

Intellectual property enclosure and economic discourse in the 2012 London Olympic Games

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Abstract:

Special legislation associated with mega sporting events had enabled new forms of cultural enclosure, effectively commoditising aspects of cultural expression that previously remained in the public domain. In this article, the authors examine the tension between economic and political justifications for hosting the Olympics and the intellectual property enclosures that are imposed upon host nations. These enclosures extend beyond what is traditionally protected under trade mark law, to include 'generic' terms. Enabling market competitors to freely use generic, descriptive language is a core doctrine of trade mark law, seeking to balance monopoly IP rights with free market competition. The authors evaluate the impact of special legislative enclosures on the public interest, and argue that collective access to expression should be more carefully considered in political and economic calculations of the value of the Olympics.

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Introduction

Controversy over the value of hosting mega sporting events such as the Olympics has focused on whether public investment is justified or whether it represents an opportunity cost when expenditures elsewhere would better serve the public interest (Poynter, 2005; Baade & Matheson, 2004; De Nooij & Van den Berg, 2013). Economic models applied ex-ante as justification for investment often depend on the concept of a 'multiplier effect' which is expected to produce direct, indirect and induced stimuli at various points in the economy (Kasimati, 2003). Arguments by proponents of hosting the Olympics have based their claims in part on the expected economic benefits to local businesses and residents. However, added to considerations about the worth of Olympic host status to nations' economic and social welfare should be the effect of new legislative techniques which impose limits on the use of language and imagery related to the sporting event, beyond what would be protectable by traditional intellectual property law.

Exceptional legislation limits commercial speech by local businesses and could be used to limit or censor unwanted expressions by other groups. As the Olympics and other mega sporting events have grown in importance as spectacular sites of symbolic capital exchange, the value of cultural signs and symbols related to the Games has increased. Efforts by Games organisers and sponsors to enclose and commoditise cultural expression through legal enclosures is consistent with intellectual property enclosure in other realms, but highlights a contradiction at the core of the modern Olympics movement: while the Olympics draws its strength from the participation of the public via expressions of patriotic nationalism, event organisers seek increasingly to exclude the public from access to the very same means of expression.

Cultural Symbols as IP

A number of authors have highlighted the ways in which the aims of cultural preservation, protection or promotion can be impacted in contradictory ways by efforts to enclose cultural symbols as intellectual property. Comaroff and Comaroff (2009) posit that efforts to commoditise local indigenous culture as a tourism 'brand' often has the perverse result of both materially preserving while simultaneously alienating creators from previous means of cultural production (2009:3). Similarly

the enclosure of culture may have alienating effects in other settings, such as that of athletic competition. Examining sporting mega events, Cho (2009) has suggested that spectacular events such as the Olympics play an important political role in promoting social cohesion, through ritual consumption of national symbols, anthems and news content. Similarly, drawing on Anderson, Tzanelli (2006) has argued that symbolic cultural artifacts play an important role in self-narration of individual and national identity. He argues that in the Euro 2004 football event, Greek identity in part drew upon 'national symbols and collective memory.' (2006:484) These included symbols which resided in the 'public domain': Hellenic mythological figures, classical architecture and sites, dress, cartographic imaginaries, flags and religious symbols. Paradoxically, however, the cultural expressions described by Cho and Tzanelli, through intellectual property enclosure, are either prohibited or are re-cast as a form of market consumption, rather than spontaneous expressions of sporting nationalism. For example, the twin mascots of the 2004 Athens Olympic Games, Athena and Phevos, were closely modeled after Greek terra cotta statues from the 7th century BC. However, the resulting character designs were the protected trademarks of the Athens Olympic Organizing Committee (ATHOC) and used in commercial licensing and sponsorship around the Games event. In this way, a symbol available to common uptake and reinterpretation by the public was forcibly removed from the cultural commons and exclusively propertised.

Commenting in the lead-up to the 2012 London Olympics, James and Osborn (2011) characterised the on-going tension between the cultural importance of the Olympics and its commercialisation as an international media event:

The Fundamental Principles of Olympism aim at, amongst other things, blending sport with culture and education, promoting a peaceful society and having respect for fundamental and universal ethical principles. [...] however, the ever-increasing costs of hosting the Games requires the local organising committee to maximise its commercial revenues in order to put on a spectacle of sufficient proportions to be considered to be a success by the IOC and the world's media. (2011:4)

Despite opposition by some lawmakers and legal scholars, the trend in special legislation has continued to evolve toward strict enclosures of generic words and images associated with mega events (see Table 1). The 2012 London Games represented the widest enclosure of words and symbols so far in the history of the Olympics, including restrictions on combinations of words such as ‘summer’ ‘2012’ and ‘medals’, terms which would not normally enjoy protection as trade marks.

