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

September 30, 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Beth Brinkmann