



June 27, 2014

David Matheson
President
Bingo Nation Network Authority
P.O. Box 408
Plummer, ID 83851

Re: Bingo Nation Game Advisory Opinion

Dear Mr. Matheson:

This letter responds to your request on behalf of the Bingo Nation Network Authority (BNNA), for an advisory opinion as to whether the Bingo Nation Game is a Class II game under the Indian Gaming Regulatory Act (IGRA). I have reviewed your March 21, 2014 request, as well as the Bingo Nation Game Description, Bingo Nation Game Procedures, Bingo Nation Game Rules, and Gaming Laboratories International (GLI) Certification of Bingo Nation Game Server Software. I conclude that Bingo Nation, as described in the submitted materials, is a Class II game under IGRA. Please be advised this opinion only pertains to Bingo Nation as described in the submitted materials submitted to the National Indian Gaming Commission (NIGC). This opinion does not take into consideration or address any future television show or broadcast associated with the Bingo Nation Game or how the Bingo Nation Game works in relation to any future television show or broadcast.

Game Description

As described in the submitted materials, Bingo Nation is a linked bingo game with interim prizes and a progressive jackpot. Bingo cards are purchased via kiosks located in tribal gaming facilities on Indian lands as defined by IGRA. Players can either play in person at the gaming facility or appoint a proxy to play the cards at the gaming facility on their behalf. Players compete to cover pre-determined patterns based on a ball draw involving 75 numbers.

Sales System and Game

Bingo Nation includes a server and sales system. In order to play Bingo Nation, players must first purchase bingo cards from kiosks located in participating tribal gaming facilities located on Indian lands. Each bingo card contains a 5x5 grid with 5 columns spelling out B-I-N-G-O and 24 numbers and a "free" middle space. Players may not choose their own numbers;

rather the card contains numbers randomly selected from 75 possible numbers. Every bingo card is unique and is only valid for the draw date printed on the card. At the time the bingo card is purchased, a player must choose to either participate in the game by playing at the tribal gaming facility, or to designate a proxy, also located at the tribal gaming facility where the ball draw occurs, to play the card on their behalf. If the player chooses to allow a proxy to play in their place, the proxy player uses an electronic version of the card purchased by the player to play the game.

The ball draw occurs at a tribal gaming facility which is located on Indian lands. Drawings are conducted using a mechanical bingo ball blower and a standard bingo ball set bearing numbers. Players or their proxy cover numbers on bingo cards that match the numbers randomly drawn by the mechanical bingo ball blower. A player wins a prize when they achieve either an interim or game-winning pattern and declare “bingo.” There are five potential prizes in Bingo Nation; one each for the three interim patterns, one for the game winning pattern, and a progressive prize. The first interim pattern is any five numbers¹ drawn that are arranged in either a vertical, horizontal, or diagonal row. The second interim pattern is any eight numbers and the “free” space in the form of an “X” or “+” pattern. The final interim pattern is the sixteen numbers that form the outside border of the bingo card. The game winning pattern is a cover-all pattern using all 25 squares. The progressive prize is won if the cover-all pattern is achieved within the first 42 numbers called. The drawing stops and the game concludes when a player obtains the game winning pattern.

As previously mentioned, at the time a bingo card is purchased, a player can choose to have a proxy play the card on their behalf. There are at least two proxy players during each game. The proxy players play the game at the site of the drawing, which is a tribal gaming facility on Indian lands. Electronic cards are randomly assigned by the server to each proxy. During the game, the proxy player uses an “Electronic Card Minding Device” to track and cover cards being played. Following the draw of a number, the proxy must press a “Daub/Claim” button on their minding device, which covers the corresponding number on each matching game card. The minding device tracks the cards being played by the proxy player and notifies them if they have achieved a bingo. A player proxy must still claim the bingo and notify the operator of a potential winning pattern, though.

A Bingo Nation player account is not necessary to purchase a bingo card, however it is required to redeem a winning card. A player may only redeem their winning card for a prize at participating tribal gaming facilities on Indian lands. The amount of the prize is determined by the total amount of revenue from bingo card game sales for that game. If the progressive prize is not won during the game, it rolls over to the following game.

Game Server

The server contains software that is operated independently from the sales system and cannot be accessed via the kiosks. The server is located on Indian lands. Prior to the sale of bingo cards, the server is used to produce an electronic library of unique randomized cards to be sold for a particular game. According to submitted materials, a new library is created for each game and can contain up to 100 million unique game cards. After it is created the library file is then

¹ A player could cover four numbers if the “free” space is used.

imported into the sales system for players to purchase cards. As mentioned previously, players may not choose their own numbers; rather a random card from the library is distributed to them. Once the sale of bingo cards ends, the sales system reports the number of cards sold at the kiosks. The server then determines which cards are being played during that game, computes the eligible prize amounts, and assigns cards purchased for that game to the proxy players.

