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RESPONSE OF THE ADVERTISING ASSOCIATION TO THE CONSULTATION BY THE SCOTTISH EXECUTIVE ON THE DRAFT GLASGOW COMMONWEALTH GAMES BILL

1. Preamble

1.1. The Advertising Association (AA) is a federation of 31 trade bodies and organisations representing the advertising and promotional marketing industries, including advertisers, agencies, the media and support services in the UK. It is the only body that speaks for all sides of an industry that was worth over £19 billion in 2006. Further information about the AA, its membership and remit, can be found at the following location: <http://www.adassoc.org.uk/>

2. Introduction & Summary

2.1. The AA welcomes the opportunity to respond to this consultation by the Scottish Executive on its draft Glasgow Commonwealth Games Bill and the Pre-Regulatory Impact Assessment (PRIA) which accompanies it. The draft Bill provides for measures that would restrict the physical location of advertising, whilst the accompanying consultation material also sets out the intent of the Scottish Executive to introduce an association right similar to that contained within the London Olympic Games and Paralympic Games Act 2006. Both these elements have the potential to impact substantially on those the AA represents.

2.2. In summary, in this response, the AA:

- (a) questions the timing of the consultation as a whole, but welcomes the desire of the Scottish Executive to engage with interested parties at an early stage;
- (b) considers the rationale for legislative intervention, both at a theoretical and practical level, and calls for a commitment from the Scottish Executive that it will not seek to gold-plate when legislating on any contractual terms it enters into with the Commonwealth Games Federation (CGF);
- (c) seeks reassurance in respect of the parameters of any secondary legislation issued by the Scottish Executive governing the physical location of advertising, in order to provide affected parties with the maximum degree of certainty as to their eventual impact;
- (d) argues that the introduction of new intellectual property statute (notably an association right) around any Commonwealth Games held in Glasgow in 2012 would be unnecessary; and,
- (e) comments upon the content of the PRIA.

2.3. Within the strands identified above, the AA makes specific recommendations as to the content of the secondary legislation governing the physical location of advertising and provides examples of why the introduction of an association right would be unnecessary. In addition to these comments, the response of the AA also contains an Annex with the self-explanatory title of "List of non-substantive proposals for improvement to the text of the draft Glasgow Commonwealth Games Bill (typos etc)".

2.4. The AA is grateful to the Scottish Executive for the short extension it has granted the Association for submission of its response. The AA looks forward to publication by the

Scottish Executive of an analysis of the responses it receives in due course. The AA is not seeking for any part of this submission to be treated as confidential and is content to be contacted again in the future about any aspect contained within it.

3. General AA comments on Draft Commonwealth Games Bill: Consultation Document

3.1. Timing of consultation

3.1.1. The AA notes that the Scottish Executive will not find out whether the candidacy of Glasgow to host the Commonwealth Games in 2014 has been successful until 9 November 2007 when the 71 Commonwealth Games Associations gathered in Colombo, Sri Lanka cast their votes. (The other remaining candidate city for hosting the 2014 Games is Abuja in Nigeria.) Additionally, the AA notes that the CGF – the organisation responsible for the direction and control of the Commonwealth Games - does not actually require the Scottish Executive to have any primary legislation aimed at curbing ambush marketing, in the event of a successful bid by Glasgow, in place until 30 June 2010. The AA therefore regards it as somewhat precipitant, given the timescales involved, for the Scottish Executive to be expending its effort and those of interested parties now by consulting on the content of a draft Bill, before knowing whether the Glasgow bid will even be successful.

3.1.2. The AA understands the desire of the Scottish Executive to introduce a Bill to the Scottish Parliament as soon as possible after 9 November 2007 in the event of a successful bid. Furthermore, the AA considers that this attempt by the Scottish Executive to engage interested parties at an early stage compares favourably with the approach adopted in the run-up to the ultimately successful bid by the UK Government for London to host the Olympic Games in 2012. Nonetheless, the time-limited nature of any secondary legislation in the form of regulations governing the physical location of advertising in 2014 leads the AA to question the merits of being too hasty in taking through any enabling primary legislation so far ahead of the event when the pressure to do so appears largely absent.

