



April 29, 2020

Jeff Hyman
Hardway Holdings, LLC
6819 Rock Road
San Antonio, TX 78229

Re: Game Classification Opinion for O-Craps!

Dear Mr. Hyman:

You requested an advisory legal opinion concerning whether “O-Craps!” constitutes a Class II game under the Indian Gaming Regulatory Act (IGRA). Based upon the game descriptions, memoranda, and compliance testing submitted by you and your attorneys, and patent information referenced in the materials you submitted,¹ it is my opinion that O-Craps! is a Class III game under IGRA for the reasons stated below.

Game Description:

The O-Craps! game operates through a server that distributes cards and ball draw information to electronic tablets used by players and allows the dealer to operate the O-Craps! game.² Game play is broken down into a primary game played by two or more players and interim games where players place craps-type wagers and compete against the house and not against other players.

I. Primary Game

The primary O-Craps! game consists of cards displayed on electronic tablets arranged around what looks like a traditional craps table. The table is oblong and has a border around the perimeter to mirror a dice-throwing game. The table has a felt surface and has betting positions and payouts

¹ The NIGC Office of General Counsel reviewed the following documents: Hardway Holdings, LLC O-Craps! Overview (“O-Craps! Overview”) (6 pages); Hardway Holdings, LLC O-Craps! Game Play (“O-Craps! Game Play”) (4 pages); Hardway Holdings, LLC O-Craps! General Description and Basis (1 page); U.S. Patent D692,502 for Innovate! Technologies Group, LLC (Oct. 29, 2013) (2 pages); Letter from John M. Peebles, Fredericks, Peebles & Morgan, LLP, to Troy King, Innovate! Technologies Group (Nov. 26, 2013) (15 pages); U.S. Patent 8,757,622 for Innovate! Technologies Group, LLC (June 24, 2014) (14 pages); Eclipse Compliance Testing for O-Craps! System RNG (July 11, 2014) (12 pages); Eclipse Compliance Testing for O-Craps! Bingo Game (July 11, 2014) (7 pages); Memorandum from Fredericks Peebles & Patterson LLP to Hardway Holdings, LLC (Oct. 25, 2019) (8 pages); and Hardway Holdings – Responses to NIGC Questions (O-Craps!) (Nov. 22, 2019) (5 pages). The Office of General Counsel viewed the O-Craps! game play through a website operated by Hardway Holdings. *See* O-Craps! Demonstration Site, available at <http://www.playocraps.com/> (last accessed Oct. 2, 2019).

² Eclipse Compliance Testing for O-Craps! Bingo Game, p. 3 (July 11, 2014).

printed throughout.³ The table includes a position for a dealer (also called a stickman), who will have a touch screen tablet equipped with software to govern the gameplay.⁴ The following picture taken from the O-Craps! website shows the player stations with electronic tablets surrounding the table.⁵



A player begins playing the primary game by approaching the table and placing an ante bet on the “O-Craps! Line” with chips purchased from the house.⁶ The amount of the ante bet will be determined by the house, but will be the same for each player. Once an ante bet is placed, the dealer activates the player’s tablet and the player will receive an electronic card on the player’s tablet.⁷ At least two players must place ante bets and receive cards before the primary game begins.⁸ Between two and ten players can play the primary game.⁹

For the primary game, a player will receive a 5X5 card with “O-C-R-P-S” as the columns instead of the traditional “B-I-N-G-O.” The following is an example of an O-Craps! bingo card that would appear on a player’s tablet.¹⁰

³ Hardway Holdings, LLC O-Craps! Overview, p. 3.

⁴ *Id.*

⁵ See O-Craps! Demonstration Site, available at <http://www.playocraps.com/> (last accessed Oct. 2, 2019).

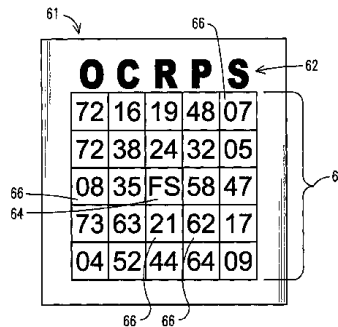
⁶ Hardway Holdings, LLC O-Craps! Overview, p. 6.

⁷ Eclipse Compliance Testing for O-Craps! Bingo Game, p. 4 (July 11, 2014).

⁸ Hardway Holdings, LLC O-Craps! Overview, p. 5.

⁹ *Id.* at p. 6; Eclipse Compliance Testing for O-Craps! Bingo Game, p. 4 (July 11, 2014).

¹⁰ U.S. Patent No. 8,757,622 for Innovate! Technologies Group, LLC, p.1 Fig. 1 (June 24, 2014).



Once a game begins, new players cannot join until the primary game ends.¹¹ A player wins a primary game by covering two squares - one square in the “O” and “S” columns of the O-Craps! card.¹² The “C,” “R,” and “P” columns serve no purpose in the primary game.

Bingo balls are electronically drawn by a dealer from a random number generator (RNG) located on the server.¹³ The dealer may elect to allow a player to draw a ball by activating a “Roll” button on a player’s tablet.¹⁴ Allowing a player to “Roll” for the next number is effectively the same as the dealer drawing a number – both come from the same RNG. The player-initiated draw is an interactive feature of the game and does not affect the ball draw. After a ball is drawn, the balls applicable to the primary game are displayed on a communal screen at the O-Craps! table, with a letter and two digits, similar to traditional bingo.¹⁵ Numbers from the RNG are generated after either a dealer or player roll.¹⁶

The O-Craps! game can be played using various totals of numbers in the RNG (72, 73, 74, 75, 76, etc.) depending on the casino’s preference. For the primary game, the universe of numbers in the “O” and “S” columns is limited to only those numbers that cannot be replicated with the roll of a pair of dice.¹⁷ For example, in the card above, “72” cannot be generated from the roll of two dice because “7” does not appear on a traditional six-sided die. Accordingly, only the following numbers would occur in the “O” and “S” columns of a primary game card: S-01, O-02, S-03, O-04, S-05, O-06, S-07, O-08, S-09, O-10, S-17, S-27, S-37, S-47, S-57, O-71, O-72, O-73, O-74, and O-75.¹⁸ The RNG may contain multiple balls with the same number applicable to the primary game to even out the number of balls applicable to the interim game.¹⁹

Players cover the numbers on their cards by touching the corresponding square on the tablet. The O-Craps! game will have an auto-daub feature, which will be active for the interim games but likely not active for the primary game according to O-Craps! representatives.²⁰ Players may sleep a

¹¹ Hardway Holdings, LLC O-Craps! Overview, p. 5.

