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# KICKING THE LAW: THE EFFECTS OF FIFA REGULATIONS ON A WORLD CUP HOST COUNTRY'S LEGISLATIVE PROCESS IN REGARDS TO INTELLECTUAL PROPERTY PROTECTION

## INTRODUCTION

Over three billion people around the world tuned in to watch the 2018 World Cup,<sup>1</sup> an international football tournament that increasingly attracts viewers from across the globe.<sup>2</sup> The Fédération Internationale de Football Association (FIFA) is football's leading international governing body.<sup>3</sup> It organizes the tournament and selects the country to host the World Cup, which takes place every four years.<sup>4</sup> Preparations for the event take many years, and the host country is chosen well in advance after careful consideration.<sup>5</sup> The bidding process to select a host country alone takes approximately two years<sup>6</sup> due to the rigorous requirements for hosting the tour-

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1. Mark Fleming, *WORLD CUP IN NUMBERS World Cup 2018 Final in Numbers: Global TV Audience, Fifa's Revenue and Cost of Hosting tournament*, SUN (July 16, 2018), <https://www.thesun.co.uk/world-cup-2018/6782884/world-cup-2018-final-in-numbers/> (citing data from Global-WebIndex).

2. Football is known in the United States as soccer. This article will refer to the sport as football since it is known as such in the international community. Adam Reed, *Half the world's population tuned in to this year's soccer World Cup*, CNBC (Dec. 21, 2018), <https://www.cnbc.com/2018/12/21/world-cup-2018-half-the-worlds-population-tuned-in-to-this-years-soccer-tournament.html>.

3. *About FIFA*, FIFA, <https://www.fifa.com/aboutfifa/worldcup/index.html> (last visited Aug. 26, 2019).

4. The FIFA World Cup is held for the adult men's national teams. There are separate tournaments for women and other age groups. *See id.*

5. To give a more concrete example, the bidding process for the 2018 and 2022 World Cup tournaments began as early as 2009. *See* Ewan Macdonald, *World Cup Bidding Process Explained: How the 2018 & 2022 World Cup Hosts Are Chosen*, GOAL (Nov. 29, 2010), <https://www.goal.com/en/news/3512/20182022-world-cup-host/2010/11/29/2234600/world-cup-bidding-process-explained-how-the-2018-2022-world>.

6. This is the projected timeline for the 2026 World Cup, which is comparable to previous tournaments' bidding processes. FIFA, *GUIDE TO THE*



FIFA understands that imposing legislative requirements on host countries is pertinent to protecting its brand and image.<sup>14</sup> Much of this legal restructuring stems from the need to avoid conflict between local laws and FIFA requirements.<sup>15</sup> As people engage in business or travel in the host country during the World Cup, they will need to comply with the laws of that country at any given time.<sup>16</sup> For example, if a person were to utilize the FIFA brand to sell counterfeit goods and the host country had no law against such action, then FIFA's brand would be threatened and infringement cases would be difficult to pursue.<sup>17</sup>

This issue has forced countries to create special police units and judicial courts devoted solely to investigating cases of infringement, ambush marketing, and counterfeited goods, as well as enact legislation that allows government officials to monitor and penalize anyone guilty of such conduct.<sup>18</sup> FIFA takes aggressive action towards protecting its brand because of the high intellectual property-based revenue brought in from each tournament.<sup>19</sup> To better illustrate FIFA's need to implement these strict regulations, it is best to look at some of the revenue brought in from the most recent World Cup in 2018.<sup>20</sup> FIFA earned \$3 billion in television broadcast rights and \$1.65 billion in marketing rights, which together make up more than half of the approximate \$6.1 billion total earned in revenue by

JlBmVmaXQiLCInYmVuZwZpdCciLCJiZW5lZml0J3MiLCInYmVuZwZpdCcuIiwiYmVuZwZpdCcsIiwjJ2JlBmVmaXQnLDIyIiwicWF0YXJgMjAyMiIsInFhdGFyIDI-

wMjIgd29ybGQyLCIyMDIyIHdvcmxkIiwiMjAyMiB3b3JsZCBjdXAiLCJ3b3JsZCBjdXAiLCJ3b3JsZCBjdXAgaG3cyIsImN1cCBsYXZzIl0=.

14. *Id.*

15. *Id.*

16. *Arrest or Detention of a U.S. Citizen Abroad*, U.S. DEP'T OF STATE – BUREAU OF CONSULAR AFFAIRS,

<https://travel.state.gov/content/travel/en/international-travel/emergencies/arrest-detention.html> (last visited Oct. 9, 2019).

17. *See Intellectual Property*, *supra* note 12.

18. Ambush marketing is a controversial type of marketing where a company attempts to take advantage of a competitor's advertising during an event to promote its own goods or services. Lusardi, *supra* note 13.

19. *Intellectual Property*, *supra* note 12.

20. Kurt Badenhausen, *FIFA World Cup 2018: The Money Behind The Biggest Event In Sports*, FORBES (June 14, 2018), <https://www.forbes.com/sites/kurtbadenhausen/2018/06/14/world-cup-2018-the-money-behind-the-biggest-event-in-sports/#493a0aa76973>.

FIFA from the tournament.<sup>21</sup> To eliminate any risk of losing brand protection and revenue, FIFA strongly encourages non-affiliated entities to refrain from associating themselves with FIFA or the World Cup, especially when it concerns activities involving or impacting FIFA's intellectual property rights.<sup>22</sup>

This Note will examine the complex relationship between FIFA and a World Cup host country, particularly the ways those countries approach legislative reform in light of the rigid requirements set by football's international governing body. This analysis will shed light on what the previous host countries have done to accommodate FIFA, including enacting and amending local intellectual property laws aimed at providing FIFA with full brand protection within their territories.<sup>23</sup> Countries will continue to face the pressure of lengthy legal challenges since laws and regulations take time to come into effect. As such, this Note will argue that FIFA should provide assistance to host countries in the form of a separate committee devoted solely to assisting local governments' legislative processes in accommodating FIFA's requirements. Furthermore, signatories to international intellectual property treaties and agreements should add provisions that provide for a better platform to address infringement claims that threaten FIFA's exclusive rights within the boundaries of a host country. This will not only benefit FIFA, but also host countries that are members of FIFA and signatories to such international treaties because those countries also benefit economically from the World Cup.<sup>24</sup>

Part I of this Note provides an overview of FIFA and its intellectual property regulations as they relate to World Cup host countries. It will also provide an overview of international intellectual property treaties and agreements with an emphasis on copyright and trademark protection. Part II will analyze the

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21. *Id.*

22. FIFA, GUIDELINES FOR THE USE OF FIFA'S OFFICIAL MARKS 6 (Apr. 2018), <https://resources.fifa.com/image/upload/2018-fifa-world-cup-public-guidelines-guidelines-for-the-use-of-fifa-s-official-.pdf?cloudid=uoetxbjs803ft3mai2eh>.