Table 1: Words and phrases protected by special legislation since 2000 Olympics

Items protected by legislation:	Sydney 2000	Athens 2004	Beijing 2008	London 2012
Year + city name				
Year + ‘medals’				
Year + ‘sponsor’				
Year + ‘summer’				
Year + ‘gold/silver/bronze’				
‘Games’ + city name				
‘Games’ + ‘medals’				
‘Games’ + ‘sponsor’				
‘Games’ + ‘summer’				
‘Games’ + ‘gold/silver/bronze’				
‘Games’ + year + variant				
‘Games’ + Sequence number				
‘Games City’				
‘Olympic~’ + generic terms				

Event organisers have argued that the purpose of enacting event-specific legislation is to raise capital needed to stage the events by offering greater protection to sponsors. Indeed, the London Games reportedly raised over £1.4 billion from sponsors who paid to have their brands displayed throughout the Olympic venue, as well as for rights to use official logos, words and imagery in advertisements (Rogers, 2012). However, the total cost of the London Games was officially stated to be in excess of £8.9 billion (Gibson, 2012).

The benefits to commercial sponsors and event organisers are potentially in tension with the public interest both economically and politically. National governments must justify public investment in mega sporting events to their political constituents. However, the true economic impact of a mega sporting event on a host country remains hotly debated, with no clear consensus on the net value of such an investment, nor on the appropriate method to empirically evaluate impact (Longdin, 2009; de Nooij & van den Berg, 2013). Consensus about the reputational effects of place-marketing associated with media coverage of the host city or nation is similarly limited. Certainly, the enclosure of symbolic capital constituted by words and images associated with an event runs contrary to the economic rationale that local and national businesses will be able to fully benefit from a ‘trickle-down’ effect, since Olympics sponsorship attracts global brands seeking to reach an international audience.

The enclosure approach represented by special legislation has attracted criticism from legal scholars for overstretching the boundaries of intellectual property law, prejudicially tipping the balance of economic incentivisation vs. public interest that is foundational to European and American IP regimes. Longdin (2009) characterises intellectual property regulation as needing to ‘strike a balance between the need to encourage innovation and creativity and discourage consumer deception through the granting of temporary and limited legal monopolies and the potentially adverse effect on the wider economy that such monopolies can entail.’ From the perspective of public good, Corbett and Roy (2010) argue that additional enclosures ‘pay little heed to the careful balancing between the public good and private rights which underpins these traditional intellectual property laws.’ Arguably, special legislative enclosures such as the 2006 London Games Act have bypassed the balancing act performed by national IP laws by not fully weighing potential effects on wider society. Inconsistencies in the purpose of special legislation may weaken the legitimacy of intellectual property regulation when viewed by the public to run contrary to the aims of promoting creation and dissemination of new ideas and contributing to economic growth.

In this article, we consider whether special legislation such as the 2006 Act should be understood in relation to existing theory on intellectual property enclosure. We identify the features of the 2006 Act which set it apart from established trade mark law, and examine potential impact of those changes on the public interest. Finally, the article concludes by arguing that neither the public interest nor the interests of event organisers are secured by overly restrictive intellectual property enclosure. Rather a recognition of the co-constructed nature of cultural meaning is more consistent with the way that audiences, consumers, and publics engage with mega sporting events and the brands associated with them.

A second enclosure movement?

Since the turn of the millennium, numerous legal theorists have argued that a recent expansion of intellectual property rights should be likened in its effect to the enclosure of common land that took place in England between the sixteenth and the nineteenth centuries (Benkler, 1999; Boyle, 2003, 2009; Rose, 2003; Cohen, 2012). The argument has been forcefully made in the case of copyright law by Benkler (1999) but the issue has also drawn attention in the domains of trade mark and patent, notably in the life sciences (Heller, 2013; Torrance, 2013).

