



INDEPENDENT CONTRACTOR REGISTRATION

By Mark Lipparelli

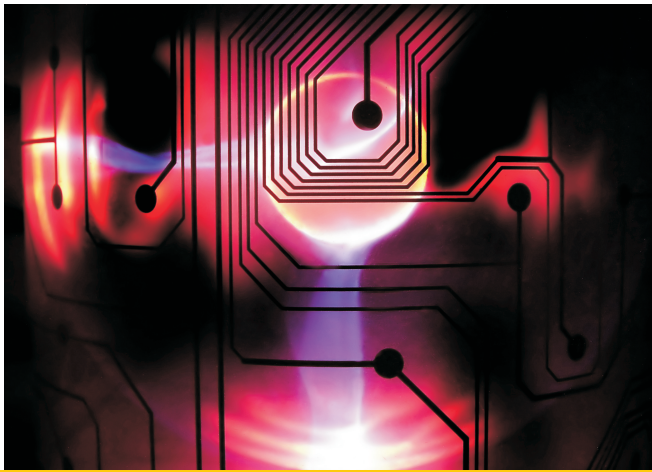
Introduction

In April, 2010, the Nevada Gaming Commission (“NGC”) adopted notable amendments to NGC Regulation 14 based on earlier meetings and the recommendation of the Nevada Gaming Control Board (“GCB”). The primary focus of the amendments related to permitting the use of independent contractors (“IC”) by licensed manufacturers for core development. The adopted language followed a series of public workshops, formal hearings, and written revisions provided by the GCB, members of its staff, industry participants and trade associations. The basis of the language changes were driven by a recognition on the part of the regulators that more and more technology development was taking place away from traditional “employee based” teams. The challenge for regulators was to implement a process that would balance giving visibility to the GCB of the parties developing technology (not subject to immediate jurisdiction) on behalf of licensed manufacturers, while not erecting an unmanageable deterrent to creative forces in development community.

The Evolution of Technology and Gaming Regulation

When the first gaming law and related regulations were adopted, language relating to technology was not likely a significant consideration. Casino ownership, full accounting of money (and taxes), and patron protection were, and are, at the heart of gaming regulation. As time passed, more and more regulatory attention began to focus on how to ensure that gaming devices and related technology were both fair to patrons and difficult to cheat. Today, the kind and type of technology subject to regulatory oversight has properly expanded to include gaming systems, cashless systems and other automated tools that provide higher levels of entertainment value, operational efficiency and security.

In large measure, the combination of technological improvements, regulatory testing and operational controls have been successful. However, as technology has become abundant in the day to day functioning of a casino, regulatory systems must change to keep pace.



Striking the Proper Balance

Efforts to create or amend regulations, when done in the best light, must strike the proper balance of providing desired protection while not creating undue hardship or cost on the industry regulated. Gaming and its regulation, in this regard, is not different than the banking, transportation, or communication industries.

On the one hand, it can (and was) argued that placing any regulatory burden on independent contractors would have a potentially chilling impact on those who might view the gaming industry as a place to dedicate resources. On the other hand, the security and confidence we place in the products that make their way through development, quality control, independent regulatory testing and on to the casino floor, is an industry imperative.

It would appear that a straightforward registration allowing access to a multi-billion dollar market would be largely acceptable to a large number of potential technology providers when compared to the costly and time consuming process of full licensing. To the extent that a registration barrier, albeit a low bar, is a burden for some to the point of avoidance may be, in the near term, a reasonable compromise when compared to the alternative.

The Process

The amendment of Regulation 14 requires ICs to complete a short form information submission to the GCB if they perform certain work on behalf of a licensed manufacturer. Unlike the traditional licensing or suitability requirements where the burden of suitability is placed on the applicant, registration will be deemed to have taken place when the GCB receives a complete submission from the IC applicant. The GCB and NGC agreed to include within the regulation the type and kind of information that would be required to be provided by an IC to achieve registration, as well as the type and kind of activities that would require the underlying registration. This concession, while unusual, provides the gaming industry a level of assurance that the registration process for ICs is not subject to any gradual increase without it coming back before the NGC in the future for debate.

The information provided to the GCB provides its staff the opportunity to make an assessment of the entity or persons providing the core work product. When warranted, the GCB may make additional requests for information up to and including a possible call forward for suitability. While this would likely be an unusual circumstance, it also puts in place a protection against a licensed manufacturer outsourcing all of its core development in a manner that would preclude the GCB staff from rendering a fair analysis of the work provided.



Once registered, an IC who wishes to remain in a “registered” status must provide an annual update to the Board disclosing any changes to the information required (if any). There are no fees associated with IC registration.