23. Lusardi, *supra* note 13.

24. Economic benefit from the World Cup includes money earned from high tourist volume and ticket sales. See Devesh Mamtani, *What Did Russia Gain From the World Cup?*, ALBAWABA (July 12, 2018), <https://www.albawaba.com/business/what-did-russia-gain-world-cup-1158408>.

burdens placed on host countries in preparation for the tournament, specifically the legislative issues that arise when host countries have to supplement or change domestic laws in order to accommodate FIFA's rigid intellectual property regulations. Much of the analysis will be on FIFA's brand protection regime and the rights held by FIFA.<sup>25</sup> Part III will illustrate these legislative issues by discussing the World Cup as it compares to the Olympic Games and the similar issues facing the International Olympics Committee (IOC) and Olympic Games host countries. Finally, Part IV will propose solutions that ease the burdens placed on host countries by FIFA's intellectual property regulations and provide for an effective platform to communicate regarding local legislative matters.

This Note concludes that FIFA's strict and hefty regulations<sup>26</sup> place great burdens and pressures on any country chosen to host a World Cup. Countries are forced to amend or enact laws that include strong intellectual property protection for FIFA.<sup>27</sup> By implementing a new committee to handle all legislative matters in tandem with the selected host country and incorporating new provisions into international intellectual property treaties, FIFA and host countries can progressively diminish these burdens and strengthen communication to tackle legal matters pertaining to hosting the World Cup.

## I. THE GLOBAL REACH OF FIFA AND CURRENT INTELLECTUAL PROPERTY AGREEMENTS

FIFA's background and the requirements it mandates for hosting the World Cup are important in identifying FIFA's international influence in the global sports and media industries. The role of intellectual property treaties and agreements, in terms of international copyright and trademark protection between all signatories, is also crucial in identifying how global protection is granted today in the realm of sports.<sup>28</sup>

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25. See GUIDELINES FOR THE USE OF FIFA'S OFFICIAL MARKS, *supra* note 22.

26. GUIDE TO THE BIDDING PROCESS FOR THE 2026 FIFA WORLD CUP, *supra* note 6.

27. *Id.*; Lusardi, *supra* note 13.

28. *Sport and Intellectual Property*, WIPO, <https://www.wipo.int/ip-sport/en/> (last visited Aug. 26, 2019).

*A. The Structure of FIFA and the Requirements for Hosting the World Cup*

The world's most popular sport has continued to exert its dominance globally, maintaining steady viewership growth in both developed and developing countries alike.<sup>29</sup> With 211 participating member countries,<sup>30</sup> FIFA has spread its brand far and wide while maintaining a high revenue stream.<sup>31</sup> Hosting the World Cup is a privilege, but it comes at great expense; to illustrate, Russia spent over \$14 billion to host the 2018 tournament, well over the predicted cost of \$11 billion.<sup>32</sup>

FIFA is a non-profit association headquartered in Switzerland with a stated goal of "the constant improvement of football," which includes providing access to the sport worldwide.<sup>33</sup> FIFA also has its own codified law, the FIFA Statutes, which govern the organization and its structure.<sup>34</sup> The FIFA president is the highest ranking official and acts as FIFA's representative in all international football matters.<sup>35</sup> The FIFA Congress is the "supreme body" that is tasked with developing the game and conducting all legislative matters that pertain to the sport and FIFA's members.<sup>36</sup> There are many standing committees that assist both the Congress and the president in their respective domains, such as the governance committee, finance committee, and organizing committee for FIFA competitions.<sup>37</sup>

29. Ira Boudway, *Soccer is the World's Most Popular Sport and Still Growing*, BLOOMBERG (June 12, 2018), <https://www.bloomberg.com/news/articles/2018-06-12/soccer-is-the-world-s-most-popular-sport-and-still-growing>.

30. *About FIFA*, *supra* note 3.

31. See Nathan Reiff, *How Does FIFA Make Money?*, INVESTOPEDIA (July 30, 2019), <https://www.investopedia.com/articles/investing/070915/how-does-fifa-make-money.asp>.

32. This is based on calculations made by the RBC business portal, a Russian news network. *Russia's World Cup Costs to Exceed \$14Bln*, *Media Reports*, MOSCOW TIMES (June 8, 2018), <https://themoscowtimes.com/news/Russias-World-Cup-Costs-to-Exceed-Record-Setting-14Bln-61732>.

33. *About FIFA*, *supra* note 3.

34. *How FIFA Works*, FIFA, <https://www.fifa.com/governance/how-fifa-works/index.html> (last visited Aug. 26, 2019).

35. *Id.*

36. *Id.*

37. FIFA, FIFA STATUTES 46 (June 2019 Edition), <https://resources.fifa.com/image/upload/fifa-statutes-5-august-2019-en.pdf?cloudid=ggyamhxxv8jrdfbekrrm>.

The statutes provide specific definitions pertaining to every role within the organization and briefly describe the regulations governing the application of the statutes themselves.<sup>38</sup>

Members are the designated football associations of a given country that agree to comply with all of FIFA's rules and any decisions made by a committee or the Congress.<sup>39</sup> A member association is defined in the statutes as "an association that has been admitted into membership of FIFA" through a vote by the Congress.<sup>40</sup> These member associations have numerous obligations, including to "ratify statutes that are in accordance with the requirements of the FIFA Standard Statutes" and follow every one of FIFA's rules.<sup>41</sup> Pursuant to this obligation, a member association must ensure that their country's legislation conforms with the regulations set by FIFA.<sup>42</sup> A member association that violates any of these obligations may be subject to disciplinary measures, including a reprimand or fine.<sup>43</sup>

FIFA's marketing is one of its key components when planning the World Cup, and its intellectual property rights are what protect the prominent FIFA brand.<sup>44</sup> These rights affect every member association and, arguably, every country in the world.<sup>45</sup> Although each member association has its own commercial and intellectual property rights for their own national teams or competitions, they are still subject to all the rights held by FIFA.<sup>46</sup> Beyond the individual member associations, FIFA also extends its rights to different entities of various industries and refers to them as "Rights Holders."<sup>47</sup> These enti-

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38. There are separate manuals and documents that go in-depth on these regulations, such as the rules of the game and the requirements of FIFA member associations. *See id.* at 37–58.

39. *Id.* at 18.

40. *Id.* at 11.

41. *Id.* at 18.

42. FIFA, FIFA STANDARD COOPERATION AGREEMENT 6 (2007), [https://resources.fifa.com/mm/document/affederation/administration/75/81/23/standard\\_cooperation\\_agreement\\_efs\\_d\\_47345.pdf](https://resources.fifa.com/mm/document/affederation/administration/75/81/23/standard_cooperation_agreement_efs_d_47345.pdf).

43. FIFA STATUTES, *supra* note 37, at 59.

44. *FIFA's Brand Protection*, FIFA, <https://www.fifa.com/about-fifa/marketing/brand-protection/index.html> (last visited Aug. 26, 2019).