¹² *Id.* at p. 4; *see also* Hardway Holdings – Responses to NIGC Questions (O-Craps!) (Nov. 22, 2019).

¹³ Eclipse Compliance Testing for O-Craps! Bingo Game, p. 4 (July 11, 2014).

¹⁴ *Id.* at p. 4.

¹⁵ Hardway Holdings, LLC O-Craps! Overview, pp. 4-5.

¹⁶ Hardway Holdings – Responses to NIGC Questions (O-Craps!) (Nov. 22, 2019).

¹⁷ Hardway Holdings, LLC O-Craps! Overview, p. 4.

¹⁸ U.S. Patent No. 8,757,622 for Innovate! Technologies Group, LLC, p. 9 (June 24, 2014).

¹⁹ *See id.* at p. 9 (June 24, 2014).

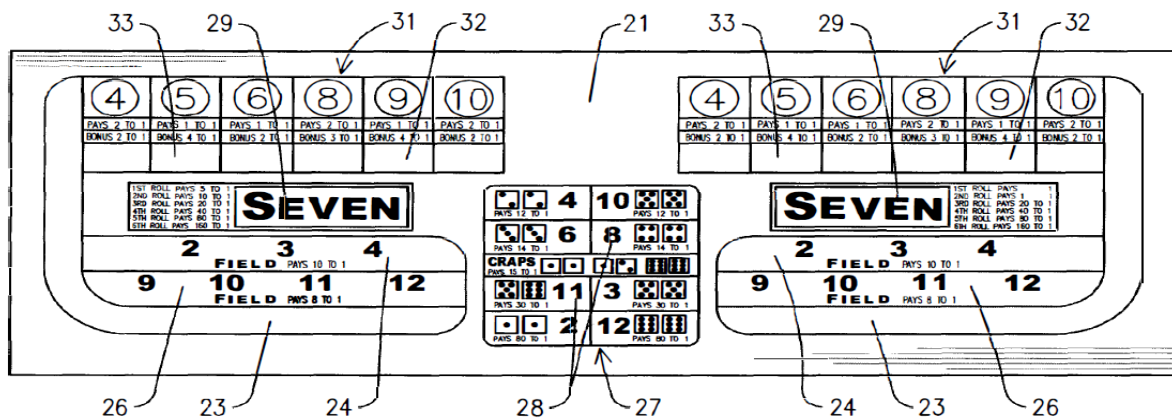
²⁰ Hardway Holdings – Responses to NIGC Questions (O-Craps!) (Nov. 22, 2019).

bingo in the primary game. After a ball draw, the time before the next ball draw depends on the number of players at the table and how many players choose to make additional bets for the interim games (discussed below). According to O-Craps! representatives, the time between each draw will range between 15 seconds and several minutes.²¹ If a player could cover a square after a ball draw, but the next ball draw occurs, then the player cannot cover that square and would miss a bingo.

If a player covers at least one square in both the “O” and “S” columns of a primary game card, the player wins the ante bets placed on the O-Craps! Line.²² If more than one player wins a primary game, the winners split the pot.²³ However, claiming a bingo in a primary game ends all pending interim game; meaning all pending craps-style bets made in the interim games are lost to the house. Therefore, the structure of the primary game in O-Craps! creates an incentive for players *not* to claim a primary game bingo. The stakes are much higher in the interim games than in the primary game where players only place an ante wager.

II. Interim Games

O-Craps! also includes interim games where players purchase additional 5X5 cards by placing wagers on different positions on the O-Craps! table. Only players participating in the primary game may place wagers for interim games.²⁴ Players may place interim wagers and receive additional interim game cards before a primary game begins and between ball draws.²⁵ The diagram of the O-Craps! table below shows the various bets players can wager for interim games.²⁶



²¹ *Id.*

²² Hardway Holdings, LLC O-Craps! Overview, p. 5; Eclipse Compliance Testing for O-Craps! Bingo Game, p. 6 (July 11, 2014).

²³ Hardway Holdings, LLC O-Craps! Overview, p. 5; Eclipse Compliance Testing for O-Craps! Bingo Game, p. 6 (July 11, 2014).

²⁴ Hardway Holdings, LLC O-Craps! Game Play, p. 2.

²⁵ Hardway Holdings, LLC O-Craps! Overview, p. 5. Some interim game wagers, for example a Sevens wager, close after certain dice rolls. See U.S. Patent No. 8,757,622 for Innovate! Technologies Group, LLC, p. 8 (June 24, 2014).

²⁶ U.S. Patent No. 8,757,622 for Innovate! Technologies Group, LLC, p. 3 Fig. 2 (June 24, 2014).

The type of interim wager determines the makeup of the interim card generated for the player. For example, after purchasing a primary game card, a player may place a bet on the “Field 2, 3, 4” position of the table. That wager hopes for a dice roll of 1-1, 1-2, 1-3, 2-1, 2-2, or 3-1. The dealer will then generate a 5X5 card to that player with squares that include an 11, 12, 13, 21, 22, and 31 in either the “O” column or “S” column of the card.²⁷ The interim game card will appear on the player’s tablet alongside the primary game card.²⁸ As explained below, a player need only cover one square in the “O” or “S” columns to win an interim game.

The universe of numbers in the RNG that are applicable to the interim games are those two-digit numbers that can be replicated by the roll of two dice. The following numbers correspond only to interim games: S-11, O-12, S-13, O-14, S-15, O-16, S-21, O-22, S-23, O-24, S-25, O-26, S-31, O-32, S-33, O-34, S-35, O-36, S-41, O-42, S-43, O-44, S-45, O-46, S-51, O-52, S-53, O-54, S-55, O-56, S-61, O-62, S-63, O-64, O-65, and S-66.²⁹ Combined with the primary game numbers, the total number of bingo balls in the RNG will range between 72 and 76. For visual purposes only, the communal display on the table displays numbers applicable to the interim games as dice rolls. This is only a visual modification instead of displaying the numbers as bingo balls and no actual dice are thrown.

There are four different betting formats for O-Craps! interim games, similar to traditional craps gameplay: (1) Field and Proposition; (2) Hard Way; (3) Sevens; and (4) the Point and Point Bonus.