According to Benkler (1999) a series of legal innovations that have appeared since the 1980s herald a problematic new direction for intellectual property rights, one which puts copyright in direct conflict with the right to freedom of speech, constitutionally protected in the United States by the First Amendment. These legal innovations included provisions for digital protection measures included in the Digital Millennium Copyright Act, new protection of compilations of facts contained in databases, and the contractual override of fair use provisions heralded by 'click-wrap' licensing. While copyright law has sought to mitigate against negative effects introduced by the granting of a monopoly right to owners through fundamental concepts such as the idea/expression dichotomy, these new legal instruments upset the balance struck by earlier intellectual property law. For Benkler, the existence of the public domain – uses of information to which all members of the public are equally privileged – is in tension with what he terms the 'enclosed domain' of uses

which the law prevents without the owner's permission. Enclosure describes the process of re-drawing the line between these two mutually-exclusive domains:

Given these symmetric definitions [of the public domain], "enclosure" means a change in law that requires government, upon the request of a person designated as a right holder, to prevent some uses or communications of information that were privileged to all prior to the change. An "enclosure" moves some uses and communications previously in the public domain into the enclosed domain. (Benkler, 1999: 363)

Boyle (2003) has carried forward work by Benkler and others to argue that the combined effect of new legislative protections on intellectual property across a range of domains constitutes not just a movement of certain goods into private hands, but a re-conceptualisation of the meaning of property. In this way, '[t]hings that were previously thought to be either common property or uncommodifiable are being covered in new or extended intellectual property rights.' (2003: 37). According to Boyle, expansionist arguments in favour of extending intellectual property rights echo those that supported the privatisation of property in the first enclosure movement. Namely, that in order to overcome the 'tragedy of the commons', inefficiently managed land should be transferred to the hands of a single owner, who will be incentivised to improve and tend the property. Selfish overgrazing will be replaced with longer term planning, resulting in an overall increase in productivity at the expense of increased inequality in the distribution of resources.

On the other hand, potential harms resulting from enclosure, both physical and intangible, historically included violence, dislocation, disruption of traditional social relations, and a changed view of the link between self and environment (Boyle, 2003: 35). To that list Benkler (1999) adds the possibility that enclosure of intellectual property concentrates the production of information among fewer actors, to the detriment of political diversity. Boyle (2003) suggests that intellectual property enclosure creates perverse incentives on the part of information owners to politically mobilise in pursuit of protection of their new right. Further, intellectual property rights might be exercised improperly to censor or manipulate culture and cultural

tastes; for example heirs of a famous author choosing to prevent adaptations and other uses seen to tarnish the original work. Discussing medical patents, Heller and Eisenberg (1998) argued that enclosure may actually invert the economic rationales provided to justify privatisation in the first place in what they refer to as the ‘tragedy of the anti-commons’, a reduction of innovation brought about by the increased transaction costs imposed by proliferating private rights.

Critiques of the second enclosure movement concept have argued that drawing equivalences with the historical appropriation of real property is misleading or incomplete (Bowrey & Fowell, 2009). It is true that intellectual property differs from real property such as land in a number of important respects. Unlike physical property, intellectual property is non-rivalrous: one’s use of the good does not deprive another of that use. Secondly, with the advent of the global information society, intellectual property is increasingly non-excludable, meaning that it is very difficult to prevent another’s unauthorised use of the good as could be done with access controls on physical property (Rose, 2003). Both Boyle and Rose acknowledge that intellectual property possesses these unique features, but they suggest that technological growth of the global communication network combined with the intangibility of IP is what is driving rights owners to seek greater protection:

Transportation improvements in the early modern period integrated England into a more unified market; [...] Similarly today, the greater opportunities for copying and disseminating via the Internet—the new *res publicae*—may well have engendered the new efforts towards “enclosure.”
(Rose, 2003: 101)

It is not just the rapidity of communication enabled by digitalisation that has prompted efforts to enclose cultural ideas. The advance of intellectual property protection and the commoditisation of culture maps with transformations in global capitalism. A political economy approach to intellectual property enclosure would suggest that the economic incentive of rightsholders to demand further protection corresponds to a shift from material to symbolic production in the information economy (Harvey, 1989; Castells, 1996; May, 2014). The increased proportion of wealth that is constituted by intangible property necessitates legal frameworks to

commercialise cultural ideas and legitimate their trade. If, in 1978, some 80% of the market value of Fortune 500 firms was comprised of tangible assets and 20% intangibles, today the scales have tipped in the opposite direction, with 80% of the market valuation of large firms comprised of intangible assets, including trade marks and patents (Jolly, 2007; Brassell & King, 2013: 25). The status of the Olympics as a cultural phenomenon has been no less influenced by the shift toward what Guy Debord termed the ‘spectacular’ commoditisation of contemporary life. Consequently, if the logic of intellectual property enclosure holds in the realm of international sporting events, we should not be surprised to observe the continuing trend toward granting exclusive property rights around these commercially valuable sites of cultural exchange.

