

Dear Licensee,

We are seeking your feedback on a petition for rule change to the soft count procedures. Earlier this year, we received a petition for rule change to allow a house-banked card room to have two people, instead of three, conduct the count if the licensee used an automated bill counter. On March 15, 2018, the Commissioners agreed to initiate rule-making.

The proposed rules are attached. The count requirements under the proposed rules would be based on the house-banked card room's gross gambling receipts in their previous license year. A summary of the proposed rule changes are as follows:

Card Room				Number of
-----------	--	--	--	-----------

Gross Gambling Receipts in the Previous Fiscal Year	Rule Changes	Requirements for the Currency Counter Used with a Two Person Count Team	Changes to the Count Process if a Currency Counter is Used with a Two Person Count Team	HBCRs Based on 2016 Fiscal Year Reporting Information
Less than \$5 million	<ul style="list-style-type: none"> <li>• Two person count team allowed with approval.</li> <li>• The approval process for a two person count team.</li> <li>• A surveillance employee must observe the entire count process as it occurs.</li> </ul>			27
Between \$5 million and \$15 million	<ul style="list-style-type: none"> <li>• Two person count team allowed, with approval, if a currency counter is used as outlined in the rule.</li> <li>• The approval process for a two person count team.</li> <li>• A surveillance employee must observe the entire count process as it occurs.</li> <li>• New requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Must automatically provide two separate counts of the funds at different stages in the count process.</li> <li>• Display the total bill count and total dollar amount for each drop box on a screen that must be recorded by surveillance.</li> </ul>	<ul style="list-style-type: none"> <li>• Prior to each count, the accuracy of the currency counter must be verified.</li> <li>• Able to combine currency from a drop box to be counted by currency counter.</li> <li>• A surveillance employee must record in the surveillance log the currency</li> </ul>	21

	<p>for currency counters used with a two person count team.</p> <ul style="list-style-type: none"> <li>• Changes to the count process if a currency counter is used with a two person count team.</li> </ul>		<p>verification amount prior to the count, the total bill and dollar count of each drop box and the combined dollar count of all drop boxes as the count is occurring.</p>	
More than \$15 million	<ul style="list-style-type: none"> <li>• A surveillance employee must observe the entire count process as it occurs.</li> </ul>			1
New HBCR	<ul style="list-style-type: none"> <li>• Must have a three member count team until the licensee submits financial statements to us indicating their card room gross gambling receipts in their previous license year.</li> </ul>			

Your feedback is important to us. To submit your comments or questions, please send an email to [Tina.Griffin@wsgc.wa.gov](mailto:Tina.Griffin@wsgc.wa.gov) or give me a call at 360-486-3546.

We anticipate presenting these rule changes at the September Commission meeting for discussion and possible filing. Meeting information will be posted on our [public meetings webpage](#) about a week prior to the meeting.

Sincerely,

**Tina Griffin**

Assistant Director

Washington State Gambling Commission





## Rule Petition to Repeal

WAC 230-03-225 Marketing level restrictions for punch board or pull-tab gambling service suppliers.

**October 2018 – Discussion and Possible Filing**

Tab 6: OCTOBER 2018 Commission Meeting Agenda.	Statutory Authority 9.46.070
<b>Who Proposed the Rule Change?</b>	
Wendy Winsor, owner, W.O.W. Distributing, Mukilteo, WA.	
<b>Background</b>	
<p>The Petitioner requests the repeal of WAC 230-03-225, which prohibits licensed manufacturers or distributors of punchboards/pull-tabs from also being a licensed gambling service supplier.</p> <p>Review of past Commission Meeting minutes do not show a specific policy consideration for the rule identified by the petitioner. However, WAC 230-03-220 establishes a tiered system by establishing marketing level restrictions for punch board or pull-tab manufacturers, distributors, or operators. This tiered approach pre-existed the creation of our service supplier licensing category and was used when the Commission created our initial service supplier rules in 1998-200, likely including the rule at issue in this petition.</p> <p>Currently, licensed gambling service suppliers can charge a fee to provide punch board/pull-tab storage, counting and record-keeping services to punch board/pull-tab operators. The intent of this rule, which went into effect on January 1, 1999, was to prevent collusion and protect the integrity of punchboard/pull-tab games. We also have a rule that prohibits punchboard/pull-tab manufacturers or distributors from being a licensed operator of punchboards/pull-tabs, WAC 230-03-220.</p>	
<b>Reason for the Rule Change</b>	
<p>Ms. Winsor is requesting the repeal of this rule because WAC 230-03-225 “is no longer needed, imposes unreasonable costs and conflicts with another rule.” Ms. Winsor further provided this repeal is necessary because:</p> <ul style="list-style-type: none"> <li>• “A distributor of pull-tabs, and its representatives, must inform and educate prospective and established pull-tab licensees in order to perform the activities for which it is licensed; and</li> <li>• Unreasonable costs (i.e., photo copying, labor, transportation) are incurred by the distributor in the course of performing these licensed activities; and</li> <li>• WAC 230-03-210 requires anyone who performs these activities for compensation must apply for a gambling service supplier license but WAC 230-03-225 does not allow a distributor to hold both licenses.”</li> </ul> <p>Ms. Winsor states, “Repeal of WAC 230-03-225 would allow a distributor to perform its licensed activities and remain compliant.”</p>	
<p>Attachments:</p> <ul style="list-style-type: none"> <li>• Petition</li> <li>• Waiver of 60-day requirement under RCW 34.05.330</li> <li>• WAC 230-03-225 (repeal requested)</li> <li>• WAC 230-03-220, Marketing level restrictions for punch board or pull-tab manufacturers, distributors, or operators.</li> <li>• WAC 230-03-210, Applying for a gambling service supplier license.</li> </ul>	