For a Field and Proposition bet, a player wagers that the next dice roll will be a certain number.³⁰ For example, if a player places a chip on “Field 2-3-4,” the dealer generates a card for the player that will have all dice roll variations for 2, 3, and 4 (1-1; 1-2; 2-1; 1-3; 2-2; 3-1). Then if the next draw is a dice roll of 2, 3, or 4 in any two-digit combination, the house pays the player. If the next dice roll is not a 2, 3, or 4, the player loses. After each dice roll, winners are paid and losers’ chips are swept off the table and deposited with the house.

A Hard Way bet is a wager that a “hard” number will be generated before a “soft” number. A hard number is formed by a dice roll of two of the same numbers. For example, “Hard 4” is a dice roll of “2-2.” If a player places a chip on Hard 4, the player is wagering that a roll of “2-2” will hit before any other combination of four hits (1-3 or 3-1). When a player places a Hard 4 bet, the dealer will generate a card on the player’s tablet with the number “22” in the “O” or “S” column.³¹ Each hard way bet remains on the table until a player wins with a hard number or loses when a soft number is drawn. If a soft number is drawn, the player loses the bet to the house and that interim game card is removed from the player’s tablet.³² There are four hard way bets:

²⁷ U.S. Patent No. 8,757,622 for Innovate! Technologies Group, LLC, p. 9 (June 24, 2014).

²⁸ Hardway Holdings, LLC O-Craps! Overview, p. 5.

²⁹ U.S. Patent No. 8,757,622 for Innovate! Technologies Group, LLC, p. 9 (June 24, 2014).

³⁰ Hardway Holdings, LLC O-Craps! Game Play, p. 3; Eclipse Compliance Testing for O-Craps! Bingo Game, p. 5 (July 11, 2014).

³¹ U.S. Patent No. 8,757,622 for Innovate! Technologies Group, LLC, p. 10 (June 24, 2014).

³² *Id.*

- Hard 4: 22 wins; 13 or 31 loses
- Hard 6: 33 wins; 15, 51, 24 or 42 loses
- Hard 8: 44 wins; 26, 62, 25, or 53 loses
- Hard 10: 55 wins; 46 or 64 loses

A Sevens Bet is a wager that a dice roll of 7 (1-6, 2-5, 3-4, 4-3, 5-2, or 6-1) will be thrown before any other dice roll combination. “If the first bingo ball rolled has digits totaling seven, the player receives a payout. If the second bingo ball rolled has digits totaling seven, then the player receives a second higher payout and so on.”³³ A sevens bet is open at the beginning of each primary game. If a ball draw is a dice roll combination for any number other than 7 (1-1, 1-2, 1-3, 1-4, 1-5, 2-1, 2-2, 2-3, 2-4, 2-6, 3-1, 3-2, 3-3, 3-5, 3-6, 4-1, 4-2, 4-4, 4-5, 4-6, 5-1, 5-3, 5-4, 5-5, 5-6, 6-2, 6-3, 6-4, 6-5, or 6-6), the player loses the wager to the house.³⁴ If a player places a bet on the sevens position, the dealer will generate a card on the player’s tablet with all variations of a sevens roll for two dice (1-6; 2-5; 3-4; 4-3; 5-2; and 6-1).

The Point bet in O-Craps! is intended to mimic “place betting” in traditional craps. In traditional craps, a player may place a wager on 4, 5, 6, 8, 9, or 10, and the placed number must hit before a 7 appears in order to win. The original bet will stay on the placed number until the shooter rolls a 7 or the place bettor may ask the dealer to take the bet down. If the shooter makes his or her point, the place bet is turned off for the initial come-out roll of the shooter unless the place bettor tells the dealer to turn the place bet on. In O-Craps!, the Point bet functions similarly. A player may place a wager on the Top Position 4, 5, 6, 8, 9, or 10 at the start of the primary game and before the first interim game. Depending on the Point bet, the dealer will generate an interim game bingo card containing a square or squares to represent the appropriate Point bet. When each ball is drawn, the player wins if the ball is a match to the card. At each successive draw of that number, the player would win the Point bet. For example, if a player placed a Point Bet on 8, she would win a payout every time a dice roll showing 8 is rolled (2-6, 3-5, 4-4, 5-3, or 6-2). Point bets are only cleared from the table (and lost to the house) when the primary game ends. The Bonus Point bet is won by the player or players who had their Point Bet drawn immediately prior to a game-ending primary game win.³⁵

After each ball draw, interim game players who are able to cover any one square in either the “O” or “S” columns win their respective interim game and are paid according to the payout structure associated with the respective interim game wager. According to patent filings for O-Craps!:

Interim bingo card holders having cards without a match are not winners. ... Each Interim Bingo Game then ends and players may prepare for the next round of Interim Bingo Games by placing chips on Interim Bingo Game positions to purchase interim bingo cards to be used with the next successive roll of a bingo ball. It will thus be

³³ *Id.* at p. 8.

³⁴ *Id.* at p. 11.

³⁵ Hardway Holdings, LLC O-Craps! Game Play, p. 4; *see also* Hardway Holdings – Responses to NIGC Questions (O-Craps!) (Nov. 22, 2019). Traditional craps does not have a bet or payout similar to the Bonus Point Bet in O-Craps!.

seen that Interim Bingo Games can be won on a single roll of a bingo ball, and thus lend speed and excitement to the overall bingo game of this invention.³⁶

Players can continue to place certain interim game wagers until a player wins a primary game. If a player wins a primary game, interim game wagers on the O-Craps! table are lost to the house.³⁷

An automatic daubing feature will be available for interim game play. According to Hardway Holdings,

The auto-daub feature is used by players in the *Interim O-Crap's! Bingo* game. The auto-daub feature is only viable where the player has purchased a bingo card to play the primary *O-Crap's! Bingo* game. Once activated, the auto-daub feature requires no further action by the player. Here, when an interim bet is made a new bingo card is created that contains one ball in either the O or S columns that could be a winning designation or pattern. For instance, if someone bet a Hard Eight (i.e., a 4 and a 4), a bingo card would be created with one cell on the card being a 44. Thus, if a Hard Eight came up via a ball draw bearing the designation of 44, that card would be auto-daubed and the dealer would be notified on his or her screen that the player (or multiple players) won that particular *Interim O-Crap's! Bingo* game.³⁸

Because the automatic daubing feature is active for the interim game, it is not possible for a player to sleep an interim game win.

Regarding competition in the interim games, only one player is required to begin an interim game, and each interim game is individual to that specific player. Players do not compete against each other to be the first to cover a pattern. The only outside player involvement is the possibility that an interim game may end if a player wins a primary game.