3.1.3. The AA would, however, seek confirmation that no other work has been initiated or is being progressed in respect of legislative measures to combat ambush marketing until such time as the Scottish Executive has considered responses to this consultative exercise and the outcome of the contest between Glasgow and Abuja is known.

3.1.4. In addition to being informed as to the conclusions the Scottish Executive may draw from this consultation exercise, the AA looks forward to being integrally involved in any subsequent discussions related to a Commonwealth Games in Glasgow that may have implications for the UK advertising sector.

3.2. Rationale of the Scottish Executive for legislative intervention

Theoretical considerations

3.2.1. The Scottish Executive will, in the event of a successful bid, seek sponsors for any Glasgow Commonwealth Games in 2014 on the basis that their interest in associating themselves with such events generates a significant revenue stream for the organisers and thus the amount that might otherwise need to be borne by the public purse. The AA considers allowing sponsors to associate themselves with major sporting events in this way constitutes a sensible and well-established approach towards their financing.

3.2.2. The Scottish Executive fears, however, that the short-term, high-profile nature of the Commonwealth Games could leave a Glasgow-based event vulnerable to ambush marketing strategies, which it argues could successfully operate within the existing body of Scottish and UK law. Based on its concerns, the Scottish Executive identifies a consequent

risk that if potential sponsors hold the same view it could frustrate the ability of Glasgow to attract private investment in the first place and thereby undermine the revenue base for any Commonwealth Games held there in 2014. The Scottish Executive considers this to be a genuine risk, arguing that many sponsors now insist that legal protection against such tactics is in place before they commit to pledging funds in order to inspire confidence that their investment is worthwhile. The AA is not party to the evidence on which this particular claim is based.

3.2.3. Nevertheless, in order to address this risk and attract private investment, the AA considers that there may be a case for extending controls on the physical location of advertising in a proportionate manner (and on a strictly time-limited basis) in order to deter ambush marketing through the proximity of non-sponsors' advertising and the like to Games venues. The AA accepts that this may involve preventing competitors of Commonwealth sponsors from engaging in unfair competition in the vicinity of Games venues through controlling advertising space and airspace to ensure no publicity appears there.

3.2.4. The AA, however, regards the existing body of law regulating the intellectual content of commercial communications as more than sufficient to ensure that any Commonwealth Games held in the UK could take place free of that form of ambush marketing. (The AA comments further on this latter form of ambush marketing, in Part 5 of this response.)

Practical considerations

3.2.5. Irrespective of the theoretical merits or otherwise of intervening legislatively advanced by the Scottish Executive, the AA understands from the consultation material that the CGF imposes a number of contractual requirements and restrictions on cities intending to host the events for which the Federation is ultimately responsible. These restrictions and requirements are set out in a Host City Contract (HCC), which incorporates various Technical Manuals, including *The Commonwealth Games Manual: Brand Protection* and the *Commonwealth Games Manual: Marketing*. Such Manuals are annexed to the HCC (to which the Scottish Government would be a signatory in the event of a successful bid for Glasgow to host the 2014 Commonwealth Games) and form an integral part of it - consequently they are legally binding in respect of the minimum requirements they contain.

3.2.6. The AA largely accepts the case that the Scottish Executive should abide by any contractual obligations it may owe to the CGF, but considers that having entered into such terms an even greater duty is thereby placed upon the Ministers in Scotland to ensure the minimum requirements set out by the Federation are not gold-plated upon.

3.2.7. The AA notes (based upon the short analysis supplied by the Scottish Executive in its consultation material) that *The Commonwealth Games Manual: Brand Protection* requires controls to be placed on the physical location of advertising. No mention, however, is made of any CGF contractual term requiring the Scottish Executive to introduce an association right similar to that contained within Section 33 ("London Olympics association right") and Schedule 4 ("London Olympics Association Right") of the London Olympic Games and Paralympic Games Act 2006. The Scottish Executive would therefore be in the undesirable position of gold-plating upon the HCC if it subsequently introduced such an association right.

