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Consuming the Olympics: the fan, the rights holder and the law

Mark James and Guy Osborn

The London Olympic Games and Paralympics Act 2006 (the Act) received its Royal Assent on 30 March 2006, well over six years before the Games themselves are due to begin. The early passing of this Act is partly to ensure that the Olympic Delivery Authority (ODA) has sufficient time to organise the Games, and partly to ensure that Parliament has sufficient legislative time to implement the legal framework necessary to stage a modern Games to the satisfaction of the International Olympic Committee (IOC). The Act as a whole covers a variety of issues from the creation of the ODA and the defining of its role and powers in respect of planning and transport to the creation of several new criminal offences.

Within the Act are certain key areas worthy of socio-legal investigation. Indeed, many of the provisions are emblematic of how the law maps the cultural and commercial tensions that we have identified elsewhere (James and Osborn, 2009 and Greenfield and Osborn, 2001). These tensions are particularly pronounced with respect to an event such as the Olympics, where the historically entrenched cultural values and identity of the Olympic movement must now be read alongside the commercial imperative of maximising income (Tomlinson, 2005). Whilst it is this income which enables the Games to be staged, there is a danger that such commercialisation might reduce the Olympics to mere commodity:

The cities are in it for reconstruction and global positioning, chasing world-wide markets; the corporations are in it for global profile and unprecedented levels and scales of television exposure; the consumers are in it for a mixture of motives, some as sports enthusiasts or idealists, others for the party atmosphere or the feel of being close to something big. But whatever the drive behind the commitment to the event of these different players, the commercialisation of the Olympics has turned it into a global commodity.
(Tomlinson, 2005)

This neatly illustrates some of the differing, and arguably competing, objectives that those organising the Games have to deal with. The provisions in the Act are designed, in part, to deal with some of these issues and two in particular build upon, and refine, corresponding provisions that have been in place at previous Summer and Winter Olympic Games. These are the regulations dealing with ticket touting and ambush marketing. Ticket touting, or scalping, is the unauthorised resale of event tickets usually, but not always, for a profit. Ambush marketing is the unofficial or unauthorised association of a product or service with an event; the ambush undermines the rights of an official sponsor of a similar product or service, who will usually have paid a substantial sum to be associated exclusively with the event. The interpretation and ambit of ambush marketing is far from clear. At the FIFA World Cup 2006, male Dutch fans were forced to remove orange shorts that were emblazoned with the name of a beer that was not one of the tournament's official sponsors and watch the match in their

underwear.(Harding and Culf, 2006) Whether or not spectators at London 2012 will be subjected to similar restrictions is as yet unclear from the wording of the Act. These event-specific offences are on top of the protections already in place in the Olympic Symbol (Protection) Act 1995 [http://www.opsi.gov.uk/acts/acts1995/pdf/ukpga_19950032_en.pdf], whose provisions are significantly reinforced by Schedule Three of the Act.

This piece addresses some of the key issues concerning the regulation of the fan with regards to access to sporting and cultural events at London 2012. In particular it examines how an Olympic Games, with an ethos that is avowedly inclusive in nature and which hopes to provide the nation with a long lasting and varied legacy, is using the law to coerce conformity with its ideals. It explores whether the Act can protect the consumer in the way that Parliament claims it is trying to do or whether, in fact, the provisions are concerned with little more than Olympic brand protection.

Olympic tickets – policy and regulation

Tickets to many Olympic events are likely to be significantly over-subscribed. At the same time, however, the London Organising Committee of the Olympic Games (LOCOG), the IOC and its Partners are keen to avoid the rows of empty seats that were seen at some events during the Beijing Games. In terms of access to tickets, London 2012 has stated:

We aim to give as many people as possible the chance to attend the Games – ensuring a great atmosphere for all the events. To achieve this, our tickets will be priced fairly. London will aim to repeat the success of the Manchester Commonwealth Games, where 90 per cent of seats were sold. Each ticket will also include free travel on public transport in London for the day of the event, to encourage spectators to use the transport system and take in the festivities throughout the city.¹

In addition, LOCOG have stated that they are considering policies that will privilege ticket applicants who are members of sports clubs. By linking allocations of tickets for Olympic events to membership of sporting clubs, whether as a playing or non-playing member, LOCOG is seeking to reward those with an active interest in sport, particularly at the grass roots level. (Hart, 2008) This approach of trying to attract genuine sports fans, and where and how tickets should be allocated, was forcefully made by Pat McFadden MP, during the Standing Committee debates on the Act; 'I am sure that the Committee supports the aim of [section 31] which is to ensure that tickets are sold properly and honestly and that they go to genuine sports fans.'² McFadden's rhetoric is redolent of the language of others, such as Tom Pendry MP,

¹ See 'London 2012 Tickets', available at: <http://www.london2012.com/plans/ticketing/index.php> [date last accessed 10th February 2009] The policy goes on to detail other inclusionary free ticket initiatives: 'As well as this, there will be free events - including the Road Cycling, Triathlon and Marathon. These events will take place on the streets of London, where spectators can line the route'.