Applicable Law:

I. Class I Gaming

IGRA defines Class I gaming as “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.”³⁹ NIGC regulations mirror those requirements.⁴⁰

II. Class II Gaming

IGRA defines Class II gaming in relevant part as:

³⁶ U.S. Patent No. 8,757,622 for Innovate! Technologies Group, LLC, p. 10 (June 24, 2014).

³⁷ *Id.*

³⁸ See Memorandum from Fredericks Peebles & Patterson LLP to Hardway Holding, LLC, p. 6 (Oct. 25, 2019) (italics in original).

³⁹ 25 U.S.C. § 2703(6).

⁴⁰ 25 C.F.R. § 502.2.

(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, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo[.]⁴¹

NIGC regulations define Class II gaming as:

(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 object, similarly numbered or designated, are drawn or electronically determined; and

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

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo[.]⁴²

IGRA further directs that “[t]he term ‘class II gaming’ does not include . . . electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.”⁴³

NIGC regulations define “other games similar to bingo” as “any game played in the same location as bingo (as defined in 25 U.S.C. 2703(7)(A)(i)) constituting a variant on the game of bingo, provided that such game is not house banked and permits players to compete against each other for a common prize or prizes.”⁴⁴

⁴¹ 25 U.S.C. § 2703(7)(A).

⁴² 25 C.F.R. § 502.3.

⁴³ 25 U.S.C. § 2703(7)(B)(ii).

⁴⁴ 25 C.F.R. § 502.9.

III. Class III Gaming

In contrast, Class III gaming is defined by IGRA as “all forms of gaming that are not class I gaming or class II gaming[,]”⁴⁵ including “any house banking game, including but not limited to - 1) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games); (2) Casino games such as roulette, craps, and keno[.]”⁴⁶ NIGC regulations define Class III gaming, in relevant part, as all forms of gaming that are not class I gaming or class II gaming, including but not limited to:

(a) Any house banking game, including but not limited to— . . .

(2) Casino games such as roulette, craps, and keno;

(b) Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance; . . . or

(d) Lotteries.⁴⁷

House banking game means “any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win.”⁴⁸

Analysis:

O-Craps! does not meet all of the statutory and regulatory requirements for Class II bingo and is therefore a Class III game.⁴⁹ If used, the automatic daubing feature, instead of players, covers numbers on the cards. The interim games lack the required competition among players and can end without a winner. Winners of interim games do not cover a previously designated arrangement of numbers. Further, O-Craps! is not a game similar to bingo because the interim games are house-banked, players of interim games do not compete against each other for a common prize, and interim games are not bingo-like, lacking two of the three statutory and regulatory criteria.

I. Fundamental Characteristics of Bingo:

O-Craps! involves a primary game and various interim games. For bingo, IGRA and NIGC regulations do not prohibit multiple winners or interim prizes.⁵⁰ However, *each game* – be it a primary game, interim game, consolation game, or some other ancillary game – must meet the Class

⁴⁵ 25 U.S.C. § 2703(8).

⁴⁶ 25 C.F.R. § 502.4 (NIGC regulatory definition of Class III gaming).

⁴⁷ 25 C.F.R. § 502.4(a-b), (d).

⁴⁸ 25 C.F.R. § 502.11.

⁴⁹ See 25 U.S.C. § 2703(8) (“The term ‘class III gaming’ means all forms of gaming that are not class I gaming or class II gaming.”).

⁵⁰ *U.S. v. 103 Elec. Gambling Devices*, 223 F.3d 1091 (9th Cir. 2000); *U.S. v. 162 MegaMania Gambling Devices*, 231 F.3d 713 (10th Cir. 2000).

II definition of bingo.⁵¹ Past NIGC game opinions show that games with interim or side games were also bingo or were traditional enhancements to bingo (e.g., award for no numbers on card).⁵² In addition, the “side” games were part of the primary game, meaning the side games awarded a prize for a different pattern or achieving only part of the game winning pattern. And, although the side games allowed different buy-in levels for the primary game, in no instance was there a separate wager for the interim, consolation, or ancillary games.⁵³ A game that is otherwise a Class III game played alongside a Class II game does not transform the Class III game into a Class II game.

A. O-Craps! is played for prizes with cards bearing numbers or other designations.

The first criterion for bingo mandates that the game be “played for prizes ... with cards bearing numbers or other designations.”⁵⁴ For both the primary game and interim games, O-Craps! uses digital cards, numbers assigned to each space, and a free space at the center of the card.⁵⁵ There is no requirement that bingo be played with paper cards. IGRA and NIGC regulations explicitly allow the use of technologic aids in bingo play.⁵⁶

As for the requirement that the game be played for prizes, O-Craps! awards monetary prizes to players. In the primary game, the first player or players to cover one space in each of the “O” and

⁵¹ See Letter from Penny Coleman, NIGC General Counsel, to Robert Luciano, President, Sierra Design Group, p. 21 (Sept. 26, 2003) (“Mystery Bingo”) (“Consolation, secondary, or interim prizes and progressive prizes are permissible if the award of these prizes comports with the IGRA requirements for bingo including the requirement for obtaining and daubing a predetermined pattern.”); see also Letter from Penny Coleman, NIGC Acting General Counsel, to Jack Saltiel, Chief Technical Officer, Cadillac Jack, Inc., p. 13 (Dec. 23, 2004) (“Cadillac Jack Triple Threat Bingo”) (“The game presented to the NIGC offers interim and consolation prizes. ... Our previous advisory game classification opinions have accepted these prizes as part of the game provided the award of these prizes is based on the play of the bingo game.”).

⁵² See e.g., Letter from Harold Monteau, NIGC Chair, to Larry Montgomery, President and COO, Multimedia Games, Inc. (July 10, 1996) (“MegaMania System”) (discussing side games and enhancements to bingo play); Letter from Penny Coleman, NIGC Acting General Counsel, to Clifton Lind, President and COO, Multimedia Games, Inc. (Sept. 23, 2003) (“Reel Time Bingo”); Letter from Eric Shepard, NIGC Acting General Counsel, to David Matheson, President, Bingo Nation Network Authority (June 27, 2014) (“Bingo Nation”).