3.2.8. The lack of access by the AA to the HCC and the relevant Technical Manuals, means that the Association is only able to surmise the probable absence of any intellectual property requirements from the CGF's contractual terms. The AA is, however, grateful to the CGF and the Scottish Executive for agreeing to supply the Association (in the event of a successful Glasgow bid) with copies of *The Commonwealth Games Manual: Brand Protection* and *The Commonwealth Games Manual: Marketing*, if not the central HCC itself, immediately following 9 November 2007.

4. Ambush marketing through physical intrusion or proximity of advertising

4.1. Timing and drafting of secondary legislation governing physical location of advertising

4.1.1. As set out in Paragraph 3.1.1 above, the AA notes that as part of its undertakings to the CGF, the Scottish Executive has agreed to introduce primary legislation to control the physical location of advertising around Games venues by 30 June 2010 if the Glasgow bid is successful. This legislation would supplement the provisions already contained within the Town and Country Planning (Scotland) Act 1997.

4.1.2. The Scottish Executive has also set out in the consultation material its intention to issue secondary legislation pertaining to the control of advertising space under any eventual Glasgow Commonwealth Games Act around two years before the event commenced with any such regulations also designating the periods during which the restrictions would apply. The AA would strongly recommend that well before the Scottish Executive issue any formal consultation on the content of such advertising regulations, it should draw on the expertise of the advertising sector. Involving the AA and its members at the drafting stage should minimise the likelihood of any unforeseen consequences of the secondary legislation emerging and thereby avoid the need to revisit them at a later date. (The AA comments further on consultation issues in Paragraphs 4.4.1, 4.4.2, 4.4.3 & 4.4.4 of this response below.)

4.2. Clarification as to the duration of restrictions on physical location of advertising

4.2.1. The AA is of the view that in order to provide the advertising industry with the maximum amount of certainty, any Glasgow Commonwealth Games Bill should contain on its face an indication of the maximum duration of any advertising regulations that may be issued under it.

4.2.2. In this context, the AA notes, based upon the Candidate City File submitted on behalf of Glasgow, that if the Commonwealth Games were held there, the event would commence on Wednesday 23 July 2014 and end on Sunday 3 August 2014. Furthermore, the CGF appears to require that the restrictions on the physical location of advertising additionally have effect in the fortnight preceding the opening of the Games. Thus the regulations would need to come into force on Wednesday 9 July 2014.

4.2.3. Of the material the AA has seen thus far, no end date for the regulations governing the physical location of advertising appears to be specified. The AA would recommend that the end date for the regulations governing the physical location of advertising be Monday 4 August 2014. Certainly, the AA is of the view that it would be difficult for the CGF and the Scottish Executive to justify the continuation of the advertising regulations for a period more generous than the International Olympic Committee (IOC) requires in respect of the London Games (which is for five days after the end of that event). As stated previously, whatever the contractual requirements set by the CGF, the Scottish Executive should not seek to gold-plate upon them. In other words, the regulations should only apply for such time as is necessary to secure compliance with any contractual obligations imposed by the CGF.

4.2.4. The AA is keen that information as to the maximum duration of the advertising regulations be included on the face of the Bill, perhaps within Clause 43 ("Commencement") and Clause 44 ("Repeal") of the draft legislation. This is because the earliest possible notification as to the effective duration of the advertising regulations, via the inclusion of this information on the face of the Bill, will assist owners of outdoor advertising media to plan

ahead for the impact any Commonwealth Games held in Glasgow will have on how certain sites may or may not be used.

4.2.5. The AA anticipates that, other than in respect of the main stadium, the Scottish Executive will in many cases want advertising restrictions to apply for far shorter periods of time around venues other than the main stadium, where Games events may be taking place. In other words the regulations may apply for different periods in respect of different places. The AA considers that the Scottish Executive should ensure that any Act from which the secondary legislation will be derived allows for flexibility in this regard – this is not at present apparently provided for on the face of the draft Bill. (From the experience of the AA of working on the draft Olympics legislation in the course of 2005 and 2006, the Scottish Executive will also need to take into account the contractual implications for branded venues of any events it may propose to hold in such places or indeed located in the vicinity of other Games venues.)