The adopted regulatory language does provide licensed manufacturers with the freedom to use the services of an IC, without registration, up to the point where the manufacturer seeks approval of the underlying work

product for use in Nevada. Some entities in the drafting process had expressed reservations that work performed by ICs in other markets (including foreign markets), not intended for use in Nevada, would nevertheless be subject to this regulation. That said, Nevada licensees are reminded that they remain accountable generally for the business partnerships and relationships beyond the terms of Regulation 14.

Deterrent

One of the inherent achievements of gaming regulation in most jurisdictions has been a rigorous up-front licensing process. Licensing and suitability is fair but not for the faint of heart. Casual observers (and some critics) of the process might point out that it is a rare case today when a Board or Commission denies an application for licensing or suitability. This is not an accident; rather, the outcome of decades of progress. What is generally less known is that many prospective gaming applicants, who would likely face a negative vote, either withdraw from the process or, in many cases, avoid the process altogether, either of their own accord or on the advice of counsel. As such, it is hard to place a value on the impact of such parties not playing a part in the gaming industry. To the extent bad actors have been prohibited from damaging the reputation of or

bringing undue oversight to the gaming industry, such value is likely very high. The negative impact associated with a national media storyline regarding how the regulatory structure failed to identify or prevent the entrance of a sophisticated technology cheat is bad. The same storyline associated with a technology provider actually producing the underlying code on behalf of a licensed manufacturer with no scrutiny in the first place, is far worse. Such an outcome would not

only impair the reputation of the direct participants but also peer providers of technology, casino operators and the regulator community. The same argument might be made in this step of registering ICs. To the extent a marginal player with bad intentions is persuaded that there are other industries to pursue (as a result of the possibility of regulatory

scrutiny), registration will have played an important role. To the extent that licensed manufacturers place greater upfront regulatory scrutiny on their prospective development IC partners to avoid costly unwinding down the road, then these changes will have played an important role. To the extent that the IC conducts a higher degree of background review of its employees who perform work on behalf of licensed manufacturers, then these changes will have been successful.

Manufacturer Diversity

One of the fundamental challenges in amending this regulation resulted from the consideration of the impact of the changes to a diverse body of existing manufacturers and potential entrants. Not all manufacturers fit into a classic structure, but all have the ability to deliver products to the casino industry. It could be argued that a large, well-established manufacturer believes IC registration brings added burden to its core responsibilities they believe are part of normal day-to-day functions. A company with a strong regulatory



compliance function, substantial security measures relating to code development and management, and evolved quality assurance, may successfully argue that industry risk is minimal with respect to the use of IC work product. In other words, such a company would likely be willing to stake their licenses and reputation in exchange for wide latitude to syndicate product development. While not certain, this argument may be valid. On the other hand, a good number of smaller manufacturers (who would be just as likely to tap the market for independent contractors) would arguably not be capable of demonstrating the process maturity noted above. In these cases, a regulatory mechanism that ensures that the code integrated into a gaming device or system is properly analyzed, or that the entity providing the services is not an unsuitable party, is more than just belt and suspenders.

Sensitivity to Manufacturers Regulatory Burdens

Licensed manufacturers face the daunting task of managing licensing and technical requirements in literally hundreds of jurisdictions when compared to even the most geographically diverse casino operator, who might have to manage relationships with only ten or so regulatory agencies. This presents challenges for any regulatory agency with a large number of licensed manufacturers. As regulation or technical standards come under review (normally for bona fide reasons), the wider consideration of industry impact is felt. The GCB, in this regard, did include language within the regulation to allow licensees to submit for waivers of the new requirements of Regulation 14 when warranted. Such waivers will most likely not be commonly granted, but the speed of technology development, along with the myriad of structures that may come to fruition with ICs, may constitute good cause for the granting of such a waiver.

Conclusion

General trends in product development and design clearly point to greater and greater use of diversified resources.

The notion that all development will take place within the walls of our licensees by employees of the manufacturer has passed. A mandate that requires any developer who creates core gaming code to be fully licensed will not serve to advance the general interests of the gaming industry. A good deal of thought, energy and compromise went into the creation of these regulatory changes by many of the gaming industry's leading participants. Applying the regulation fairly and with good intent (and changing it in the future when warranted), will require the same level of regulator/industry cooperation.

The views expressed by the author in this article are those of the author and do not necessarily reflect those of the other members of the Nevada State Gaming Control or the members of the Nevada Gaming Commission.

Mark Lipparelli is currently a member of the Nevada State Gaming Control Board, having been appointed in January 2009. In addition to his responsibilities as a Board Member generally, he has primary responsibility for oversight of the Board's Audit and Technology Divisions. Prior to becoming a member of the Board, Mr. Lipparelli was a consultant to the gaming industry, founded his own developmental-stage technology company, and was an executive with a number of gaming companies, including Bally Technologies, Inc., Shuffle Master, Inc., and Casino Data Systems. [NGL](#)