Policy Considerations

The intent of this rule was to protect the integrity of punch boards/pull-tabs and prevent collusion amongst licensed manufacturers, distributors, operators, and gambling service suppliers.

Staff Recommendation

Staff recommends accepting the petition and filing initial rule-making to allow for further review and analysis of our service supplier rules and marketing level restrictions for punch board/pull tab operators.

## Rules Petition Received on August 7, 2018

Petitioner's Name: Wendy Winsor, owner, Wow Distributing

Rule Petition Type: Amend Rule – I am requesting WSGC eliminate an existing rule.

==Repeal Rule – I am requesting WSGC to eliminate an existing rule.==

List rule number (WAC) if known: WAC 230-03-225

Reason for repeal:

- It does not do what it was intended to do
- It is no longer needed because
- It imposes unreasonable costs
- It conflicts with another federal, state or local law or rule

Explain in more detail the reason for repeal:

WAC 230-03-225 “is no longer needed” and “imposes unreasonable costs” and “conflicts with another rule” and therefore, should be repealed because:

- A distributor of pull-tabs, and its representatives, must inform and educate perspective and established pull-tab licensees in order to perform the activities for which it is licensed and;
- Unreasonable costs (i.e., photo copying, labor, transportation) are incurred by a distributor in the course of performing these licensed activities and;
- WAC 230-03-210 requires anyone who performs these activities for compensation must apply for a “gambling service supplier license” but WAC 230-03-225 does not allow a distributor to hold both licenses.

Repeal of WAC 230-03-225 will allow a distributor to perform its licensed activities and remain compliant. Repeal of WAC 230-03-225 is within the RCW’s and WAC’s and if repealed, poses no conflict.

Wendy Winsor

**From:** [Laydon, Ashlie \(GMB\)](#)  
**To:** "[Wendy Winsor](#)"  
**Cc:** [Considine, Brian \(GMB\)](#); [Diane Sperry](#)  
**Subject:** RE: Petition for rule-making  
**Date:** Thursday, August 30, 2018 11:39:00 AM  
**Attachments:** [image001.png](#)

---

Ms. Winsor,

We have received your email stating you wish to waive the 60-day requirement. The October Commission Meeting will be held at the Hampton Inn and Suites in Olympia, Washington. The meeting agenda and supporting documents will be posted one week before the meeting. More information can be found [here](#).

Thank you,

Ashlie

**Ashlie Laydon**  
**Rules Coordinator**  
**Legal and Records Division**  
**Washington State Gambling Commission**  
**(360) 486-3473**  
**[ashlie.laydon@wsgc.wa.gov](mailto:ashlie.laydon@wsgc.wa.gov)**

---

**From:** Wendy Winsor <[wendyw@wowdistributing.com](mailto:wendyw@wowdistributing.com)>  
**Sent:** Thursday, August 30, 2018 11:28 AM  
**To:** Laydon, Ashlie (GMB) <[ashlie.laydon@wsgc.wa.gov](mailto:ashlie.laydon@wsgc.wa.gov)>  
**Cc:** Considine, Brian (GMB) <[brian.considine@wsgc.wa.gov](mailto:brian.considine@wsgc.wa.gov)>; Diane Sperry <[dianek@wowdistributing.com](mailto:dianek@wowdistributing.com)>  
**Subject:** RE: Petition for rule-making

We waive the 60 day requirement to hear the petition and will plan to attend the meeting on October 18<sup>th</sup> in Olympia to discuss the petition.