45. Because the Internet has a complete global reach, and imports and exports of goods flow continuously, it can be said that FIFA's brand has spread worldwide. *See id.*

46. FIFA STANDARD COOPERATION AGREEMENT, *supra* note 42, at 20.

47. GUIDELINES FOR THE USE OF FIFA'S OFFICIAL MARKS, *supra* note 22, at 7.

ties are generally granted commercial rights in the form of media or advertising during official FIFA events and World Cup tournaments.<sup>48</sup> Media rights can be limited to a particular territory under FIFA's discretion and include the privilege of using the brand in television, radio, or any sort of digital transmission.<sup>49</sup> Rights Holders can also be granted the right to sell official FIFA licensed products,<sup>50</sup> such as football jerseys, balls, or posters.<sup>51</sup>

Rights Holders provide a significant amount of support to FIFA because they invest in events solely to be granted the exclusive right to use the brand or any official marks.<sup>52</sup> Without brand protection and exclusivity for Rights Holders, the acquired rights would be significantly diluted and subsequently there would be less interest in becoming a Rights Holder.<sup>53</sup> Large partners that are granted the most comprehensive packages in global rights, such as Adidas or Coca-Cola,<sup>54</sup> would not invest as much money into FIFA events if their profits were threatened.<sup>55</sup> As such, FIFA ensures that intellectual property laws, specifically those addressing copyright and trademark, protect its brand and any official marks in a country where these marks would appear for a significant period of time.<sup>56</sup> Both Rights Holders and member associations have a higher duty to abide by FIFA's rules when a World Cup is in session, as that is the time when both FIFA and host countries earn the highest revenue during a tournament season.<sup>57</sup>

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48. *Id.*

49. Transmission rights are defined as broadband rights, IPTV transmission rights, and mobile transmission rights. *Id.* at 8.

50. *Id.*

51. *Retail & Merchandising*, FIFA, <https://www.fifa.com/about-fifa/marketing/licensing/consumer-retail.html> (last visited Aug. 26, 2019).

52. FIFA defines its official marks as "a range of logos, words, titles, symbols and other asset/brands/identifiers which are used in connection with the Event ('Official Marks')." GUIDELINES FOR THE USE OF FIFA'S OFFICIAL MARKS, *supra* note 22, at 6.

53. *Id.*

54. *Id.* at 7.

55. *Id.* at 6.

56. *Id.* at 10.

57. GUIDE TO THE BIDDING PROCESS FOR THE 2026 FIFA WORLD CUP, *supra* note 6.

Any member association may host the World Cup.<sup>58</sup> In doing so, that country agrees to abide by the requirements, including FIFA's particularly rigid media and marketing rights.<sup>59</sup> One of the organization's main goals is to prevent ambush marketing, which it defines as an effort to gain an unauthorized association with the World Cup for commercial purposes or to exploit the publicity and marketing generated by official events.<sup>60</sup> Enforcing these regulations allows for FIFA to continue receiving generous funds from official commercial affiliates and Rights Holders or licensees, a large portion of which also provide revenue for member associations.<sup>61</sup> FIFA also places strong emphasis on its commercial rights to ensure full cooperation by member associations and Rights Holders.<sup>62</sup> These rights are described as "exclusively and solely owned and controlled, on a worldwide basis," by FIFA.<sup>63</sup>

In addition to explaining the purpose of having rigid media and marketing regulations, FIFA stresses that all member associations must strictly comply with any and all terms outlined in the regulations, or else FIFA may impose disciplinary measures.<sup>64</sup> Compliance with the regulations includes restricting any member association, regardless of participation in the World Cup, from using any of FIFA's media, marketing, or intellectual property rights, unless explicitly allowed.<sup>65</sup> The most stringent of these regulations requires member associations to enable FIFA to freely utilize any of these rights within its country's territory.<sup>66</sup> Member countries must comply by altering local or national laws in a timely manner so as to not hin-

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58. A member association cannot host the World Cup if either of the previous two tournaments has taken place on that given continent. *Rotation ends in 2018*, FIFA (Oct. 29, 2007), <https://www.fifa.com/worldcup/news/rotation-ends-2018-625122>.

59. FIFA, MEDIA AND MARKETING REGULATIONS FOR THE 2018 FIFA WORLD CUP (2018), <https://resources.fifa.com/image/upload/media-and-marketing-regulations-for-the-2018-fifa-world-cup-2922838.pdf?cloudid=dbibgs0syrpkdbzbgbxr>.

60. An example of this is would be if a local sports clothing store started selling shirts during the World Cup near one of the arenas hosting a match and promoting the shirts as "World Cup merchandise." *Id.* at 7.

61. *Id.* at 14.

62. *Id.* at 15.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 17.

der FIFA.<sup>67</sup> In addition to this regulation, member countries are required to immediately notify FIFA if they have any knowledge of infringement, effectively positioning member associations to act as a sort of police or law enforcement unit to protect against any kind of infringement that would diminish the commercial value of the World Cup.<sup>68</sup> In efforts to further protect itself and relinquish as many burdens as possible, FIFA waives all liability for any costs or damages associated with, or that may result from, the requirements set forth in the media and marketing regulations.<sup>69</sup>

### *B. International Intellectual Property Agreements*

The World Intellectual Property Organization (WIPO) is a United Nations agency with 191 member states that addresses intellectual property matters on the international level.<sup>70</sup> The two major WIPO treaties regarding copyright and trademark protection are the Berne Convention<sup>71</sup> and the Paris Convention.<sup>72</sup> These treaties were implemented in an effort to increase harmonization amongst signatory members and provide better protection for people and entities as goods and services are im-

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67. It is important to note that FIFA requires any and all costs or financial obligations associated with this process to be paid by the member associations. *Id.* The members must also handle all clearances or documents required by the state's judicial or legislative bodies, in accordance with FIFA's instructions. *Id.*

68. *Id.* at 20.

69. *Id.* at 48.

70. *About WIPO*, WIPO, <http://www.wipo.int/about-wipo/en/> (last visited Aug. 26, 2019).

71. The Berne Convention was established in 1886. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Stockholm on July 14, 1967, 828 U.N.T.S. 221 [hereinafter Berne Convention]. For a summary of the convention see *Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)*, WIPO, [http://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](http://www.wipo.int/treaties/en/ip/berne/summary_berne.html) (last visited Aug. 26, 2019).

