

Artistic Freedom at the Olympic Games

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Days before the Vancouver 2010 Olympic Winter Games opened, Vancouver's poet laureate, Brad Cran, published a blog entry explaining why he would not be reading his poems during the Cultural Olympiad arts festival.

Cran's (2010) complaint was over a 'muzzle clause' within his contract with the Vancouver 2010 Organizing Committee (VANOC) which, he argued, was an open 'attack on free speech'. The clause, he says,

came at a time when our [British Columbia] provincial government announced its plans to cut arts funding by as much as 90%. This has put many cultural organizations in jeopardy and created tension in the arts community between those who are now prevented from speaking their mind because of their contracts and those who feel it is the right time to speak up.

His refusal to participate was noted by Raymond T Grant

(2010), Artistic Director of the 2002 Salt Lake City Olympic Arts Festival, who wrote an open letter sent to the CEO of VANOC, John Furlong, proposing that the clause be removed. Supporting Cran's freedom of speech infringement argument, Grant indicates that the clause was both dangerous, unnecessary and a blatant form of censorship. The clause states:

The artist shall at all times refrain from making any negative or derogatory remarks respecting VANOC, the 2010 Olympic and Paralympic Games, the Olympic movement generally, Bell and/or other sponsors associated with VANOC (cited in Grant, 2010).

Using the freedom of speech infringement argument advanced by Cran and Grant, this article analyses the VANOC contractual clause from the perspective of a corporate sponsor for the Olympic arts. In so doing, it draws on various semantic interpretations and links them with wider arguments about artistic freedom and corporate or governmental sponsorship. The role of financial contributions to artistic freedom and freedom of

expression will also be discussed. The crucial issue at stake is the future of artistic freedom within Olympic programmes.

In Cran's and Grant's view, VANOC's clause asking artists to refrain from any negative or derogatory remarks within their work or general conduct is in breach of freedom of speech. From a legal perspective, speech has three main interpretations: as talk, as an individual liberty or as an essential exercise in the process of truth seeking (Wallace, 1999; Stevens, no date). When attributed to 'remarks' - as phrased in the text of the clause - any of these definitions would shape both the argument and the solution to the debate over whether the clause is abusive and makes censorship an integral part of the contract.

If "remarks" are speech, and speech is defined as talk, then VANOC's clause would restrict artists from making any negative verbal comments. By implication, this would also exclude remarks made in any other form, whether it is writing, code, visual or any other. While instrumental as a definition, this interpretation of "remarks" still requires further explanatory clauses as well as references to other national or international laws to clarify its interpretation.

If speech is defined as an individual liberty, it is necessary to appeal to the Universal Declaration of Human Rights and

the Canadian Charter of Rights of Freedoms for clarity over the limits of this liberty.

However, there are also differences between the definitions the two documents provide. The Universal Declaration of Human Rights (1948) combines the freedom of opinion with that of expression whereas the Canadian Charter of Rights (1982) lists the freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication under the same category of fundamental rights. So, if remarks are speech, and speech is expression, then speech refers to artistic expression as well.

In this situation VANOC's clause breaches both the Charter of Rights and the UDHR, which states that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (UDHR, article 19, 1948)

However, interpreting the clause via the freedom of opinion and freedom of information rights route, raises questions about how emotionally-evocative, sensory and reality-transforming messages - such as those

incorporated in artistic messages - can be legally protected. Moreover, it is necessary to consider whether it is appropriate to use existing legal frameworks, or request the development of new laws addressing the particularities of art practice.

As Bezanson (2009) suggests, the argument proposed by Cran and Grant has been around for a long time. In his view, the role of law was to promote 'order, organization, predictability and safety' and, historically, such concerns had little to do with art, which was mostly a private affair requiring only 'private judgements of taste and personal exercises of imagination' (p.2) rather than recourse to law courts for approval.

In a context when the artist was an agent of public and private patronage, the patron was the one who shaped the artist making the need of contracts and laws to protect art and freedom unnecessary. From this perspective, the VANOC clause is a reflection and recording of the patron's demands from the artist and should not be surprising or, perhaps, controversial. Similarly, an artist willing to collaborate with VANOC may not perceive the dialogue and requests from the patron as being restrictive, perhaps even interpreting these conditions as guidance for a commissioned piece.

However, the funds that contribute to the Olympic

programme derive from a mixture of public and private and the displaying of the artistic works enters the public sphere. To this end, the public expectations of work that is, legally, privately commissioned, traverse what may otherwise be the case.

This view corresponds with Bezanson's description of the artist as an autonomous enterprise operating in an open and competitive market. In this case, the patron acts more like an investor in the artist's work, rather than a director of artistic content. This, he argues, makes the intersections of art and law numerous and justifies the existence of contracts between parties. Yet, one may yet ask whether the contracts that exist between artists and their patrons should stipulate any limitation or suspension of a right? Is the existence of a financial agreement of any kind - sponsorship, fee, or donation - between artists and patrons a justification for such clauses?

From a consequentialist perspective, there may be occasions when it is right to suspend fundamental rights, if their cessation contributes to a greater good. Indeed, this precedent occurs within law in its limitation of media freedom, to promote the chance of a fair trial. However, it is difficult to conceive what may be the greater good in restricting an artist's creative freedom in the case of an

Olympic Games. Certainly, the overarching ambition of organizers to ensure that a positive Games is experienced by all may explain such aspirations. However, this desire to control public messages may be incompatible with granting artistic freedom at all. In any case, any such suspensions of this type should be temporary and be clearly explained in terms of duration, as well as its bearing on other natural rights. The VANOC's clause "at all times" did not satisfy this requirement.