⁵³ See Letter from Harold Monteau, NIGC Chair, to Larry Montgomery, President and COO, Multimedia Games, Inc. (July 10, 1996) (“MegaMania System”); Letter from Kevin Meisner, NIGC Acting General Counsel, to Gary Watkins, Worldlink Gaming Corporation (Aug. 1, 1997) (“Rocket Bingo Ante Up Game”); Letter from Kevin Washburn, NIGC General Counsel, to Frank Banyai and Mike Macke, Cadillac Jack, Inc., (Mar. 22, 2001) (“Wild Ball Bingo”); Letter from Penny Coleman, NIGC Acting General Counsel, to Clifton Lind, President and COO, Multimedia Games, Inc. (Sept. 23, 2003) (“Reel Time Bingo”); Letter from Penny Coleman, NIGC Acting General Counsel, to Robert Luciano, President, Sierra Design Group (Sept. 26, 2003) (“Mystery Bingo”); Letter from Penny Coleman, NIGC Acting General Counsel, to Robert Luciano, President, Sierra Design Group (May 7, 2004) (“Mystery Bingo” with changes); Letter from Penny Coleman, NIGC Acting General Counsel, to Joseph Webster, Hobbs, Straus, Dean & Walker, LLP (Oct. 18, 2004) (“Rocket FastPlay 1.0”); Letter from Penny Coleman, NIGC Acting General Counsel, to Jack Saltiel, Chief Technical Officer, Cadillac Jack, Inc. (Dec. 23, 2004) (“Cadillac Jack Triple Threat Bingo”); Letter from Eric Shepard, NIGC Acting General Counsel, to David Matheson, President, Bingo Nation Network Authority (June 27, 2014) (“Bingo Nation”).

⁵⁴ 25 U.S.C. § 2703(7)(A)(i)(I); 25 C.F.R. § 502.3(a)(1).

⁵⁵ O-Craps! Overview, p. 3.

⁵⁶ 25 U.S.C. § 2703(7)(A); 25 C.F.R. § 502.3(a). NIGC regulations cite “electronic cards for participants in bingo games” as an example of a technologic aid. 25 C.F.R. § 502.3(a).

“S” columns wins the chips on the O-Craps! ante line of the table. If more than one player covers one space in each of the “O” and “S” columns in the primary game, the players split the pot. For the interim games, players can win prizes at various payout levels depending on where players place interim game bets. O-Craps! characterizes the betting on individual numbers or dice configurations as purchasing additional bingo cards to play the interim games. The primary game and interim games satisfy the first criterion that the game be played for prizes with cards bearing numbers or other designations.

B. O-Craps! cardholders do not cover numbers or other designations as they are drawn.

i. Cardholders do not cover if the automatic daubing feature is used.

The second criterion of bingo mandates that the cardholders cover numbers when drawn or electronically determined.⁵⁷ Specifically, IGRA provides that bingo is a game “in which the holder of the card covers such numbers or designations when objects ... are drawn or electronically determined[.]”⁵⁸ NIGC regulations clarify that “players” must cover numbers or designations when drawn.⁵⁹

In O-Craps!, covering may occur in two ways. In the first method, the RNG generates numbers and players then touch the individual numbers on their cards. In so doing, players cover numbers when drawn. According to Hardway Holdings, this configuration may, but will not necessarily, be used for the primary game. This configuration of covering satisfies IGRA’s requirement that the cardholder cover numbers on the card because the player is undertaking some act to actively participate in the game.⁶⁰

The other configuration of covering in O-Craps! will involve an automatic daubing feature. As stated above, the automatic daubing feature is available when a player has purchased a primary game bingo card. Once activated, the automatic daubing feature requires no further action by the player to cover numbers for the interim games.⁶¹ Automatic daubing features are not per se prohibited by IGRA because IGRA contemplates the use of technological aids for Class II gaming.⁶² However, to meet the covering requirement of IGRA’s bingo definition, a player (or proxy agent) must undertake *some* act to actually and actively participate in the game. This conclusion is in line with the proposed “one-touch” rule issued by the Commission⁶³ and numerous NIGC Office of

⁵⁷ 25 U.S.C. § 2703(7)(A)(i)(II); 25 C.F.R. § 503.2(a)(2).

⁵⁸ 25 U.S.C. § 2703(7)(A)(i)(II).

⁵⁹ 25 C.F.R. § 503.2(a)(2).

⁶⁰ See Letter from Penny Coleman, NIGC Acting General Counsel, to Clifton Lind, President and COO, Multimedia Games, Inc., p. 7 (Sept. 23, 2003) (“Reel Time Bingo”) (“Likewise, an automatic daub, in which the player need not have any response to the numbers that are called, would not be acceptable. The statutory criterion is met in Reel Time because, after initiating play, players cover their numbers either by hitting the daub button on the game’s hardware or touching the monitor screen when cued.”).

⁶¹ See Memorandum from Fredericks Peebles & Patterson LLP to Hardway Holding, LLC, p. 6 (Oct. 25, 2019).

⁶² 25 U.S.C. 2703(7)(A); 25 C.F.R. § 502.3(a).

⁶³ See 78 Fed. Reg. 37,998, 37,999 (June 25, 2013) (In the proposed rule, the player takes the initial action of touching a button. To this end, the proposal stated: “In one touch bingo, the player covers the numbers or

General Counsel legal opinions, all of which underscore that the player or the agent must perform some act to be involved in the play of the game of bingo.⁶⁴ In O-Craps!, players participating in the interim games do not take any action whatsoever to cover numbers or designations when drawn.⁶⁵ Numbers that are eligible to be covered on players' interim cards are automatically covered by the automatic daubing feature of the game. Therefore, O-Craps! does not meet the second criteria of bingo that players *cover* numbers when drawn.

ii. Numbers are covered when they are drawn.

The second criterion of bingo also requires that “players ...[c]over numbers or designations when ... drawn or electronically determined.”⁶⁶ This requirement “is met only when numbers or designations are drawn *after* a player begins play of the game.”⁶⁷ “[G]ames that use pre-drawn numbers cannot constitute bingo.”⁶⁸ The O-Craps! game complies with this criterion. The game generates numbers *after* players purchase cards using a RNG and after game play begins. The numbers are not pre-drawn.

C. O-Craps! is not necessarily won by the first person to cover the designated pattern.

i. The interim games lack player competition.

IGRA defines bingo as a game “in which the game is won by the first person covering a previously designated arrangement of numbers ... on such cards.”⁶⁹ Pursuant to NIGC regulations,

designations when drawn. That step is achieved by the assistance of a machine via the first, and only touch of the button.”).