The server is also used by the operator of the game to track the progress of all bingo cards in play. Once the game begins, the drawn numbers are entered into the server software. The software allows the operator to track the progress of all cards being played, to identify any cards that contain a winning pattern, and to validate any claims of winning cards. Proxy players also use the server to play on behalf of players and track the status of cards being played.

Once the game concludes, the server creates a file containing a list of all winning game cards from that game. The server then audits the file by checking the drawn numbers against the winning game cards. This ensures the card matches the winning pattern and is thus a proper winning card. Following the audit the file is transferred to a system which notifies players of winning cards and distributes the proper prize to winners.

A player with a Bingo Nation player account will be notified of their winnings the next time they use a kiosk. A paper card can also be redeemed via a kiosk; however a player must create a Bingo Nation player account before that occurs.

Applicable Law

IGRA defines Class II gaming in relevant part to include:

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) --

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations:

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards.²

NIGC regulations similarly define Class II gaming as follows:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations:

(2) Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

² 25 U.S.C. §2703(7)(A).

(3) Win the game by being the first person to cover a designated pattern on such cards.³

IGRA provides that Class II games may utilize “electronic, computer or other technologic aids.”⁴ NIGC regulations define a technologic aid as “any machine or device that: (1) assists a player or the playing of a game; (2) is not an electronic or electromechanical facsimile; and (3) is operated in accordance with applicable Federal communications law.”⁵ Electronic, computer or other technological aids include “machines or devices that: (1) broaden the participation levels in a common game; (2) facilitate communication between and among gaming sites; or (3) allow a player to play a game with or against other players rather than with or against a machine.”⁶

NIGC regulations also define an electronic or electromechanical facsimiles as: “a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for bingo, lotto, and other games similar to bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.”⁷

In short, if a game contains the fundamental characteristics of a Class II game and is played using an electronic or other technologic device, the determining factor in its classification is whether the electronic device is an aid to the play of a game, in which case the game is Class II, or whether the electronic device is a facsimile of a game, in which case the game is Class III.

Analysis

The Definition of Bingo

To qualify as a Class II game, Bingo Nation must meet the three-part definition of bingo found in IGRA; it must be played for prizes with cards bearing numbers or other designations; cardholders must cover numbers as they are drawn; and the game must be won by the first person to cover the designated pattern.⁸ Bingo Nation meets the first part of the definition. According to the material submitted by BNNA, Bingo Nation uses a bingo card containing a 5x5 grid with 24 numbers and a “free” middle space. The bingo card can be a paper card played in person by the player or it can be an electronic card played by the proxy. There is no statutory requirement that bingo be played with paper cards. IGRA and NIGC regulations specifically allow the use of technological aids in the game of bingo⁹ and NIGC regulations specifically use “electronic cards for participants in bingo games” as an example of a technological aid.¹⁰ As for the requirement that the game be played for prizes, Bingo Nation awards monetary prizes determined by the total amount of revenue from bingo card game sales for that game. Therefore, it is my opinion that Bingo Nation meets the first part of the bingo definition.

³ 25 C.F.R. § 502.3.

⁴ 25 U.S.C. § 2703(7).

⁵ 25 C.F.R. § 502.7(a).

⁶ 25 C.F.R. § 502.7(b).

⁷ 25 C.F.R. § 502.8.

⁸ 25 U.S.C. §2703(7)(A).

⁹ 25 U.S.C. §2703(7)(A) & 25 C.F.R. §502.3(a).

¹⁰ 25 C.F.R. §502.7(c).

Bingo Nation also meets the second part of IGRA's Class II definition that requires holders to cover the numbers or other designations when objects, similarly numbered or designated, are drawn or electronically determined.¹¹ Bingo Nation can be played by either the purchaser of the card or by a designated proxy player. IGRA contains no statutory prohibition on the use of agents to play the game of bingo – it simply requires that, for a game to be defined as Class II, the “holder of the card” cover the numbers.¹² IGRA does not further define the meaning of “holder” and, in Bingo Nation, the holder is either the player or the proxy designated by the player.¹³

Although the Class II definition in the NIGC regulations replaces the word “holder” with the word “player,” as the NIGC Office of General Counsel has previously stated, “this is a distinction without a difference when the law of agency is applied to the analysis.”¹⁴ It is a fundamental tenet of the law of agency that the acts of the agent are deemed to be the acts of the principal.¹⁵ When the proxy plays the bingo card for the player in Bingo Nation, the act of playing the card is deemed to be the act of the player. The legal effect is that the proxy is the player. Therefore the use of proxy players violates neither IGRA's provision regarding the holder nor NIGC's regulations that discuss the player.¹⁶