72. The Paris Convention was established in 1883. Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, 21 U.S.T. 1583 828 U.N.T.S. 305 [hereinafter Paris Convention]. For a summary of the convention see *Summary of the Paris Convention for the Protection of Industrial Property (1883)*, WIPO, [http://www.wipo.int/treaties/en/ip/paris/summary\\_paris.html](http://www.wipo.int/treaties/en/ip/paris/summary_paris.html) (last visited Aug. 26, 2019).

ported and exported across the globe.<sup>73</sup> At the core of both the Berne Convention and the Paris Convention is the principle of national treatment, which posits that all signatory states must accord the same intellectual property rights to the citizens of other nations as they would for their own.<sup>74</sup> Since their inception, the Paris Convention and the Berne Convention have established the minimum standards of protection in their respective intellectual property fields and have continued to adapt to the modern age of technology.<sup>75</sup>

The Paris Convention protects industrial property, such as trademarks or patents, and aims to limit unfair competition.<sup>76</sup> In regards to trademarks, protection must be granted across all signatory states if a trademark has been properly registered in the country of origin.<sup>77</sup> Registration and use of a trademark, however, will be refused if it infringes on the rights of another person or entity, or if it is an attempt to reproduce or imitate an already registered mark.<sup>78</sup> Although trademark registration generally lasts for a period of ten years, renewal can be granted indefinitely.<sup>79</sup> Currently, trademark owners can more easily seek protection at the international level by using WIPO's Madrid System, which only requires one application for protection in up to the 122 countries that are members of the Madrid System.<sup>80</sup>

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73. See *Summary of the Berne Convention*, *supra* note 71; *Summary of the Paris Convention*, *supra* note 72. See also Andrew Larrick, *Resource Guide for Researching Intellectual Property Law in an International Context* Sec. 2 (June 2008), [http://library.law.columbia.edu/guides/International\\_Intellectual\\_Property](http://library.law.columbia.edu/guides/International_Intellectual_Property).

74. Berne Convention, *supra* note 71; Paris Convention, *supra* note 72; Larrick, *supra* note 73, at Sec. 2.2.

75. Larrick, *supra* note 73, at Sec. 2.4.

76. *Summary of the Paris Convention*, *supra* note 72.

77. *Id.*

78. Reproduction or imitation of an already existing trademark would likely cause confusion, thus impacting the economic influence and property rights of the trademark owner. *Id.*

79. *Trademarks*, WIPO, <http://www.wipo.int/trademarks/en/> (last visited Aug. 26, 2019).

80. The Madrid System allows for a more convenient way to register trademarks worldwide by requiring only a single application for protection in up to the 122 countries that are signatories to the System. *Madrid - The International Trademark System*, WIPO, <http://www.wipo.int/madrid/en/> (last visited Aug. 26, 2019).

The Berne Convention protects all artistic works and the rights of authors, such as the right to reproduce and the right to broadcast.<sup>81</sup> Protection is granted for copyrighted works in every “literary, scientific and artistic domain, whatever the mode or form of its expression,” and the author receives complete and exclusive rights to that copyright.<sup>82</sup> An author is also given moral rights to their copyright, which entails the right to object to any action that would prejudice the author’s reputation.<sup>83</sup>

While both the Berne Convention and the Paris Convention outline the registration and protection of intellectual property,<sup>84</sup> the Agreement on Trade-Related Aspects of Intellectual Property Rights (the “TRIPS Agreement”) provides for a more extensive system of these rights.<sup>85</sup> The TRIPS Agreement is the leading and most comprehensive international trading agreement to date on intellectual property.<sup>86</sup> In setting the standards of the TRIPS Agreement, the WTO acknowledged the existing WIPO conventions by requiring all signatory states of the TRIPS Agreement to comply with the obligations set forth in the Berne Convention and the Paris Convention.<sup>87</sup> The WTO refers to the TRIPS Agreement as a “Berne and Paris-plus agreement” because of the substantial number of obligations added to it on matters or issues where the two conventions “are silent or were seen as inadequate,” thus broadening the reach of the TRIPS Agreement.<sup>88</sup>

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81. Berne Convention, *supra* note 71, art. 2; *see also Summary of the Berne Convention, supra* note 71.

82. Berne Convention, *supra* note 71, art. 2.

83. *Id.* at art. 6bis.

84. *Summary of the Berne Convention, supra* note 71; *Summary of the Paris Convention, supra* note 72.

85. *Intellectual Property: Protection and Enforcement*, WTO, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm) (last visited Aug. 26, 2019).

86. The TRIPS Agreement was established by the WTO and came into effect in 1995. *Overview: the TRIPS Agreement*, WTO, [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm) (last visited Aug. 26, 2019).

Currently, all member states of the WTO are signatories to the TRIPS Agreement. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 3 [hereinafter TRIPS Agreement].

87. *Overview: TRIPS, supra* note 86.

88. *Id.*

Another important element of the TRIPS Agreement is the enforcement of intellectual property rights.<sup>89</sup> The TRIPS Agreement specifies, in great detail, the procedures and remedies that signatory states must make available so that every registrant can enforce their rights within their domestic territory, including both civil and criminal procedures.<sup>90</sup> The objectives of the TRIPS Agreement are plenty, including “the reduction of distortions and impediments to international trade, promotion of effective and adequate protection of intellectual property rights,” thus ensuring that barriers to legitimate international trade are not erected.<sup>91</sup>

## II. LEGISLATIVE BURDENS ON HOST COUNTRIES

FIFA’s increased focus on protecting its intellectual property rights has shifted the burden onto host countries, as infringements and ambush marketing tactics continue to pose substantial risks during every World Cup.<sup>92</sup> As a result, FIFA holds an “unhealthy grip on the host nation’s legislation, authorities and judicial process” in order to keep revenue as high as possible and to ensure countries make every effort to protect FIFA’s brand.<sup>93</sup>

### A. *The Effects of Ambush Marketing on Brand Protection*

FIFA continues to place heavy burdens on the legislative and even judicial processes of World Cup host countries in an effort to protect its brand during the tournament season.<sup>94</sup> The main reason behind FIFA’s efforts is to prevent third parties from taking advantage of the extensive media coverage that occurs during the World Cup, particularly because of how tempting it is to “piggyback” off of the international attention.<sup>95</sup> Ambush

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89. TRIPS Agreement, *supra* note 86; *Overview: TRIPS*, *supra* note 86.

90. TRIPS Agreement, *supra* note 86, art. 41; *Overview: TRIPS*, *supra* note 86.

91. TRIPS Agreement, *supra* note 86; *Overview: TRIPS*, *supra* note 86.

92. See Jack Blakey, *Ambush Marketing and the 2018 FIFA World Cup*, SQUIRE PATON BOGGS (June 25, 2018), <https://www.sports.legal/2018/06/ambush-marketing-and-the-2018-fifa-world-cup/>.

93. David Cran & Simon Griffiths, *Ambush Marketing: Unsporting Behavior or Fair Play?*, 21 ENT. L. REV. 293, 297 (2010).

94. *Id.* at 294.