⁶⁴ See Letter from Kevin K. Washburn, NIGC General Counsel, to Bertram E. Hirsch, pp. 6-7 (Nov. 14, 2000) (“National Indian Bingo”) (agent used reader/minder to cover and using such a device required the agent to take an independent action to enter into the machine data identifying each letter and number combination drawn); Letter from Penny J. Coleman, NIGC Acting General Counsel, to Robert A. Luciano, President, Sierra Design Group, pp. 12-13 (Sept. 26, 2003) (“Mystery Bingo”); Letter from Penny J. Coleman, NIGC Acting General Counsel, to Joseph H. Webster, Hobbs, Straus, Dean & Walker, p.12 (Oct. 18, 2004) (“Rocket FastPlay Bingo 1.0”) (“FastPlay meets the requirement that a player cover when objects are drawn in that numbers are not stored on the game’s computer. Instead, numbers are released sequentially and displayed in the order released and players all have the same opportunity to cover (or daub) immediately upon release of drawn balls.”); Letter from Penny J. Coleman, NIGC Acting General Counsel, to Jack Saltiel, Cadillac Jack, Inc., Chief Technical Officer, p. 12 (Dec. 23, 2004) (“Cadillac Jack Triple Threat”) (“[T]he player is actually performing some act to be involved in the play of the game of bingo.”); Letter from Penny J. Coleman, NIGC Acting General Counsel, to Nancy McAlister, Commissioner, Eastern Shawnee Tribe of Oklahoma, p. 1 (Apr. 22, 2005) (“Lucky Lotto”) (“As I understand Lucky Lotto, it automatically daubs matching numbers for the player without the player taking any overt action, and it lacks a designated game-winning pattern. These features make the game Class III.”); Letter from Eric Shepard, NIGC Acting General Counsel, to David Matheson, President, Bingo Nation Network Authority, p. 5 (June 27, 2014) (“Bingo Nation”) (“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.”).

⁶⁵ If the automatic daubing feature is available for the primary games as well, the same reasoning applies.

⁶⁶ 25 C.F.R. § 503.2(a)(2) (emphasis added).

⁶⁷ NIGC Bulletin No. 2003-3, “Guidance on Classifying Games with Pre-Drawn Numbers,” p. 1 (Sept. 23, 2001).

⁶⁸ *Id.* at p. 2.

⁶⁹ 25 U.S.C. § 2703(7)(A)(i)(III).

this third criterion mandates that players “win the game by being the first person to cover a designated pattern on such cards.”⁷⁰ A key element of bingo is competition. By requiring that the first person to cover the designated pattern wins a game, IGRA requires competition amongst people⁷¹: “In evaluating the statutory criteria ... we conclude that a basic premise of bingo is play and competition among others. The language ‘won by the first person,’ ... describes a contest or race among players to be the first to win.”⁷² This element of competition must be present for all consolation, secondary, or interim prizes and progressive prizes.⁷³

For O-Craps!, the primary game requires competition among players in a common game. The first player to cover one square in each of the “O” and “S” column wins the pool of ante bets. However, players of interim games do not compete against each other to win a common game. Instead, players compete against the house in individual games.

According to Hardway Holdings, “[t]he third essential element of Class II Bingo – that the game is won by the first person to reach bingo – is applied to the bingo game *as a whole*.”⁷⁴ Relying on the Ninth and Tenth Circuit Courts of Appeals’ decisions regarding the “MegaMania” game, Hardway Holdings contends that “a bingo game that contains a sub-game with an interim win feature satisfies the third element for Class II Bingo if the [primary] game is won by the first person to reach bingo.”⁷⁵ This argument, however, mistakenly ignores the fact that there must also be competition among players in the interim games.

In MegaMania, the interim games were played within the primary bingo game play. All players competed against each other to win the primary bingo game *and* to win the interim games. If a player won a primary game, competition amongst all players continued until at least one player won an interim game (called “CornerMania”).⁷⁶

In O-Craps!, the interim games are separate but related to the primary game. All players compete against each other in the primary game to cover squares in the “O” and “S” columns on their cards. Only certain balls can be used to cover squares in the primary game. The first player to cover at least one square in the “O” and “S” columns wins the primary game *and terminates all pending interim games*. During the interim games, however, players compete against the house - not one another - and only certain balls are relevant in the games. While there is player competition for the primary game, there is no player competition in an interim game.

⁷⁰ 25 C.F.R. § 502.3(a)(3).

⁷¹ See Letter from Michael Hoenig, NIGC General Counsel, to Michael Horan, pp. 8-9 (May 18, 2017) (“Shooter Bingo”).

⁷² Letter from Penny Coleman, NIGC General Counsel, to Robert Luciano, President, Sierra Design Group, p. 14 (Sept. 26, 2003) (“Mystery Bingo”).

⁷³ *Id.* at p. 21 (“Consolation, secondary, or interim prizes and progressive prizes are permissible if the award of these prizes comports with the IGRA requirements for bingo including the requirement for obtaining and daubing a predetermined pattern.”).

⁷⁴ Letter from John Peebles, Fredericks, Peebles & Morgan, LLP, to Troy King, innovate! Technologies Group, LLC, p. 11 (Nov. 26, 2013) (emphasis in original).

⁷⁵ *Id.*

⁷⁶ *U.S. v. 103 Elec. Gambling Devices*, 223 F.3d 1091, 1094 (9th Cir. 2000).

O-Craps! is similar to a version of a game described in the Rocket FastPlay Bingo 1.0 game opinion.⁷⁷ A manufacturer submitted a version of a game which offered interim prizes, but where “higher bettors had more interim patterns available to them and consequently more opportunity to win than lower bettors.”⁷⁸ “Since players [were] not competing for the same patterns they [were] not playing the same game.”⁷⁹ The NIGC Office of General Counsel suggested that the manufacturer modify the game to allow “all players, regardless of buy-in level, [to] have the same opportunity to win interim prizes, although the prize amounts associated with these winning patterns could vary depending on the buy-in level.”⁸⁰ In response, the manufacturer grouped players who were playing for “a common set of both interim and game ending patterns.” This modification satisfied the competition requirement.⁸¹

Since O-Craps! players do not compete against each other to be the first player to cover an arrangement of numbers or designations during the interim games, the game as a whole fails to meet this requirement. As noted above, all games and prizes, including interim games, must meet the statutory and regulatory requirements of bingo to qualify as such. Accordingly, O-Craps! does not meet the first-person-to-cover criterion.

ii. O-Craps! does not require a winner for interim games.

A bingo game must have a winner. This is a straightforward proposition that comes from the plain language of the third element of bingo: “the game is won by the first person covering a previously designated arrangement of numbers.”⁸² This, of course, accords with the common experience of the game. The bingo caller keeps drawing numbers until someone wins, and someone must win.