² HC Deb Standing Committees 2005/06 Vol.4. SC D London Olympics Bill 13th - 18th October 2005 col. 102 (18th October morning sitting) <http://www.publications.parliament.uk/pa/cm200506/cmstand/d/st051018/am/51018s04.htm> Date accessed 4th March 2009;

during the Parliamentary debates on the need for anti-ticket touting legislation at professional football matches in the 1990s (Greenfield and Osborn, 1996). This sentiment is repeated in many of the current Parliamentary debates where the recurring theme is that these provisions are there to protect the *consumer*, the real sporting enthusiast, from the unscrupulous and exploitative behaviour of ticket touts. This raises a number of interesting and important points, an understanding of which are essential to an analysis of the government's approach to regulating access to tickets at Olympic events.

At the outset there is a problem of identifying who or what is a genuine or authentic fan, and then deciding whether these fans should be prioritised. There has been much discussion in the past of whether the real Wimbledon tennis fans are the ones that have queued for hours, and sometimes days, to obtain access to the event rather than some of the spectators who may have obtained their tickets through corporate hospitality deals. Similarly, there has been some academic debate, particularly within football, of what attributes one needs to possess to define oneself as a fan (King, 2002).

In terms of access to tickets for events, the authorised ticket seller will have little or no opportunity to determine whether the first purchaser of the ticket is a 'real fan' or a tout, particularly where remote sales are concerned.³ This problem is exacerbated by the distribution of blocks of tickets to corporate sponsors as the primary rights holder has little control over how the sponsor will distribute their allocation. As the lack of enforcement of the anti-ticket touting legislation in football has demonstrated, (Home Office 2004–2008) the threat of punishment is not necessarily an effective means of preventing touting from taking place.

There may also be *prima facie* legitimate reasons why a 'real fan' may pass on a ticket. This can include the obvious scenario where the purchaser has a spare for which they cannot get a refund and so have no option other than to sell the ticket on the secondary market to recoup their expenditure. It can also conceivably include the real, but impoverished, fan who needs to sell part of their allocation to be able to fund the price of their own ticket.

In reality, the lack of effective control of the supply of tickets from the primary rights holder and its authorised sales outlets means that there is no guarantee that the 'real fans' will be able to secure tickets legitimately. This in turn may force many real fans to purchase their tickets from a tout precisely because access to the primary market has been regulated in such a way as to limit rather than promote equality of access.

What is Parliament trying to protect?

Despite these issues, the government has opted to criminalise the secondary market in Olympic event tickets whilst leaving the primary market completely unregulated. Section

³ An interesting development from the England and Wales Cricket Board has been for them to email all members of their TwelfthMan supporters group warning them of the actions that are being taken to police the secondary market and enforce the non-transferability condition of tickets to the 2009 Ashes series. (See also, http://www.lroom.net/clients/ecb/html_emails/090213_issue_0018/index_noheader.html date last accessed 15th February 2009).

31(1) of the Act criminalises the unauthorised resale of all tickets to all Olympic events, whether of a sporting or cultural nature, including events that are being used to test out facilities in the run up to the Games. According to Richard Caborn MP, the government is 'concerned with catching people who want to make a fast buck out of 2012, not those who advertise legitimately, who exploit the Games in the right way, and from whom we receive benefit.'⁴ Put in these terms, it does not appear that consumer protection is high on the list of the government's priorities. Instead, it appears that they are concerned with profiteering, reduced profits and lost tax revenues. Although these are all issues with which any government should be concerned, in the case of the London 2012 Olympic Games, these provisions have been dressed up as being for the benefit of the consumer or justified on the basis that the IOC has forced the government's hand.⁵

Such justifications are somewhat disingenuous. The framework of consumer protection already in place in the UK is extensive and covers most of the situations where a tout could be considered to be 'ripping off' a consumer on anything of than the actual amount charged. For example, the Consumer Protection from Unfair Trading Regulations 2008 [http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081277_en.pdf] ensure that anyone selling on a ticket to events such as this is committing a criminal offence if the vendor provides false or misleading information to the purchaser⁶. Further, for situations where these Regulations are inapplicable, offences under sections 2 and 3 Fraud Act 2006 [http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060035_en.pdf] are committed where false or misleading information is supplied by the vendor to the purchaser. Thus, there is no real need for the additional offence in section 31 of the Act, aside from the fact that it is an IOC condition of securing the right to host an Olympic Games that such legislation is in place.