95. Blakey, *supra* note 92.

marketing threatens the media and marketing revenues FIFA and its sponsors earn during each tournament because unaffiliated parties and brands create a “commercial connection or association with the event despite no official link,” which leads to the devaluation of FIFA’s intellectual property rights and exclusivity paid for by official sponsors.<sup>96</sup>

Ambush marketing poses a greater threat with each passing World Cup.<sup>97</sup> There are three types of ambush marketing driving the existence of strict media and marketing regulations, which are (1) ambush by association, (2) ambush by intrusion, and (3) opportunistic advertising.<sup>98</sup> The first, ambush by association, involves a third party or non-sponsoring brand that attempts to market itself as one of the official sponsors of the competition.<sup>99</sup> This is usually done when the entity associates its brand with one of the parties present at the tournament, such as a country or player.<sup>100</sup> An example of ambush by association took place during the 2014 World Cup in Brazil when the brand ‘Beats by Dre’ advertised its headphone product by featuring famous football players wearing the headphones, which led to such high viewership that the brand saw a 130 percent growth in its revenue.<sup>101</sup>

The second type, ambush by intrusion, occurs when a non-sponsoring party attempts to gain attention at the event itself through actions like giving out free goods or placing signs in and around the venue.<sup>102</sup> A famous example of this happened during the 2010 World Cup in South Africa when the company Bavaria Beer paid a large group of women to wear orange outfits displaying the brand at one of the most popular matches in order to garner attention and free advertising when the cameras were facing them.<sup>103</sup> This type of ambush marketing caught the attention of the media when FIFA removed the women from the stadium, questioned them about the company’s in-

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96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

volvement, and subsequently charged two women with violating the Merchandise Marks Act of South Africa.<sup>104</sup>

Finally, the third and least common of the three types of ambush marketing, opportunistic advertising, occurs when a non-sponsor indirectly refers to the tournament.<sup>105</sup> One relatively recent example of this took place during the 2012 London Olympics, when the company Paddy Power utilized a tongue-in-cheek advertising technique by posting an advertisement with the misleading slogan, “official sponsor of the largest athletics event in London this year!”<sup>106</sup> Interestingly enough, the IOC failed in its efforts to remove the advertisement because Paddy Power did host a sporting event, although it was held in London, France not London, England.<sup>107</sup> It has become increasingly clear that ambush marketing has profound negative effects on the brand protection of large international sport organizations and is often found in “sneaky” forms of advertising.<sup>108</sup>

### *B. The Role Host Countries Play in FIFA’s Brand Protection Regime*

Since citizens from almost every country around the globe tune in to watch the World Cup, FIFA is continuously faced with the challenge of ensuring brand protection across different jurisdictions, all of which contain their own set of intellectual property legislation.<sup>109</sup> If a country that is trying to become a host already has substantial legislation on the matter, then FIFA requires that country to detail how those laws or regulations will protect FIFA’s rights during the World Cup.<sup>110</sup> If that is not the case, then FIFA strictly mandates that host countries enact specific legislation to address anti-ambush marketing tactics and provide for the highest level of protection for FIFA.<sup>111</sup> This type of legislation is uniquely time-barred, mean-

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104. The Merchandise Marks Act was one of the specific intellectual property acts implemented by South Africa to comply with FIFA’s strict media and marketing regulations for the 2010 World Cup. Cran & Griffiths, *supra* note 93, at 295.

105. Blakey, *supra* note 92.

106. *Id.*

107. The sporting event was an egg and spoon race. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. Intellectual property rights protection is one of the main goals of FIFA because almost thirty percent of the organization’s revenue is generated

ing the relevant law is only applicable to the year that the World Cup takes place.<sup>112</sup> For example, Brazil enacted legislation in 2014 that made it illegal for non-sponsors to engage in ambush marketing specifically targeting the tournament, and that offense was no longer in existence after 2014.<sup>113</sup> This is one of the major reasons why host countries are chosen years in advance, so that FIFA has time to engage in a “rights protection programme,” and follow through with any registrations or documents needed for its brand, such as copyright or trademark registrations.<sup>114</sup>

A major issue that has repeatedly developed related to this kind of legislation is determining how to strike the right balance between corporate interests and freedom of public or commercial expression.<sup>115</sup> In regards to corporate interests, it is clear that FIFA intends to gain as much benefit from each World Cup as possible, and one of its most noticeable methods to achieve this end is to demand a tax-free “status” in the host country during the time when the tournament is being promoted and in session.<sup>116</sup> By removing opportunities for the host country and its nationals to earn profit, FIFA severely limits that freedom of public and commercial expression, particularly with the restrictions placed on intellectual property registrations and advertisements.<sup>117</sup> Balancing these two interests has proven to be increasingly difficult through the consistent enactments of specific laws and regulations designed to shift the balance to heavily favor FIFA.<sup>118</sup>

The 2018 World Cup in Russia is the most recent example of the impact FIFA has on domestic brand protection–related leg-

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through marketing and media-related efforts. Claire Jones, *Turf Wars: IP and the FIFA World Cup 2018*, NOVAGRAAF (Mar. 27, 2018), <https://www.novagraaf.com/en/insights/turf-wars-ip-and-fifa-world-cup-2018>.

112. Blakey, *supra* note 92.

113. *Id.*

114. Cran & Griffiths, *supra* note 93, at 294.

115. *Id.* at 293.

116. *Id.* at 297.

117. *Id.* at 294.

118. Lucy Walker, *2018 World Cup: FIFA's Determined to Keep Ambush Marketing on the Bench*, BARKER BRETTELL (June 27, 2018), <https://www.barkerbrettell.co.uk/2018-world-cup-fifas-determined-to-keep-ambush-marketing-on-the-bench/>.

islation and the subsequent shift in FIFA's economic favor.<sup>119</sup> In 2013, Russia both adopted and amended laws to encompass a broad array of intellectual property and advertisement legislation in order to comply with FIFA's requirements, with the main law titled the "Federal Law on the preparation for and observance in the Russian Federation, the FIFA World Cup 2018 year FIFA Confederations Cup 2017 year and amendments to certain legislative acts of the Russian Federation" ("Russian World Cup Law").<sup>120</sup> For the World Cup specifically, the federal law recognized FIFA's exclusive rights solely for that year and highlighted strict new provisions.<sup>121</sup> Articles 17 and 55 of the Russian World Cup Law prohibited the use of all Russian trademarks that were identical or similar to any registered or promoted FIFA mark.<sup>122</sup> These provisions were intended to limit unfair competition and prevent consumers from being misled, while also giving FIFA trademarks priority over any other trademarks during that time.<sup>123</sup> Rospatent, the Russian Federal Service for Intellectual Property,<sup>124</sup> also played a large role for FIFA by creating an easy and quick method for FIFA to register or license any marks during the World Cup.<sup>125</sup>

As to the new provisions related to advertisement, Articles 18 and 51 of the Russian World Cup Law gave FIFA the exclusive right throughout the World Cup to control the placement of advertisements within two kilometers of the stadiums where the games were held.<sup>126</sup> This measured distance referred to both physical land area and airspace, giving FIFA an all-encompassing reach to any nearby implementations of com-

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119. Schmitt & Orlov, *2018 FIFA World Cup's Impact on Russian IP and Advertisement Legislation*, LEXOLOGY (June 6, 2017), <https://www.lexology.com/library/detail.aspx?g=f641a457-a4d8-4e98-84f7-c65e3d26cb09>.

120. The full title of the federal law was "Federal Law on the preparation for and observance in the Russian Federation, the FIFA World Cup 2018 year, FIFA Confederations Cup 2017 year and amendments to certain legislative acts of the Russian Federation". *Id.*

121. *Id.*

122. The similar or identical Russian trademarks were prohibited until December 31, 2018. *Id.*

123. *Id.*

124. *About Rospatent*, ROSPATENT, <https://rupto.ru/en/about> (last visited Aug. 26, 2019).