In the Quarterback Draw Football game opinion, the Acting General Counsel determined that one of the games in question did not meet the definition of Class II bingo because the game could end without any winner.⁸³ The Acting General Counsel stated:

On the one hand, the game described by the first version is not defined by, and is not coextensive with, one ball draw. As this Bango was designed, there are eight rounds, and while there has to be a winner in round eight, it is possible that some of the first seven rounds will have no winner. Depending on what happens in the quarterback game, in any of the first seven rounds, the cards may be cleared, a new ball draw may begin, and no prizes may be awarded. Put slightly differently, then, in this version of

⁷⁷ Letter from Penny Coleman, NIGC Acting General Counsel, to Joseph Webster, Hobbs, Straus, Dean & Walker, LLP (Oct. 18, 2004) (“Rocket FastPlay 1.0”).

⁷⁸ *Id.* at p. 1.

⁷⁹ *Id.* at p. 17.

⁸⁰ *Id.* at p. 1.

⁸¹ *Id.* at p. 17.

⁸² 25 U.S.C. § 2703(7)(A)(i)(III).

⁸³ Letter from Penny Coleman, NIGC Acting General Counsel, to Donald Bailey, President, Atlantic Internet Group Corp. (Sept. 3, 2009) (“Quarterback Draw Football”).

Bango, there can be ball draws without winners, something for which IGRA does not provide.⁸⁴

This principle applies not only to primary games but also to consolation, secondary, or interim games because, as mentioned above, all such games must conform to the statutory and regulatory requirements for bingo. When it adopted the first set of regulatory definitions, the Commission explained:

Many commenters questioned whether the requirement in the IGRA that the bingo game ‘... is won by the first person covering a previously designated arrangement of numbers or designations on such cards’ excludes jackpot bingo or progressive bingo. The Commission believes that Congress’ intent was to include jackpot or progressive bingo in class II as long as: (1) There is eventually a winner (in other words, the house never takes the jackpot), and (2) in each game there is at least a winner of a consolation prize.)⁸⁵

In the O-Craps! game, the primary game does not end until a player wins, meaning there will always be a winner of the primary game. However, interim games can end without a winner if a player wins a primary game or the RNG generates a dice roll where the interim game player loses his or her bet to the house.⁸⁶ O-Craps! does not require an interim game to have a winner and therefore fails to satisfy this bingo requirement.

iii. O-Craps! players do not cover a previously designated arrangement of numbers or designations in the interim games.

IGRA requires a player to cover a “previously designated arrangement of numbers or designations” in order to win a bingo game.⁸⁷ Similarly, NIGC regulations require players to “cover a designated pattern on such cards[.]”⁸⁸ IGRA does not limit previously designated patterns to the traditional straight-line on a bingo card. Rather, any pattern is permissible so long as the pattern was previously determined.⁸⁹

⁸⁴ *Id.* at p. 8.

⁸⁵ See Definitions Under the Indian Gaming Regulatory Act, 57 Fed. Reg. 12,382, 12,382 (Apr. 9, 1992); see also Letter from Penny Colman, NIGC Acting General Counsel, to Robert Luciano, President, Sierra Design Group, p. 21 (Sept. 26, 2003) (“Mystery Bingo Opinion”) (requiring interim games to meet IGRA’s requirements of bingo)

⁸⁶ Certain bets on the table are swept off the table (i.e., lost to the house) depending on the next ball draw. For example, if a player bets on a Hard 10 and the draw is a 4-6 or 6-4, the player loses the bet to the house. Hardway Holdings, LLC O-Craps! Overview, pp. 5-6.

⁸⁷ 25 U.S.C. § 2703(7)(A)(i)(III).

⁸⁸ 25 C.F.R. § 507.3(a)(3).

⁸⁹ See *U.S. v. 103 Electronic Gambling Devices*, 223 F.3d 1091, 1098 (9th Cir. 2000) (“Turning to the question of whether MegaMania satisfies §2703(7)(A)(i)(III), as an initial matter, there is no reason that the ‘previously designated arrangement’ to which the statute refers must be a straight line. Indeed, the statutory description just quoted quite clearly permits *any* pattern to yield a prize, as long as the pattern is “previously designated”). (emphasis in original).

To win a primary game, O-Craps! players are required to cover one square in both the “O” and “S” columns. Stated in another way, players are required to cover one of twenty-five previously determined patterns on their cards. The following table describes the twenty-five possible game-ending patterns for the primary game:

O-1 S-1	O-2 S-1	O-3 S-1	O-4 S-1	O-5 S-1
O-1 S-2	O-2 S-2	O-3 S-2	O-4 S-2	O-5 S-2
O-1 S-3	O-2 S-3	O-3 S-3	O-4 S-3	O-5 S-3
O-1 S-4	O-2 S-4	O-3 S-4	O-4 S-4	O-5 S-4
O-1 S-5	O-2 S-5	O-3 S-5	O-4 S-5	O-5 S-5

Therefore, players in the primary game cover previously designated arrangements of numbers and satisfy this criterion.

The interim games, however, do not satisfy this criterion. By using “arrangement of numbers or designations” and “pattern,” IGRA and NIGC regulations also require players to cover more than one number or designation on a card to win.⁹⁰ The NIGC General Counsel has previously determined that Evergreen Bingo – a game where a player was required to cover only one number (a corner) in order to win - did not meet the definition of Class II bingo. In the Evergreen Bingo game opinion, the General Counsel stated:

The definition of Class II bingo games under the Indian Gaming Regulatory Act requires players to cover a “previously designated arrangement of *numbers* or *designations*” 25 U.S.C. § 2703(7)(A)(I)(III) (emphasis added). The NIGC’s regulations require players to “*cover* a designated *pattern*” 25 C.F.R. § 502.3(a)(3) (emphasis added). A pattern is a “design composed of *elements* in a regular arrangement.” Random House Webster’s Dictionary 485 (1993). Both definitions use the plural form to describe what needs to be covered in order to win a game. Thus, under the plain language of both IGRA and the NIGC regulations, a game is not bingo or a game similar to bingo unless players are required to cover more than one number or designation before they can win. They must also cover numbers or designations that are in a regular arrangement. In Evergreen Bingo, players need only cover one number, a corner, in order to win. Therefore, Evergreen Bingo fails to meet this element of the Class II bingo definition.⁹¹

Evergreen Bingo contained several features of the MegaMania game that was then subject to litigation in the Ninth and Tenth Circuit Court of Appeals.⁹² However, the General Counsel’s

⁹⁰ See Letter from Barry Brandon, NIGC General Counsel and Chief of Staff, to Larry Montgomery, Vice Chairman, Multimedia Games, Inc., pp. 2-3 (Nov. 2, 1999) (“Evergreen Bingo”); see also Letter from Kevin Washburn, NIGC General Counsel, to Frank Banyai and Mike Macke, Cadillac Jack, Inc., p. 6 n. 4 (Mar. 22, 2001) (“Wild Ball Bingo”).

