

Regulating Technology

By Jim Barbee

...I think we in Nevada are perhaps in one of the most unique times in recent history. I believe that we have opportunities that we have never had before. I believe those opportunities, however, require that we continue to use our ingenuity, our creativity and our imaginations to develop new and even more exciting games for tomorrow than what we have today.

The area of technology I believe is going to be a large part of that. The area of technology [is] something that we all see from our young adults and our younger kids who are the Nintendo players of today and the Pac-Man players of yesterday are going to be the gamblers of tomorrow...

... there will not be any regulation that will have any intention with it to thwart development of technology. That does not mean it will go unregulated, it does not mean it will go uncontrolled. The statute leaves us no choice. It must be officially and completely regulated and will continue to be.

– John O'Reilly, Chairman, Nevada Gaming Commission



Nevada Gaming Commission Chairman John O'Reilly made the preceding comments during his opening remarks at the July 27, 1989, Commission hearing regarding changes being made to Regulation 14. Regulation 14 is the regulatory bedrock for gaming device standards in Nevada. With the possible exception of replacing Pac-Man with the video game du jour, Chairman O'Reilly's remarks are as relevant and salient today as they were nearly 30 years ago. Gaming technology is ever-evolving, critical to the success of the gaming industry, and requires regulation. The obvious variable regulators have influence over is our approach to how gaming technology will be regulated.

As in 1989, the ongoing challenge is how to provide an effective regulatory environment that addresses the dynamic nature of gaming technology without inhibiting its growth or adoption. The problem can be restated in terms of the five phases of the Gartner Hype Cycle for Emerging Technologies¹ as how to provide regulation after an "Innovation Trigger" at the "Peak of Inflated Expectations" that does not contribute to the "Trough of Disillusionment" but instead supports the "Slope of Enlightenment" and eventual "Plateau of Productivity."²

Universal regulatory roles include risk control, compliance management, enforcement, and problem solving. Carrying out these duties requires a certain amount of discretion be exercised. Historically, there are two camps when it comes to regulatory discretion. The first being that too little discretion on the part of the regulator leads to an inflexible environment that is easily obsolete, nit-picky, and stifling to innovation. The other view being that too much regulatory discretion is an incubator for corruption, discrimination and regulatory capture.³ The former being characterized by overly prescriptive regulations and standards. The latter characterized by vague or anecdotal regulation and arbitrary regulatory policies.

As we carry out our regulatory mission, we strive to apply an effective discretionary balance between the two which allows Nevada licensees to operate with the greatest level of flexibility while still maintaining the public confidence and trust in our industry. And, of course, continuing to ensure the accurate

accountability of gaming revenue. Now would be a good time to point out that the views expressed herein are my own and not necessarily those of the Nevada Gaming Control Board.



Several years ago, Nevada Gaming Control Board Chairman A.G. Burnett provided clear direction on how he would like to approach the challenge of



regulating technology. He stated we need to move the bar on the level of risk we are able to accept while still meeting our statutory mandate of ensuring the integrity of our industry.

With adopting a more risk-based strategy to technology regulation as a principle, we have made significant changes to NGC Regulation 14 to improve the discretionary balance in our approach. These include changes to Regulation 14.025 related to themes associated with gaming devices, changes to Regulation 14.040 to address skill in gaming devices, and the implementation of the New Innovation Beta (NIB) process under Regulations 14.080 and 14.130. The NIB process exemplifies our evolving approach to technology regulation.

NIB was enacted to allow new gaming device technology to be made available to the public, in a field trial status, earlier in the overall approval process, prior to being fully regulatory compliant. This permits new technology to not only be deployed