125. Schmitt & Orlov, *supra* note 119.

126. *Id.*

mercial advertising both digitally and physically.<sup>127</sup> Russia referred to commercial advertising as “trading activities” and made it clear in the provisions that any such trading activities within the two-kilometer radius needed written consent from FIFA.<sup>128</sup>

The burdens placed on Russia are merely one example of FIFA’s determination to protect itself from ambush marketing, as many of the issues present during the 2018 World Cup in Russia were also present in other countries.<sup>129</sup> During the 2010 World Cup, the host country, South Africa, implemented laws specific to both the tournament and FIFA as a supplement to the strong existing legislation regarding intellectual property protection.<sup>130</sup> The most notable law created was the 2010 FIFA World Cup Special Measures Act, which granted permission to official sponsors to advertise in “exclusion zones” and allowed existing businesses to carry on their commercial activities without government or FIFA interference.<sup>131</sup> The Trade Practices Act of 1974 in South Africa was similar to the Russian World Cup Law in that it prohibited third parties from using marks or phrases that created or implied a connection to the World Cup, FIFA, or official sponsors.<sup>132</sup> Along with those two acts, South Africa also amended the Merchandise Marks Act and enacted the Sponsorship Code of the Advertising Standards Authority of South Africa, demonstrating the considerable amount of effort put towards complying with FIFA’s strict requirements.<sup>133</sup> A notable exception to this trend occurred in 2006, when Germany did not enact or amend any legislation for the 2006 World Cup because the country already had strong unfair competition laws that were in compliance.<sup>134</sup>

Although much, if not all, of the legislation enacted or amended by various World Cup host countries only apply for the given World Cup year, hosts are still burdened with the re-

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127. *Id.*

128. *Id.*

129. Cran & Griffiths, *supra* note 93, at 295.

130. *Id.*

131. The “exclusion zones” set specific parameters near certain stadiums where unassociated businesses and unofficial advertisers were allowed to promote and sell their goods without infringing on FIFA’s rights. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

quirement of ensuring that all protections mandated by FIFA are in place, which is certainly not an effortless task.<sup>135</sup> Due to these measures, any unauthorized uses of protected marks, such as copyright infringement or violations of the specific World Cup-related laws, lead to civil, administrative, or criminal liability in the host country, which compounds the issue of draining domestic resources to protect FIFA.<sup>136</sup> Brazil did not have any specific or detailed legislation on ambush marketing prior to the 2014 World Cup and subsequently spent a considerable amount of time creating the General Law on the World Cup legislation (the “General Law”).<sup>137</sup> Although the General Law was seen as a “positive step” toward addressing the need for greater intellectual property and brand security throughout the country, it expired at the end of 2014 and was only limited to FIFA.<sup>138</sup> FIFA’s influential grip on Brazil did not allow for other businesses or entities to benefit from the legislation because of the narrow nature of the law.<sup>139</sup>

Brazil acted similarly to South Africa and Russia by also implementing a law prohibiting the registration of marks or symbols that would likely confuse consumers, in compliance with FIFA’s demands to prevent ambush marketing and unfair competition.<sup>140</sup> Brazil’s World Cup Law provided for criminal liabilities to strengthen FIFA’s protection, such as a one-year imprisonment sentence.<sup>141</sup> The Brazilian law also granted FIFA the right to apply for injunctions directly to Brazilian courts as a more expedited method to receive monetary damages or in-

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135. Blakey, *supra* note 92.

136. Yuriy Korchuganov, *Russia Federation: FIFA 2018 World Cup and Advertising Restrictions*, MONDAQ (Oct. 27, 2017), <http://www.mondaq.com/russianfederation/x/640786/advertising+marketing+branding/FIFA+2018+World+Cup+And+Advertising+Restrictions>.

137. Jose Eduardo Pieri, *Ambush Marketing Laws: A Legacy of the 2014 FIFA World Cup in Brazil*, INTA (Sept. 23, 2014), <https://www.inta.org/INTABlog/Lists/Posts/Post.aspx?ID=107#.W-esBydRfVo>.

138. *Id.*

139. *Id.*

140. Poonam Majithia, *How Successful Were FIFA and Its Sponsors at Protecting Their Brands During the World Cup?*, LAWINSPOORT (Aug. 13, 2014), <https://www.lawinsport.com/topics/articles/intellectual-property-law/item/how-successful-were-fifa-and-its-sponsors-at-protecting-their-brands-during-the-world-cup>.

141. *Id.*

junctions.<sup>142</sup> Brazil described its efforts in creating this law as a means to protect “the goodwill and positive image generated by the FIFA World Cup,” directly aligning itself with the brand protection goals articulated by FIFA.<sup>143</sup> As FIFA and its official sponsors continue to benefit from the extensive protections provided through host countries’ legislative efforts, there remains the question of whether these laws and regulations severely limit the freedom of public expression in favor of commercial interests.<sup>144</sup>

### III. THE OLYMPIC GAMES COMPARISON AND HOW FIFA SETS A MORE RIGOROUS STANDARD

Along with the World Cup, the Olympic Games feature another leading international sporting event that takes place in different host countries.<sup>145</sup> The IOC is similar to FIFA in that most of the revenue it generates is from marketing programs and intellectual property rights, including by sharing or selling rights to official sponsors and partners.<sup>146</sup> The IOC is similarly faced with the challenges associated with ambush marketing, especially because legal remedies are still limited when no specific laws are in place to protect these entities and official Olympic Games sponsors.<sup>147</sup> Legislation related to anti-ambushing or anti-infringing was first implemented by an Olympic Games host in Australia during the 2000 Olympic Games, proving successful for both Australia and the IOC.<sup>148</sup> This was a major catalyst for the IOC to begin requiring that host countries enact legislation to protect against ambush

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142. Kevin Carpenter & Louise Millington-Roberts, *What are the Risks and Opportunities for Ambush Marketers at the FIFA World Cup Brazil?*, LAWINSPOORT (June 24, 2014), <https://www.lawinsport.com/content/blog/kevin-carpenter/item/what-are-the-risk-and-opportunities-for-ambush-marketers-at-the-fifa-world-cup-brazil>.

143. *Id.*

144. Blakey, *supra* note 92.

145. *The Olympic Games*, HIST. (Aug. 21, 2018), <https://www.history.com/topics/sports/olympic-games>.

146. *See The International Olympic Committee*, OLYMPIC GAMES, <https://www.olympic.org/the-ioc> (last visited Aug. 26, 2019).

147. *See generally* Nicole Vidinu, *Playing by the Rules – Ambush Marketing and the Olympic Games*, SMART & BIGGAR FETHERSTONHAUGH (July 6, 2016), [http://www.smart-biggarr.com/en/articles\\_print.cfm?news\\_id=1141](http://www.smart-biggarr.com/en/articles_print.cfm?news_id=1141).