Thank you,

Wendy Winsor  
CFO



4424 Chennault Beach Rd, Suite B  
Mukilteo, WA 98275

425-315-8815 Office  
425-870-9741 Mobile

---

**From:** Laydon, Ashlie (GMB) <[ashlie.laydon@wsgc.wa.gov](mailto:ashlie.laydon@wsgc.wa.gov)>  
**Sent:** Thursday, August 30, 2018 11:24 AM  
**To:** Wendy Winsor <[wendyw@wowdistributing.com](mailto:wendyw@wowdistributing.com)>  
**Cc:** Considine, Brian (GMB) <[brian.considine@wsgc.wa.gov](mailto:brian.considine@wsgc.wa.gov)>  
**Subject:** Petition for rule-making  
**Importance:** High

Ms. Winsor,

My name is Ashlie Laydon and I am the Rules Coordinator for the Washington State Gambling Commission. We received your petition to repeal [WAC 230-03-225](#) on August 7, 2018. [RCW 34.05.330](#) is the law that governs these types of petitions and it requires that an agency hear a petition within 60 days of receipt of the petition. You are encouraged to appear before the Commission to discuss your petition with them. The [next Commission Meeting](#) will be held in Spokane, Washington on September 13<sup>th</sup> and 14<sup>th</sup>. If you are unable to attend the September Commission Meeting in Spokane, you are encouraged to attend the [October 18th Commission Meeting](#) in Olympia, Washington to discuss your petition.

If you are unable to attend the Commission Meeting in September, we will need an email from you stating that you waive the 60-day requirement for the agency to hear your petition as outlined in RCW 34.05.330.

Please feel free to contact me if you have any questions.

Thank you,

Ashlie

**Ashlie Laydon**  
**Rules Coordinator**  
**Legal and Records Division**  
**Washington State Gambling Commission**  
**(360) 486-3473**  
[ashlie.laydon@wsgc.wa.gov](mailto:ashlie.laydon@wsgc.wa.gov)

## **REPEAL**

### **~~WAC 230-03-225 Marketing level restrictions for punch board or pull-tab gambling service suppliers.~~**

~~If you are a substantial interest holder in a licensed gambling service supplier who provides services to punch board and pull tab operators, you must not hold a substantial interest in a licensed manufacturer or distributor of punch boards or pull tabs.~~

[Statutory Authority: RCW [9.46.070](#). WSR 06-07-157 (Order 457), § 230-03-225, filed 3/22/06, effective 1/1/08.]

**WAC 230-03-220 Marketing level restrictions for punch board or pull-tab manufacturers, distributors, or operators.**

(1) The different marketing levels for punch board and pull-tabs are:

- (a) Operator; and
- (b) Distributor or manufacturer.

(2) If you are a manufacturer or distributor, or spouse of a manufacturer or distributor of punch boards, pull-tabs, pull-tab dispensing devices, or related equipment, you must not have a substantial interest in a business that operates punch boards or pull-tabs.

[Statutory Authority: RCW [9.46.070](#). WSR 06-07-157 (Order 457), § 230-03-220, filed 3/22/06, effective 1/1/08.]

## **WAC 230-03-210 Applying for a gambling service supplier license.**

(1) You must apply for a gambling service supplier license if you perform any of the following gambling-related services for compensation:

- (a) Consulting or advisory services regarding gambling activities; or
- (b) Gambling management services; or
- (c) Financing for more than one licensee for purchases or leases of gambling equipment or financing for providing infrastructure or facilities, or equipment that supports gambling operations:
  - (i) Once you have financed more than one licensee, you must be a licensed gambling service supplier until all loans with licensees or previous licensees are paid.
  - (ii) Once you have been a licensed gambling service supplier, you must be licensed as a gambling service supplier again before financing purchases or leases for any licensee; or
- (d) Acting as a lending agent, or loan servicer, or placement agent; or
- (e) Providing the assembly of components for gambling equipment under a contract with a licensed manufacturer or entering into an ongoing financial arrangement for gambling related software with a licensed manufacturer; or
- (f) Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; or
- (g) Training individuals to conduct authorized gambling activities; or
- (h) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission; or
- (i) Performing the testing and certification of tribal lottery systems in meeting requirements specified in the tribal-state compact; or
- (j) Providing nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services exceed thirty thousand dollars during any permit period or license year.

(2) You do not need a gambling service supplier license if you are:

- (a) A bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution; or
- (b) A university or college regulated by the Washington state board of community and technical colleges and the higher education coordinating board that trains individuals to conduct authorized gambling activities; or
- (c) An attorney, accountant, or governmental affairs consultant whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; or
- (d) A person who only provides nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services do not exceed thirty thousand dollars during any permit period; or
- (e) A person who provides names, images, artwork or associated copyrights, or trademarks, or patent use, or other features that do not affect the results or outcome of the game, for use in gambling equipment; or
- (f) Regulated lending institutions.

[Statutory Authority: RCW [9.46.070](#). WSR 10-19-052 (Order 673), § 230-03-210, filed 9/14/10, effective 1/1/11; WSR 07-21-116 (Order 617), § 230-03-210, filed 10/22/07, effective 1/1/08; WSR 06-24-030 (Order 605), § 230-03-210, filed 11/29/06, effective 1/1/08; WSR 06-07-157 (Order 457), § 230-03-210, filed 3/22/06, effective 1/1/08.]