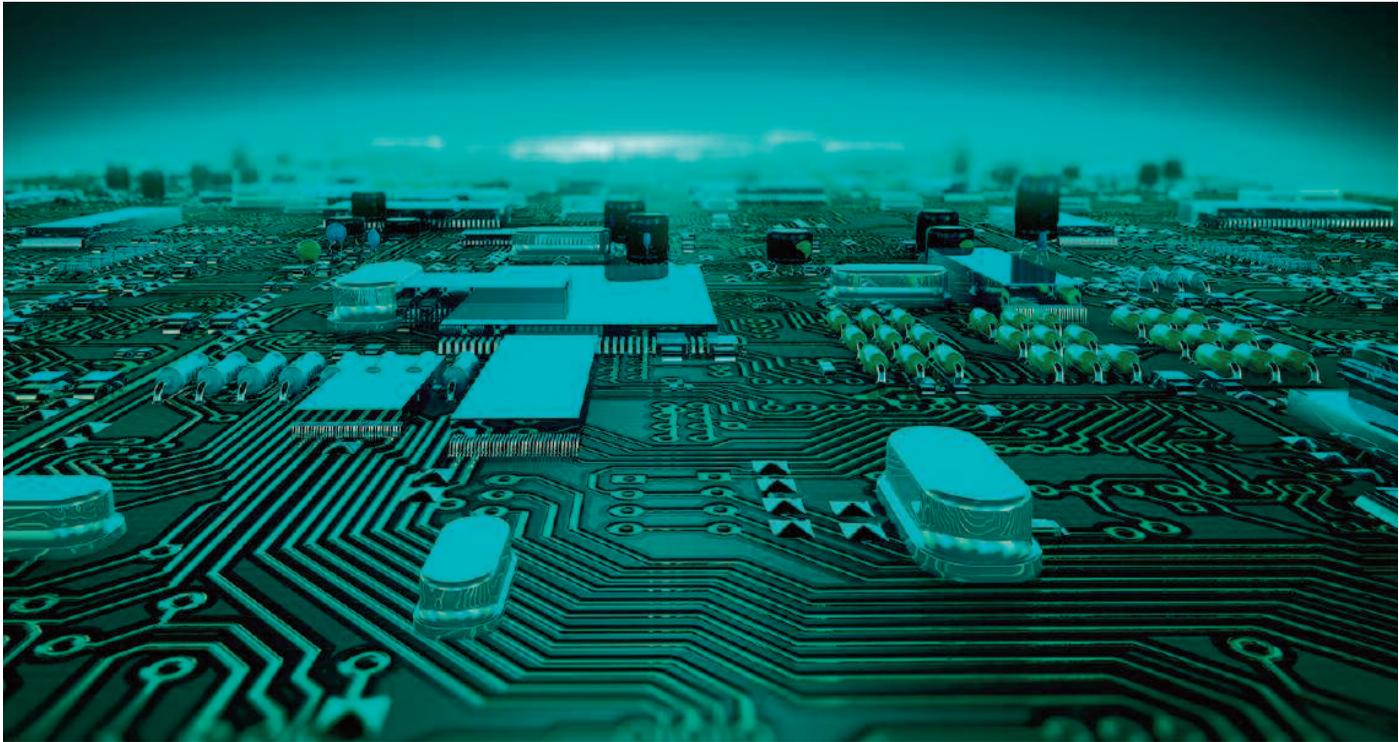
sooner, but also affords the manufacturer and operator the opportunity to evaluate patron acceptance and make necessary adjustments during the product development process.

Fundamental to NIB is the ability to accept a greater level of risk when authorizing a field trial of a new or modified gaming device. As adopted in 1989, Regulations 14.080 and 14.030 authorized the Board Chairman to allow a field trial of a new or modified gaming device only after a determination had been made that the devices met the standards of Regulation 14. The device had to be fully compliant prior to being offered to the public for play. This provided for little to no risk tolerance.

Amendments made in 2016 remove the fully compliant requirement and permit the Chairman to exercise a certain degree of discretion when authorizing a field trial. The amended regulations establish that the Chairman will consider the ability of the device to accurately determine, evaluate, and display the game outcome and accurately process the acceptance and award of all payments. Provided a new or modified gaming device meets these fundamental patron protection and integrity requirements, the Chairman may authorize a field trial be conducted while the manufacturer brings the device into full compliance with Regulation 14.

For example, once it has been determined that a gaming device accurately implements game play and





credit handling, a field trial can be authorized allowing a manufacturer to place the device at a licensed gaming establishment while they continue development to meet the obligations of various technical standards. To mitigate the risks of not being fully regulatory compliant, a manufacturer and operator may be required to implement compensating controls during the trial period until the device is fully compliant.

NIB also allows the Chairman to consider the approval status of new gaming device technology that has been approved in a jurisdiction with materially the same standards as Nevada as the basis for authorizing a field trial. For example, a gaming device that has been approved by the New Jersey Division of Gaming Enforcement may be deployed under NIB while the manufacturer brings the device into compliance with Nevada standards.

To borrow from Heraclitus, change is the only constant in gaming. I can only imagine what technology will be available to the gaming industry in another 30 years. Future regulators will be faced with the same challenge of finding the appropriate discretionary balance at the **“Peak of Inflated Expectations.”**

Jim Barbee joined the Nevada Gaming Control Board (NGCB) in 2000 and was appointed to his present position as Chief of the NGCB’s Technology Division in 2011. As Chief of the Technology Division, Jim’s responsibilities include oversight of the review and approval process for all gaming related technology used in Nevada and advising the members of the NGCB and Commission on matters related to technology in gaming.

Jim received his Bachelor’s Degree in Computer Engineering from UNLV and is a member of the UNLV College of Engineering Advisory Board.

- ¹ “Gartner Hype Cycle.” Gartner www.gartner.com/technology/research/methodologies/hype-cycle.jsp (last accessed June 2, 2017).
- ² In a 2008 presentation prepared by then Board Member Mark Clayton on the state of Gaming Technology, Mr. Clayton also noted that regulators are expected to develop and adopt regulations, establish standards, and begin reviewing new technologies during the “Peak of Inflated Expectations” phase.
- ³ Malcom K. Sparrow, *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance* (Washington, D.C: The Brookings Institution, 2000) 238.