148. The law was titled “Sydney 2000 Games (Indicia and Images Protection) Act 1996.” *Id.*

marketing, thus creating the growing trend of protecting the intellectual property rights held by the IOC and any officially affiliated sponsors.<sup>149</sup> While both the IOC and FIFA have evidently been combating ambush marketing by implementing similar requirements, FIFA has continued to set a more rigorous standard than the IOC. FIFA can benefit from looking at how the IOC details its requirements and the language that the IOC uses when collaborating with host countries.

The 2016 Olympic Games in Brazil enacted a specific and time-barred law for the event, titled the Olympic Act.<sup>150</sup> Brazil enacted this temporary law in an effort to prevent unfair competition from unassociated uses of official Olympic marks and expressions,<sup>151</sup> which was similar to the initiative it had taken two years prior while hosting the 2014 World Cup.<sup>152</sup> In its Brand Protection Guidelines for the 2016 Olympics, the IOC stated that protection must be a requirement in order to “preserve the emotional and commercial value of the brands” and emphasized the importance of its official partners.<sup>153</sup> Given that the IOC is a non-profit organization, it demonstrates its intellectual property through elements representing the “identity of the Games” and the values of the organization.<sup>154</sup> The marks and expressions associated with the Olympic Games are much more expansive than those of FIFA because of the large variety of sports played during the Olympic Games.<sup>155</sup> The IOC describes ambush marketing similarly to FIFA because ambush marketing negatively affects the Olympics just as much as the World Cup due to the large-scale events thriving on the investments of official partners and sponsors.<sup>156</sup>

The striking difference between FIFA and the IOC, however, is the IOC’s language when outlining the requirement for host countries to enact legislation. The IOC suggests a less aggres-

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149. *Id.*

150. *Id.*

151. *Id.*

152. Pieri, *supra* note 137.

153. ORGANIZING COMMITTEE FOR THE OLYMPIC AND PARALYMPIC GAMES IN RIO IN 2016, BRAND PROTECTION GUIDELINES 8 (2014), [https://library.olympic.org/Default/doc/SYRACUSE/76211/brand-protection-guidelines-advertising-market-and-advertisers-organising-committee-for-the-olympic-?\\_lg=en-GB](https://library.olympic.org/Default/doc/SYRACUSE/76211/brand-protection-guidelines-advertising-market-and-advertisers-organising-committee-for-the-olympic-?_lg=en-GB).

154. *Id.* at 12.

155. *Id.*

156. *Id.* at 42.

sive tone than FIFA, such as explaining the requirement as a “commitment to protect” its intellectual property,<sup>157</sup> whereas FIFA describes the need to protect the intellectual property rights as “crucial for staging the event.”<sup>158</sup> For the 2016 Olympic Games, Brazil swiftly followed the IOC’s protocol and enacted specific rules to comply with its commitment to the IOC, including the Federal Olympic Act, State Olympic Act, and Municipal Olympic Act.<sup>159</sup> The IOC, in turn, added further protection by stating all its rights are registered worldwide.<sup>160</sup> Not many differences exist between the World Cup and the Olympic Games in this regard, as ambush marketing is prevalent during both tournaments and each host country has different legislative approaches to intellectual property laws.<sup>161</sup> Much of the specific legislation put in place for both events have been time-barred to only the year the event occurs, but legislation for the Olympic Games seems to have a shorter expiration than the equivalent laws for the World Cup, as seen when the London Olympic Association Right expired soon after the Olympic Games ended.<sup>162</sup> In contrast, both Russia and Brazil extended their legislation for the World Cup until the end of the year, as FIFA employed a stricter regime for compliance with its brand protection rules.<sup>163</sup>

The negative impacts of the IOC’s requirements, similarly to FIFA, widen the gap between freedom of expression and commercial interests by giving almost complete control to these influential entities that organize the large-scale events and commercial associations.<sup>164</sup> As a result, outside brands and the general public fail to understand what constitutes an offense or a violation of these laws because of the wide array of marks,

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157. *Id.* at 44.

158. GUIDELINES FOR THE USE OF FIFA’S OFFICIAL MARKS, *supra* note 22.

159. *Id.* at 45.

160. *Id.*

161. Blakey, *supra* note 92.

162. The London Olympic Games took place in 2012. *Id.* The London Olympic Association Right was part of the London Olympic Games and Paralympic Games Act 2006. *Id.*

163. *Id.*

164. Benoit Seguin & Teresa Scassa, *Ambush Marketing Legislation to Protect Olympic Sponsors: A Step Too Far in the Name of Brand Protection?*, in INTELLECTUAL PROPERTY FOR THE 21ST CENTURY: INTERDISCIPLINARY APPROACHES 513 (B. Courtney Doagoo et al. eds., 2014).

symbols, and expressions associated with the IOC.<sup>165</sup> Another consequence is that the rights of the public and athletes participating in the event are repeatedly infringed.<sup>166</sup> This confusing language in the legislation puts non-IOC sponsors at substantial risk of having their profits reduced while also limiting their ability to be creative and innovative.<sup>167</sup> For the IOC, the large amount of stakeholders and sponsors for each Olympic Games influences the organization to push for stronger intellectual property-based legislation and grant further privileges to contributors in order to secure the necessary revenue to fund the event.<sup>168</sup> Violations certainly do not go unnoticed as officials for the IOC and affiliated associations will send infringement notices to both large and small businesses, such as local bars, bakeries, and even charities.<sup>169</sup>

Looking forward, the IOC is continuing to expand its protections against ambush marketing by creating, well in advance, the Brand Protection Guidelines for the Tokyo 2020 Olympic Games (the “Guidelines”).<sup>170</sup> The Organizing Committee in Japan is handling the intellectual property associated with the Olympic Games, including, among other goals, the utilization of necessary marketing strategies to secure revenue and adequately prepare for the event.<sup>171</sup> In a similar fashion, the Guidelines outline and define ambush marketing while focusing on the risk of reduced funding if any infringement or ambush marketing occur.<sup>172</sup> If either were to occur, it would “seriously compromise the operation of the Games and impede efforts to develop the athletes,” as part of the revenue is intended to go towards the athletes and participating teams.<sup>173</sup>

Local sponsors account for twenty-seven percent of the revenue earned through marketing efforts, and the Worldwide Olympic Partners (“TOP Partners”) account for ten percent of

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165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. THE TOKYO ORGANISING COMMITTEE OF THE OLYMPIC AND PARALYMPIC GAMES, BRAND PROTECTION GUIDELINES (2019), <https://tokyo2020.org/en/copyright/data/brand-protection-EN.pdf>.

171. The Organizing Committee also aims to secure funds for Japanese athletes as they prepare for the Olympic Games. *Id.* at 2.