In the next section, we outline the contours of existing trade mark law, and identify the points of divergence between its limited right and the new rights granted by special legislation including the London Games Act 2006. We argue that the special legislation enacted in the UK does constitute an enclosure according to the definition provided by legal scholars, in that it moves expression previously in the public domain into the enclosed domain.

Trade mark and special legislation

Trade mark law grants exclusive rights to use a mark in relation to a product or service. The mark designates the source of a good, and consequently must be unique, avoiding confusion with other competing goods or services in a specific market. Trade mark is territorial, meaning that it is granted in a specific jurisdiction, and it protects a mark only in the class of goods in which the trader does business. For example, separate trade marks may be granted to Apple computer and Apple graphic design, as long as the marks are not applied to goods in the same class. Trade marks must be registered (in the UK with the Intellectual Property Office) and if granted, enjoy protection for a term of 10 years, which is renewable.

As with other intellectual property rights such as patent and copyright, lawmakers have circumscribed the rights granted by trade mark in order to strike a

balance between the monopoly right of the mark owner and the interests of the public. In copyright and patent law, this balance is achieved partly by limiting the term of protection so that after a period of time, inventions and creative works enter the public domain, where they may be used freely as the basis for new creations. Trade mark, if renewed, may last in perpetuity, so the exclusivity of the right is balanced instead by limiting the scope of the right to protecting only certain types of marks for specific classes of goods.

A foundational limitation imposed on trade mark has been that marks must be distinctive and not generic. Common words may sometimes be used as trade marks provided that their use is arbitrary, meaning that they bear no relation to the market or goods supplied (for example, 'Orange' for a mobile phone operator). The rationale for this limitation is that if generic words or symbols are monopolised by one single mark owner, it will limit the ability of competitors to market similar goods and services that can be described using the same generic language. For example, in the case of *British Sugar PLC v. James Robertson & Sons Ltd.*, 1996, the plaintiff sued for infringement of the word 'treat', which the company had registered in relation to a range of sugary desert sauces. In reviewing the case, Justice Jacob found in favour of Robertson, on the basis that the word 'treat' was generic and therefore that the mark registered by British Sugar was invalid. In his decision, Jacobs cited from a similar finding in an early twentieth century case the observation that, 'Wealthy traders are habitually eager to enclose part of the great common of the English language and to exclude the general public of the present day and of the future from access to the enclosure.'³ Recently, trade mark has been interpreted in Europe to extend to protection of brand investment, although not without controversy. In *L'Oreal v Bellure*, 2009, L'Oreal brought proceedings against Bellure on the grounds that Bellure's low-cost perfumes harmed L'Oreal's business by generating confusion and that Bellure was free riding on the L'Oreal brand by issuing price comparison lists that showed the two perfumes side by side (Chen 2010). Although a UK Court of Appeals upheld the ECJ finding of trade mark infringement, the court criticized the ECJ decision for granting protection to the 'brand' investment of L'Oreal to the detriment of free expression (in this case the transmission of descriptive information

³ Joseph Crosfield & Son's Appn ("Perfection") (1909) 26 RPC 837 at page 854.

about a product to consumers). These two cases illustrate that the creation of a monopoly right by grant of a trade mark is not taken lightly by the courts; while determinations about the extent of protection enjoyed by a trade mark owner vary by case, limits to the right are always acknowledged as a counterbalance to owners' rights.

In the case of sporting events, a number of prominent disputes have centred on the use of generic words and symbols. In *S.F. Arts & Athletics*, 1987, The US Supreme Court upheld that the petitioner had infringed the right of the USOC to the word 'Olympic' and various Olympic symbols under the Amateur Sports Act, 1978⁴. San Francisco Arts and Athletics had sought to organise a 'Gay Olympic Games' event and had used the symbols in advertising and mailings. The group argued that the prohibition on use of the word 'Olympic' was unconstitutional and that the First Amendment prevented Congress from lawfully granting a trade mark in the word. The US Court of Appeals found that the exclusive use granted by the Amateur Sports Act was not equivalent to a simple trade mark. The USOC was awarded an injunction to prevent the unauthorised use of the symbol, in the first widely publicised application of special legislation to protect Olympic symbols.