⁹¹ See Letter from Barry Brandon, NIGC General Counsel and Chief of Staff, to Larry Montgomery, Vice Chairman, Multimedia Games, Inc., pp. 2-3 (Nov. 2, 1999) (“Evergreen Bingo”) (italics in original).

⁹² See generally *U.S. v. 103 Elec. Gambling Devices*, 223 F.3d 1091 (9th Cir. 2000); *U.S. v. 162 MegaMania Gambling Devices*, 231 F.3d 713 (10th Cir. 2000).

opinion that an arrangement must include more than one number was entirely consistent with the Ninth and Tenth Circuits' opinions issued after the Evergreen Bingo opinion. The MegaMania game at issue in the court decisions required players to cover arrangements of more than one number or designation – either straight-line bingo (5 spaces) for the primary prize, or two, three, or four corners for the interim prizes referred to as CornerMania.⁹³

In the Wild Ball Bingo game opinion, the General Counsel again concluded that a Class II game must require a player to cover an arrangement of more than one number or designation:

A card must bear “numbers or designations” and the player is to cover “a previously designated arrangement of numbers or designations when objects similarly numbered or designated” are selected. This would seem to eliminate the possibility of playing a game with a card that contained fewer than three numbers or designations or in which the purpose of the game was to cover only one number or designation. One number or designation would not be an “arrangement of numbers or designations.” At least two or three numbers or designations on a card would be necessary to establish an “arrangement.”⁹⁴

In O-Craps!, a player must cover must cover two squares to win a primary game. But, a player must cover only one square on an interim game card to win an interim game. Therefore, the interim game does not meet the bingo requirement that players cover an arrangement of *more than one* number or designation.

II. O-Craps! is not a game similar to bingo.

IGRA permits a game that is similar to bingo to qualify as a Class II game if the game is played in the same location as bingo.⁹⁵ IGRA does not define “games similar to bingo.” NIGC regulations interpret the phrase to mean “any game played in the same location as bingo (as defined in 25 U.S.C. § 2703(7)(A)(i)) constituting a variant on the game of bingo, provided that such game is not house banked and permits players to compete against each other for a common prize or prizes.”⁹⁶

O-Craps! is not a game similar to bingo. O-Craps! is not a variant of bingo because it fails to satisfy two of the three statutory criteria for bingo, as described above. Also, the interim games are house banked. The house in O-Craps! is a participant in the interim games in the same way that a

⁹³ *103 Elec. Gambling Devices*, 223 F.3d at 1093 (“In addition to the traditional straight-line game, there is a ‘corners game’ (dubbed ‘CornerMania’). In the corners game, each player who covers two, three, or four corners of a card gets a prize.”); *162 MegaMania Gambling Devices*, 231 F.3d at 716-17. The Tenth Circuit described the arrangement of numbers required to win the primary and interim games in MegaMania: “With the purchase of these numbers, a MegaMania player simultaneously engages in two aspects of the game, namely ‘straight-line’ bingo and ‘CornerMania.’ Straight-line bingo is won by the first player or simultaneous players to cover or “daub” five spaces in a straight line on the player’s bingo card” And, “[t]he object of the CornerMania portion of the game is to cover two, three or four corners of a card and win an interim monetary prize.” *Id.*

⁹⁴ Letter from Kevin Washburn, NIGC General Counsel, to Frank Banyai and Mike Macke, Cadillac Jack, Inc., p. 6 n. 4 (Mar. 22, 2001) (“Wild Ball Bingo”).

⁹⁵ 25 U.S.C. § 2703(7)(A)(i)(III).

⁹⁶ 25 C.F.R. § 502.9.

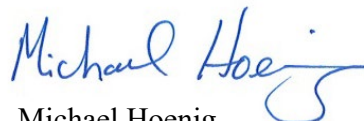
house is a participant in traditional craps.⁹⁷ The house also takes on all players, collects from all losers, pays all winners, and the house can win interim games if a player covers a game-ending pattern in a primary game or if a certain roll clears an interim bet.⁹⁸ Lastly, players participating in interim games do not compete against each other for a common prize. Instead, interim game players compete against the house in individual games for prizes awarded by the house, which amounts are not determined by any common prize pool. Therefore, O-Craps! is not a game similar to bingo.

Conclusion:

For the reasons stated above, O-Craps! is not a Class II game according to IGRA and NIGC regulations. O-Craps! is not a Class II game because the automatic daubing feature, instead of players, covers numbers; the interim games lack player competition; the interim games may end without a winner; and players in interim games do not cover a previously designated arrangement of numbers. O-Craps! is also not a game similar to bingo because it fails to satisfy two of the three statutory criteria, the interim games are house banked, and players do not compete against each other for a common prize. Accordingly, O-Craps! is a Class III game.

Please be advised that this legal opinion is advisory in nature only, and may be superseded, reversed, revised, or reconsidered by a subsequent General Counsel. Moreover, this advisory legal opinion is not binding upon the NIGC Chairman or Commission, who are free to disagree with it in any action that comes before them or via the Chairman's prosecutorial discretion. In sum, this advisory legal opinion does not constitute agency action or final agency action for purposes of review in federal district court and is issued solely as a matter of courtesy.⁹⁹ If you should have any further questions, please contact NIGC Staff Attorney Steven Iverson at 202-632-7003.

Sincerely,



Michael Hoenic
General Counsel

cc: John Peebles, Fredericks, Peebles, & Patterson, LLC
Patrick Bergin, Fredericks, Peebles, & Patterson, LLC

⁹⁷ See 25 C.F.R. § 502.4(a)(2) (defining casino games such as craps as a house banking games).

⁹⁸ 25 C.F.R. § 502.11.

⁹⁹ See *Kansas ex rel. Schmidt v. Zinke*, 861 F.3d 1024, 1031 (10th Cir. 2017) (“IGRA’s text, statutory structure, legislative history, and associated regulations all establish that Congress did not intend judicial review of NIGC General Counsel opinion letters.”).