172. *Id.*

173. *Id.*

the revenue.<sup>174</sup> These TOP Partners consist of powerful companies, such as Toyota, Samsung, and Coca-Cola, that are given exclusive rights to exploit the intellectual property of the Olympic Games because of their high contributions.<sup>175</sup> The broad nature of the IOC's exclusive intellectual property rights can be seen through the list of terms to be protected, which includes simple terms such as "Tokyo 2020" and "Olympics," meaning that any unauthorized use or affiliation with these words or phrases is strictly prohibited and subject to legal action.<sup>176</sup>

Japan grants legal protection to the IOC through numerous laws and regulations, most of which have incorporated specific provisions for the Olympic Games.<sup>177</sup> The Trademark Act, which could easily apply to the World Cup as well, protects all registered marks and logos used on goods or services.<sup>178</sup> The Act highlights criminal charges similar to those imposed by other Olympic and World Cup host countries against trademark infringers, although the charges seem excessive in Japan as imprisonment could last up to ten years, and fines could be as much as ten million yen.<sup>179</sup> The Unfair Competition Prevention Act and the Copyright Act also impose similarly heavy criminal charges, as both Japan and the IOC recognize how common it is for these infringement violations to take place.<sup>180</sup> In concluding the Guidelines, the IOC stated that these "marketing activities cannot be established without the protection of the intellectual property," which seems to be the foundation for each brand protection regime for the Olympic Games,<sup>181</sup> as well as the World Cup.

#### IV. FIFA MOVING FORWARD: PROPOSED SOLUTIONS

FIFA continues to require host countries to enact legislation and regulations to protect FIFA's intellectual property, thus placing undue burdens on host countries.<sup>182</sup> FIFA must take

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174. *Id.* at 4.

175. *Id.* at 5.

176. *Id.* at 9.

177. *Id.* at 10.

178. *Id.*

179. *Id.*

180. *Id.* at 11.

181. *Id.* at 12.

182. Cran & Griffiths, *supra* note 93, at 294.

necessary steps to ease these burdens and build a more effective process for host countries to adequately protect FIFA against infringements and ambush marketing. A new platform should also be created to ensure FIFA and host countries communicate effectively when preparing for the World Cup. FIFA must be able to communicate clearly with a host country so as to minimize ambiguities or unforeseen difficulties. With fewer burdens, host countries can save time and energy during preparations, which in turn can help FIFA continue to protect its brand.

#### *A. New FIFA Committee to Handle Temporary Legislative Reform*

Building a new FIFA committee devoted solely to legislative issues concerning a World Cup host country would allow for a productive, communicative platform. In working with such a committee, the host country would first inform FIFA of its current legislation regarding brand protection and intellectual property. FIFA would then need to familiarize itself with the unique legal environment of its hosts, as each country sets its own laws regarding those matters. With adequate information ahead of time, FIFA can better communicate its requirements and needs. Through this, communication would be much more effective, enabling FIFA to address any inconsistencies and deficiencies in domestic legislation.

Another important aspect of the proposed committee would be to have designated representatives from the host country who are members of the proper legislative or judicial branch and who are knowledgeable in the necessary matters concerning hosting a World Cup. FIFA often does not understand the complexities of each country's legal landscape, and it would benefit from specialized guidance. The host country representatives would negotiate with FIFA regarding how to enact or amend their legislation, such that every party understands how to comply with FIFA requirements. Furthermore, the committee would give these representatives a concrete platform for proper discussions to take place.

#### *B. New Provisions in Existing International Agreements*

Specific provisions should also be added to international intellectual property agreements to address claims of copyright or trademark infringements that occur during a World Cup

season, particularly given FIFA's strong international reach and popularity. Any threat to FIFA's exclusive rights creates disruptions in revenue for both FIFA and a host country. To ease the process of acquiring intellectual property registrations and bringing claims against infringers, these agreements or treaties can incorporate new provisions that focus on international sporting events. These provisions should refer directly to brand protection, since that is the main issue with infringements. Including language that describes the well-known "brand" of an organization or entity provides more protection because it is inclusive of both copyright and trademark principles.

Part IV of the TRIPS Agreement outlining the acquisition and maintenance of intellectual property rights would be an appropriate place to incorporate this new provision.<sup>183</sup> Signatory members are required to comply with all procedures described in the TRIPS Agreement, so adding an article that requires members to maintain FIFA's intellectual property rights would be consistent with this obligation.<sup>184</sup> To narrow this further, it would be crucial to include a timeframe for which these provisions would be effective; for example, specifying that the legislation would only apply during the year the World Cup is taking place. This grants more flexibility for FIFA and the host countries to take any necessary actions during the time leading up to that year. The timeframe would also grant non-host countries protection when advertising merchandise or services related to the World Cup.

One difficulty with adding these provisions is how to refer to FIFA itself. Countries or organizations may oppose including laws that speak specifically to FIFA, but not to other significant international organizations. Despite this concern, it is important to focus on the fact that FIFA is an incredibly influential international organization, with over two hundred countries as active members.<sup>185</sup> Member states are already faced with the task of adopting FIFA-specific legislation, so incorporating provisions that refer directly to FIFA would assist countries that are chosen as future hosts. Although countries might argue that they will not be chosen as a host for years to come,

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183. See TRIPS Agreement, *supra* note 86, art. 62.

184. *Id.*

185. *About FIFA*, *supra* note 3.

it's important to consider that FIFA is active in most countries beyond hosting the World Cup, such as through advertisements and merchandise sales.

With the World Cup occurring on a consistent four-year basis, and with the FIFA brand appearing worldwide every day, adding these specific provisions to international treaties will prove to be advantageous to every signatory country. Host countries will have fewer burdens with legislative matters and more support when dealing with infringements in their territory. FIFA would also benefit from these provisions because the organization would garner support from international leading bodies, such as WIPO and the WTO, while simultaneously protecting their brand from infringers. Furthermore, FIFA's workload would lessen because there would not be a rush to implement legislative changes and verify compliance before the World Cup.

#### CONCLUSION

The FIFA World Cup continuously generates ever-growing revenue and viewership, but at a great cost to the country hosting the event.<sup>186</sup> FIFA's strict regulations regarding media and marketing protection impose heavy burdens on host countries to amend or add legislation in order to comply and protect FIFA's brand.<sup>187</sup> These regulations form a complex relationship between FIFA and the host countries, as FIFA wields immense control over the host country and broad authority to regulate the actions that must occur if the World Cup is to take place in that country.

The threat of ambush marketing and brand infringements influences FIFA to implement strict regulations and force host countries to adapt their domestic legislation accordingly.<sup>188</sup> Creating a new committee within FIFA dedicated to addressing the legislative needs of host countries in regards to intellectual property protection would help ease the burdens placed on these countries while also providing an effective platform for communication. Additionally, adding specific provisions to existing international intellectual property agreements would significantly reduce difficulties related to implementing domes-

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186. Cran & Griffiths, *supra* note 93, at 297.

187. Lusardi, *supra* note 13.

188. Blakey, *supra* note 92.

tic legislation among World Cup host countries. As these host countries begin to adapt to FIFA's regulations through a more efficient process, FIFA can lift legislative burdens while continuing to advance and improve brand protection.

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