In Europe, challenges to the trade mark protection of generic sports-related language have succeeded. In *Ferrero v FIFA*, the sweets manufacturer Ferrero challenged FIFA over the registration of the mark 'WORLD CUP 2006' in Germany because it was a descriptively used for sports events⁵. OHIM decided in favour of Ferrero that such mark was not capable of registration as a Community trade mark since it was only a generic description of a type of competition and was not restricted solely to the competition organised by FIFA unless combined with another element like the name of the organiser or a main sponsor.

The new tool of special legislation has enabled the IOC and events organisers to overcome limits in trade mark law and gain protection for generic and descriptive

⁴ *S.F. Arts & Athletics, Inc. v. USOC*, 483 U.S. 522 (1987)

⁵ Bundesgerichtshof, I. Zivilsenat, I ZR 183/07 "WM-Marken"

terms. The words ‘London’ and ‘2012’ are similar in distinctiveness to the example of ‘World Cup 2006’, however the London Olympic Games organisers sidestepped any limitation in trade mark law and acquired the extended protection via the London Games Act 2006.

The London Games Act 2006 protected two broad categories of words and symbols. The first category were the words and symbols which are trade marks or function in the manner of trade marks to indicate origin of the Games and the entities responsible for organising the event. This category included the words ‘Olympic’, ‘Olympiad’, and the Olympic motto, as well as the emblems and signs of the IOC. In addition, the category covers the names of the entities which were established to deliver the games such as LOCOG (London Organising Committee for Olympic Games) and the mascots, slogans and certain terms created by such entities (such as ‘share for spirit’ created by SOCOG for Sydney Olympics). The trade mark protection of this category arguably pre-exists the enactment of event-specific legislation in the host country and consequently does not encroach further upon the public domain.

The second category of words and symbols protected by the 2006 Act included the addition of additional generic words related to the sporting event, such as the colours ‘gold’ and ‘silver’. It also consisted of generic words and symbols describing the milieu surrounding the event, such as ‘London 2012, Games City’ (see table 2). The Act prohibited the commercial use of any combination of two words from list A and B, or any two words from List A. The use of these words or symbols would not normally be protected under existing trade mark law in any of the jurisdictions concerned.

Table 2: Words and symbols protected by London Games Act 2006

List A	List B
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<p>Games Two Thousand and Twelve 2012 Twenty Twelve</p>	<p>Gold Silver Bronze London medals sponsor summer</p>
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By enclosing generic language surrounding the Olympic event, the IOC and organisers sought to reduce the ability of non-sponsor businesses and individuals from making any commercial association with the international event. This legal enclosure moves beyond not only what is normally permitted in trade mark law (distinctive or arbitrary terms used in the course of trade) but arguably extends the definition and role of trade mark to dissuade not only efforts to confuse or deceive consumers, but any effort to associate one's product or service with the public goodwill surrounding the events.

Although the scope of trade mark law has expanded over time to include protection against 'dilution' of marks, some legal scholars have argued that the purpose of trade marks should remain focused on preventing confusion in the course of trade, and should not be further broadened to protect the reputation or goodwill surrounding a mark. Drawing from Ralph Brown's (1949) analysis of early trade mark law, Jessica Litman (1999) argues that 'legal protection for trade symbols, in the absence of confusion, disserves competition and thus the consumer. It arrogates to the producer the entire value of cultural icons that we should more appropriately treat as collectively owned.' (1999:1718). The information function of trade marks serves the public interest, Litman argues, because it prevents sellers from engaging in deception about the source of goods, whilst enabling competition between sellers with different marks. However when trade mark protection is widened to include the goodwill or reputation surrounding the mark itself, this results in the removal of words and symbols from the public domain because the mark owner can police its further use in markets not related to the original goods. The removal of words and symbols from the public domain is precisely what we observe occurring via the

mechanism of special legislation: the IOC and organisers wish not only to prevent confusion about the origin of the games and sponsorship status, but also to prevent mere association with the athletic competition itself – a broad and generic set of concepts and ideas.

The approach proposed by Litman is to limit the scope of protection granted by trade marks in recognition that brand goodwill is co-constructed by audiences and consumers and is therefore not solely the property of the mark's user. The reputation, or 'atmospherics' which surround a brand are themselves a product. And if lawmakers wish to promote competition in the marketplace of ideas, Litman suggests that over-protection of those ideas is a misguided response:

The argument that trade symbols acquire intrinsic value – apart from their usefulness in designating the source – derives from consumers' investing those symbols with value for which they are willing to pay real money. [...] If the thing itself is valuable, if it is in some sense itself a product, then we want other purveyors to compete in offering it to consumers in their own forms and on their own terms. (1999: 1734).