As described in the materials submitted to NIGC, the card numbers are covered by the proxy or by those players who are physically present at the ball draw location. The proxy player uses an “Electronic Card Minding Device” to track and cover the numbers determined by the mechanical bingo blower. Following the draw of a number, the proxy player must press a “Daub/Claim” button on their minding device, which covers the corresponding number on each matching game card. A similar feature used to cover patterns on an electronic bingo card has been found by a federal court to be an acceptable class II method. In *U.S. v. 103 Electronic Gambling Devices*,¹⁷ the Federal District Court in the Northern District of California considered the daub feature on the MegaMania electronic bingo game which automatically identified electronically drawn numbers, requiring the player to merely push a “daub” button, which covered the drawn number or numbers, rather than requiring the player to push a button corresponding to each relevant position on the bingo card. The court held that:

There is nothing in IGRA or its implementing regulations [t]hat require a player to independently locate each called number on each of the player's card and manually ‘cover’ each number independently and separately. The statute and the implementing regulations merely require that a player cover the numbers without specifying how they must be covered.^{18 19}

¹¹ 25 U.S.C. §2703(7)(A)(i)(II).

¹² *Id.*

¹³ See Letter from Monteau to Montgomery of July 26, 1995 re: MegaBingo Game Classification Opinion and Letter from Washburn to Hirsch of Nov. 14, 2000 re: National Indian Bingo Game Classification Opinion.

¹⁴ Letter from Washburn to Hirsch of Nov. 14, 2000 re: National Indian Bingo Game Classification Opinion.

¹⁵ See 3 Am. Jur. 2D Agency §2 (1986); See also *Lubbock Feed Lots, Inc. v. Iowa Beef Processors, Inc.*, 630 F.2d 250, 272 (5th Cir. 1980); *U.S. v. Sylvanus*, 192 F.2d 96, 108 (7th Cir. 1951); and *Lux Art Van Service, Inc. v. Pollard*, 344 F.2d 883, 887 (9th Cir. 1965).

¹⁶ See also Letter from Washburn to Hirsch of Nov. 14, 2000 re: National Indian Bingo Game Classification Opinion. (Finding the use of agents did not violate IGRA's provision regarding the holder).

¹⁷ 1998 WL 827586 (N.D. Cal), *affirmed*, 223 F.3d 1091 (9th Cir. 2000).

¹⁸ *Id.* at 6.

The NIGC Office of General Counsel (OGC) also addressed this issue before in the National Indian Bingo Game Classification Opinion.²⁰ There, OGC determined the use of bingo minder machines and Reader/Dauber machines did not violate the requirement that players cover numbers or other designations when objects, similarly numbered or designated, are drawn or electronically determined.²¹

Therefore, based upon the previous decisions by two federal district courts in the MegaMania cases, as well as the prior OGC game opinion, it is my opinion that the use of an “Electronic Card Minding Device,” and Bingo Nation generally, meets the Class II definition’s requirement that a player cover numbers or designations when objects similarly numbered or designated, are drawn or electronically determined.

Finally, the third element of Class II bingo requires the game be won by the first person to cover a previously designated pattern.²² According to the material submitted, there are five potential prizes in Bingo Nation made up of three interim patterns, the game winning pattern and a progressive prize. The first person(s) to cover the specified pattern wins a prize. The fact that the game allows prizes for interim patterns prior to the game ending pattern being achieved does not automatically remove the game outside the definition of bingo. In *U.S. v. 103 Electronic Gambling Devices*,²³ the U.S. Court of Appeals for the Ninth Circuit made clear that the third element could be met even if prizes are won by players before there is a game winner:

The sum of the matter is that the IGRA requirement that a “bingo” game be “won” by the “first player” covering a pre-designated pattern does not mean the game must *end* when one player does so, so that everyone else wins nothing.²⁴

The Tenth Circuit has similarly held that “nothing in the Gaming Act or [NIGC] regulations prohibits more than one winner or “interim prizes” during a game of bingo.”²⁵ Thus, the fact that the first person to cover a pre-designated pattern does not end the game does not affect the analysis of the game. It is my opinion that that Bingo Nation satisfies the third element of the bingo definition.

After analyzing Bingo Nation, I find that it meets three-part definition of bingo found in IGRA.

Electronic Aid vs. Facsimile

IGRA and NIGC Regulations also explicitly include the use of technologic aids to the play of bingo in the definition of Class II gaming. Although IGRA does not elaborate on what is

¹⁹ In another case which dealt with the classification under the IGRA of the MegaMania game, the court found unpersuasive the argument that the game was not a class II game because the player does not actually “cover” the numbers, but merely presses a lighted “daub button” and the machine does the covering. *United States v. 162 MegaMania Gambling Devices*, No. 97-C-1140-K (N.D. Okla. October 26, 1998), *aff’d*, 231 F.3d 713 (10th Cir. 2000).

²⁰ Letter from Washburn to Hirsch of Nov. 14, 2000 re: National Indian Bingo Game Classification Opinion.