What is the likely impact on the consumer of this legislation?

In terms of ticketing policy, the theory behind these provisions of the London Olympic Games and Paralympics Act 2006 is that consumers will not be exploited by being overcharged for tickets by touts and that they will not be mis-sold tickets on the basis of false or misleading information. The practice is likely to have a very different impact on the consumer.

First, the legislation is supposed to force all ticket sales to be conducted through an authorised, licensed ticket agent. Although there are obvious benefits to both the primary rights holder and consumer if all transactions are carried out in this way, it also runs the risk of restricting access to the market rather than promoting it. Not all prospective purchasers have access to the internet, nor can they all afford to book on a

⁴ HC Deb Standing Committees 2005/06 Vol.4. SC D London Olympics Bill 13th – 18th October 2005 col. 97 (18th October morning sitting)
<http://www.publications.parliament.uk/cm200506/cmstand/d/st051018/am/51018s03.htm>
&
<http://www.publications.parliament.uk/pa/cm200506/cmstand/d/st051018/am/51018s04.htm>
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⁵ HC Deb Standing Committee 2005/06 Vol.4. SC D London Olympics Bill 13th – 18th October 2005 col. 102 (18th October morning sitting)per Richard Caborn MP
<http://www.publications.parliament.uk/pa/cm200506/cmstand/d/st051018/am/51018s04.htm>
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⁶ Consumer Protection from Unfair Trading Regulations 2008 SI 2008/1277

premium rate telephone line. If they can, they may not be able to afford the booking, credit card and postage fees that are habitually incurred when purchasing tickets in this way. With many major events selling out in minutes via remote sales, those without access to the necessary technology or to a credit card will not be able to make legitimate primary market purchases and will inevitably turn to the secondary market.

Secondly, at this point in time, there is no indication of whether consumers with legitimately bought tickets will be able to secure refunds if they have spare tickets. If a procedure similar to that used by many Premier League football clubs is used, then consumers will not only lose the fees that they have paid up front but they will also be charged a handling fee for the resale of the ticket. The above face value costs involved with buying from and selling back to the primary rights holder ensures that the conditions are ripe for a secondary market to evolve as consumers seek to recoup not just the ticket but also the associated fees. This can be contrasted with the anti-touting provision in section 17 of the Glasgow Commonwealth Games Act 2008 [http://www.opsi.gov.uk/legislation/scotland/acts2008/pdf/asp_20080004_en.pdf], where the unauthorised resale of a ticket is only an offence if it is for an amount in excess of the face value of the ticket or if the sale is with a view to making a profit, thereby enabling a seller to recoup a much higher proportion of their original expenditure.

Thirdly, touting has not been legislated out of existence in football. There is no reason to suspect that a provision based on section 166 Criminal Justice and Public Order Act 1994 [http://www.opsi.gov.uk/acts/acts1994/Ukpga_19940033_en_1], which bans the resale of tickets to professional football matches in England and Wales, will succeed in respect of the Olympics. The police either cannot, or do not, enforce section 166 and make around only 100 arrests for touting each year, despite the public order implications of a break down of fan segregation. In the absence of any real threat to public order at the Olympics, an orchestrated clampdown on ticket touting by the Metropolitan Police seems unlikely.

Conclusion

The pro-access and pro-fairness regimes being promoted for ticketing at London 2012 do not necessarily achieve their aims. It is possible that nothing can, short of making people queue up on the day. The problem that has been identified here is that nobody has tried to establish what the impact of these provisions will be on the consumer; it has simply been assumed that the regulations will be to their benefit. In reality, the main benefit of this legislation is to the primary rights holders, LOCOG and the IOC, who will be able to call on the police and trading standards officers to monitor and penalise any breaches of contract that occur. LOCOG called on the government to regulate the secondary market and the Act signifies its unquestioning acquiescence.

This could cause significant problems for the government in the aftermath of London 2012. Primary rights holders and event organisers from the Lawn Tennis Association and the Rugby Football Union, to Glastonbury and Glyndebourne, will increase their calls for similar protection. In the face of this clamour, the government will need to ensure that in protecting the commercial interests of the primary rights holders and their partners and sponsors they do not act to the detriment of the consumers who they claim to be trying to protect.

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