Litman's observations have proven prescient since, in the years following, the media itself has enthusiastically adopted characteristics of interconnectivity and co-production. More than ever, through digital networks which enable user-generated content and audience contribution, brand value is inseparable from the communicative activities of consumers. Organisers of spectacular, global, televised events now seek ways to make their programmes more engaging and more 'spreadable' (Ytreberg, 2009; Jenkins et al, 2013). Hosting an Olympic competition in the era of digital media may necessarily mean relinquishing some measure of control over intellectual property to spectators and fans, whose collective engagement with the spectacle facilitates its circulation via participatory culture (Green & Erickson, 2014).

Conclusion: the impact of enclosure on the public interest

The citizenry of the Olympic host nation is impacted by special legislation even though the commitment to enact such legislation occurs during the bidding process when there is limited public oversight or input (Scassa, 2012). The host nation public is potentially impacted by special legislation in two ways. First, rules imposed by event organisers impose costs disproportionately on smaller local businesses which, according to commonly applied economic models of the potential benefits of hosting the Olympics, are the most likely to directly benefit from ‘multiplier’ effects as visitors and consumers spend money in the local economy. Paradoxically, any chilling effect produced by special legislation is likely to be most strongly apparent among smaller businesses which lack the marketing nous and legal understanding required to edge close to, without infringing, the labyrinthine set of regulations imposed (Scassa, 2012). On the other hand, large multinational brands, wishing to generate associations with an Olympic event, can apply a range of creative approaches for doing so without directly speaking about the Games. For example, during the 2012 event, non-sponsor UK company Marks and Spencer ran a major print advertising campaign using the strapline ‘On your Marks’ which portrayed revelers engaging in a variety of garden party games, the scene framed with patriotic colors and flag pendants. None of the words or images used in the advertisement directly infringed the London Games Act, but the overall impression generated by the combination of elements was an association with the cultural context of the Games. The campaign required creative skill and legal expertise that may be inaccessible to smaller firms, while the subtle association prompted by the advertisement may not have been suitable for those businesses directly engaged with customers, for example in the service or leisure industries.

Second, the public interest is potentially harmed by overly restrictive special legislation because it may impose a chilling effect on both commercial and non-commercial speech beyond the Games themselves. Granting exclusive protection for generic terms such as ‘summer’ ‘2012’ and ‘London’ raised challenges for non-sponsor advertisers while its usefulness to protect the investment of major brand sponsors is questionable. Importantly, the Olympics were not the only event which occurred in London during the summer of 2012: advertisers wishing to associate themselves with the Queen’s Diamond Jubilee or even the British summertime itself would have been discouraged from doing so by the broad reach of the 2006 Games

Act. Non-commercial speech was also potentially restricted by the special legislation. The Act permitted ‘factual’ reference to the Games in non-commercial settings, but covered a broad range of communication, ‘wholly or partly for the purpose of promotion, advertisement, announcement or direction’. The IOC issued guidelines discouraging use of the protected phrases by journalists, conference organisers, charities, and not-for-profit groups. Enforceable or implied restrictions upon non-commercial or quasi-commercial users could have the effect of dampening criticism of the Olympics or preventing wider engagement by minority groups in media conversations.

The upcoming 2016 Olympic Games in Rio will be accompanied by extraordinarily restrictive special legislation that continues the trend of intellectual property enclosure established by the London Games. In its published guidelines, the Rio 2016 Organising Committee has claimed restrictions on the use of associative words and imagery, use for political purposes (‘propaganda’), website domain registration, placement of online advertisements and the creation of fan-made countdown clocks (Omega is the official timekeeper of the 2016 Games). These intellectual property enclosures are particularly impactful because they will occur in the context of an ‘emerging’ economy which faces challenging levels of social and economic inequality. The published guidelines insist that ‘Passion and transformation are ever-present in the essence of the official brands. [...] Passion that unites all Brazilians in organising the Games. Transformation in the creation of a new reality for progress.’ (Rio OCOG 2014: 18). However, when special legislation is used to upset the balance of intellectual property law to grant exclusive use of common culture and ideas, the ability of society to transform the Olympics into an engine of progress is cast into doubt.

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