²¹ *Id.* at 7.

²² 25 U.S.C. §2703(7)(A)(i)(III).

²³ 223 F.3d 1091 (9th Cir. 2000).

²⁴ *Id.* at 1098-1099.

²⁵ *U.S. v. 162 MegaMania Gambling Devices*, 231 F. 3d 713, 722.

or is not a technologic aid, NIGC regulations define “Electronic, computer or other technologic aid” as “any machine or device that: (1) assists a player or the playing of a game; (2) is not an electronic or electromechanical facsimile; and (3) is operated in accordance with applicable Federal communications law.”²⁶ The definition includes “machines or devices that: (1) broaden the participation levels in a common game; (2) facilitate communication between and among gaming sites; or (3) allow a player to play a game with or against other players rather than with or against a machine.”²⁷

As described in the submitted materials, Bingo Nation uses a number of devices in the play of the game. Here, though, it must be determined whether the “Electronic Card Minding Device”, kiosks, and game server are technologic aids and not electronic or electromechanical facsimiles of bingo. As previously mentioned, the “Electronic Card Minding Device” is used by proxy players to track and cover the numbers determined by the mechanical bingo blower. Following the draw of a number, the proxy player presses a “Daub/Claim” button on their minding device, which covers the corresponding number on each matching game card being played. Kiosks are devices located in participating tribal gaming facilities on Indian lands and allow players to purchase bingo cards and appoint proxy players on their behalf. The game server, also located on Indian lands, contains software used to generate the bingo card library and allows the game operator and proxy players to track the bingo cards being played. Prior to and during the game, the server communicates with the kiosks and the “Electronic Card Minding Device.” The devices satisfy the first element of the definition of “Electronic, computer or other technologic aid” because they assist the player or proxy player in playing bingo, as well as the operator in the playing of the game. The “Electronic Card Minding Device” assists proxy players in the reading and daubing of cards, while the kiosks assist in the sale of bingo cards. Additionally, the server assists the operator in tracking the game and ensuring the game results are accurate.

The second element requires that the devices are not “an electronic or electromechanical facsimile.” NIGC regulations define electronic or electromechanical facsimiles as: “a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for bingo, lotto, and other games similar to bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.”²⁸ Courts have adopted a plain meaning interpretation of the term *facsimile* and recognize a facsimile as a game that electronically replicates the characteristics of the underlying game.²⁹

The “Electronic Card Minding Device”, kiosks, and game server, when considered either alone or together, do not replicate a game of chance or incorporate all of the characteristics of bingo. Rather, each device assists in the playing of the game or broadens the participation level

²⁶ 25 C.F.R. § 502.7(a).

²⁷ 25 C.F.R. § 502.7(b).

²⁸ 25 C.F.R. § 502.8.

²⁹ *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535, 542 (9th Cir. 1994) (“the first dictionary definition of ‘facsimile’ is ‘an exact and detailed copy of something’”), *cert. denied*, 516 U.S. 912 (1995); *Cabazon Band of Mission Indians v. National Indian Gaming Commission*, 14 F.3d 633, 636 (D.C. Cir. 1994) (“[a]s commonly understood, facsimiles are exact copies, or duplicates”).

in Bingo Nation. The devices do not change the fact that players still compete against one another rather than with or against a machine. In Bingo Nation, players or proxy players cover numbers on cards that match numbers on bingo balls drawn by a bingo blower. Players compete against each other to be the first person to achieve a predetermined pattern and win a prize. Whether a player wins or loses is determined by the contents of the card purchased, and whether the numbers on the bingo balls drawn by the bingo blower match the numbers on the bingo card. Therefore, I find that the devices are not electronic or electromechanical facsimiles of bingo.

The final requirement for use of a technological aid in connection with Class II bingo is that the aid must be operated according to applicable Federal communications law. It is the BNNA's responsibility to ensure that Bingo Nation is so operated. I make no determination whether the game as described violates any Federal communications law.

The "Electronic Card Minding Device", kiosks and game server all assist players or the playing of a game and are not electronic or electromechanical facsimiles. Thus, I find them to be technologic aids.

Please be advised that this legal opinion is advisory in nature only and that it may be superseded, reversed, revised, or reconsidered by a subsequent General Counsel or Chair of the Commission. Again, this opinion only relates to the Bingo Nation Game as described in the materials submitted to the NIGC and does not address the Bingo Nation Game in relation to any future television show or broadcast. Furthermore, if there are any changes made to the game as described, such changes might materially alter our conclusions.

If you have any questions regarding this opinion, please contact NIGC Staff Attorney Miles Janssen at (202) 632-7003.

Sincerely yours,

A handwritten signature in dark ink, appearing to be "ES" followed by a long horizontal stroke.

Eric Shepard
Acting General Counsel