Funding of the arts, whether by governments or other institutions, creates an uneasy and precarious alliance, as has been demonstrated in the case of the London 2012 Olympic Games Cultural Olympiad sponsorship by British Petroleum. As Ray (1995) suggests, one of the biggest dangers of such partnerships is that of censorship that results from the funding body's right to place conditions on funding the arts and hence come up with regulations that disadvantage one viewpoint as compared to another.

This argument is similar to the one that Cran advances in his notes when indicating that the scarcity of funds available to support the arts after the provincial government financial cuts creates a dangerous precedent in funding the art and the artists that agree to comply with the rules of their patrons marginalizing those who don't

either agree or seek such support. While Cran's point is reasonable, the question of whether governments and corporations should sponsor dissent, opposition or controversy still remains. Yet, it may not just be formal or explicit censorship that is of concern. Artists may adjust their practice implicitly in order to avoid confrontation with funders and this may be an altogether more alarming situation.

Ray (1995) suggests that placing the responsibility of funding in the hands of the individuals will eliminate the censorship problem and 'allow artists to be free to create as they wish and appeal to their particular audience for support'. In this case there would be no need to conform with any grant or funding conditions. In a Cultural Olympiad context, when the organizing committee through the art it commissions has a contractual responsibility towards its sponsors, this is particularly difficult.

Burke Taylor, vice-president for culture and celebration programs at VANOC, indicated in a public letter sent to the Cultural Olympiad artists that the clause is 'to reasonably ensure that the integrity of our [VANOC] partners is respected, as without the support of such partners the Cultural Olympiad would not be possible' (Taylor cited in CBCNews, February 11, 2011). This may seem like a reasonable position to take, if one imagines

that a commissioned artist could, for instance, produce work that mocks the corporations who sponsor the Games.

It could also be argued that VANOC's clause attempts to prevent calumnious remarks made by artists that could harm the Olympic brand and VANOC's reputation. However, were this the case for Vancouver 2010, then a different formulation would have been necessary to clarify the instances of calumny and the actions VANOC would take, should that have happened.

Moreover, in his public letter, Taylor also reassured artists that the committee respects the integrity of artists and their work and has no intention of suppressing artistic expression he also suggested that the clause is a standard one used in big events contracts. Ray's (1995) final conclusion suggests that unless and until the artists agree with VANOC, which in this case is synonymous with acceptance of restrictions contractually imposed, the committee or future committees intending to use the same clause will be susceptible for censorship claims.

Finally, if speech is defined as an exercise of truth seeking, it would mean that everyone, as part of this exercise should be allowed access to information and granted the responsibility of analysing the information they receive. Even as an exercise of truth seeking, if artists should refrain from

making negative remarks, VANOC's clause could be interpreted as fostering manipulation. This, like the interpretation of "remarks" as synonymous with individual liberty, brings questions about the role of contracts and financial rewards in shaping the artistic work as well as in shaping speech in general.

While VANOC's clause shows a deep concern for the committee's sponsors, partners and stakeholders and a commitment to protecting their image and trademarks, this is to the detriment of the artists involved, which seems to justify the Grant and Cran's claims over the unfairness of the contract. This is why the clause required clarification and contextualization, which should have included revisiting and perhaps deleting the 'at all times' restriction or eliminating it completely, as Raymond T. Grant suggested.

In sum, one may argue that the restrictions of freedom within the artists' contracts within the Vancouver 2010 programme betrayed the negotiation that takes place between artist and funder, during the process of making the art work. While one may idealise artistic freedom, creative work operates within a context where others champion their accomplishments and this encompasses funders. It would be in the interest of a radical artist to accept a contract with a funder

and then proceed to make their work harmful to the funding party's interests. However this may not prove to be a particularly prudent long-term funding strategy for an artist to secure future work. Moreover, such radical aspirations may have more integrity were they are channelled into artistic creations funded by like-minded funding bodies.

In each case, the crucial, decisive moment is when a legally binding contract is made. As long as funding is being awarded and artistic project is included in a programme as a result of submission process, such contractual matters should be presented in the initial stages of submission and discussed in the first stages of planning. This means that both parties should inform each other on their intentions – the patron on the purpose of the artwork and the artist on any ideas and materials related to the artwork.

Such an approach presents the relationship of the artist and the patron in similar terms with that existing between service providers. Under these circumstances, the specificity of the project is agreed, which can include messaging and brand elements representations and symbols.

Of course, this presumes that an artist's intentions are always apparent in obvious ways. Many artists have produced work that

may not have seemed radical or confrontational to funding bodies, but which later is interpreted by art critics as a slant on some institution or system. Artists are renowned for poking fun at the art world. Indeed, most artistic revolutions have been brought about precisely by such attempts.

No matter which definition is chosen – that of speech as talk, individual right or truth seeking exercise, the VANOC clause brings into question the difficult balance and delicate link between funding of arts and the need of artistic freedom. It also brings more general questions about suspension or contraction of other human rights, as a result of contractual agreements that aim to protect the IOC and its brand or those of its sponsors and stakeholders.

It remains to be seen as to which will prevail: the brands or the individuals and their freedoms. However, it is clear that a lot of what is presented within Olympic Cultural Olympiads find themselves aligned with core Olympic values – of which the promotion of human dignity is arguably one.

The Vancouver 2010 debate emerged again in the context of London 2012 when, in 2009 the *Critical Network* announced that it would not draw attention to or support any inquiries about the Cultural Olympiad, which it considered involves 'artists and

art organizations are compromising their integrity'. There were also some concerns from within the cultural sector that corporate patrons such as British Petroleum in funding the Cultural Olympiad would also compromise the values of artists and art. While the conversation about artistic freedom was not the same as Vancouver, it raises similar issues that should inform future host cities in how they negotiate relationships with artists.

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