4.2.6. The AA is reassured (given the absence of any reference in the consultation material) by the intention of the Scottish Executive to adopt a far more proportionate approach than their counterparts in London in respect of transport-related advertising at the 2012 Olympic Games. Although the Scottish Executive states that the CGF requires advertising on public transport to be controlled, it makes no such claim in respect of transport hubs or routes (and presumably any private vehicles travelling along them) that could potentially be great distances away from the actual Games venues themselves as will be the case at the time of London 2012. The AA has always regarded the inclusion of transport hubs and routes as excessive in respect of the London Olympic Games in 2012 and is therefore reassured by the apparent decision of the Scottish Executive not to go down this particular route.

4.3. Call for inclusion of a definition of “vicinity”

4.3.1. Despite numerous references to “vicinity” within the draft Bill, no definition of the term in respect of controls on advertising, is offered by the Scottish Executive, which states only that any restrictions will be designated in secondary legislation to be issued much nearer to 2014. The AA is of the view, however, that a definition of “vicinity” should be incorporated on the face of the eventual version of the Bill, perhaps within Clause 42 (“Interpretation”), as without it the sector will be left with a significant degree of uncertainty - most notably owners of outdoor advertising sites.

4.3.2. Alternatively, it is noteworthy that although the London Olympic Games and Paralympic Games Act 2006 contains no definition of “vicinity”, during the Parliamentary passage of that statute, the Minister-in-charge – Rt Hon Richard Caborn MP - clarified the intention of the Government behind the term, stating: “When we talk about vicinity, we mean a few hundred metres.” (Official Record, Commons, 18 October 2005, Column 78)

4.3.3. It would be helpful then, in the event that it is not possible to include a definition of “vicinity” on the face of the Bill, were Scottish Ministers to offer a similar clarification during the passage of any draft legislation through Holyrood, in the event of a successful Glasgow bid. The AA would argue that it would be difficult to justify a more generous definition of “vicinity” around any Commonwealth event than will apply in respect of an Olympic one, which has been defined as within 200-300m of a venue.

4.4. Inclusion of a duty to consult with the advertising industry

4.4.1. The AA considers that a specific duty should be placed on the face of the final version of the Bill which requires the Scottish Executive to consult with the advertising industry when drawing up any secondary legislation relating to advertising.

4.4.2. For the purposes of comparison it is noteworthy that the London Olympic Games and Paralympic Games Act 2006 contains just such a duty within sub-Section 20(3)(b) ("Regulations: supplemental"). Section 20(3) provides, in respect of any secondary legislation issued under the 2006 Act, that: "Before making regulations under section 19 the Secretary of State shall consult – ...one or more persons who appear to the Secretary of State to represent interests within the advertising industry which are likely to be affected by the regulations,...". (Section 19 of the 2006 Act is entitled "Advertising regulations".)

4.4.3. Sub-Section 20(3)(b) was added to the Bill on the recommendation of the Delegated Powers & Regulatory Reform Committee of the House of Lords in its 11th Report of Session 2005-2006 (HL Paper 95). In light of the conclusions drawn by that Committee (and accepting that Holyrood is of course an entirely independent legislature) the AA would still commend to the Scottish Executive the inclusion of a similar duty on the face of the Bill. The AA considers that the most appropriate location for the placement of such a duty on Scottish Ministers would be via the addition of a sub-clause to Clause 38 ("Consultation") of the draft Bill.

4.4.4. Additionally, the AA would request that the Scottish Executive specify that the period of consultation permitted should last no less than twelve weeks either on the face of the final version of the Bill or via a statement by Ministers during its passage through Holyrood (so that it might be registered in the Official Report of the Scottish Parliament). The AA considers it notable that the Minister-in-charge of the Olympics Bill – Lord Davies of Oldham - provided a similar reassurance in respect of the minimum duration of consultation on secondary legislation during its Parliamentary passage (Official Report, Lords, 6 March 2006, Column 608).

4.5. Call for provision in Bill of exceptions for different media from advertising regulations

4.5.1. During the passage of the Olympics Bill, the AA expressed concern that certain non-broadcast and broadcast advertising media could inadvertently fall foul of any regulations directly governing the physical location of advertising or falling within the meaning of vicinity. The non-broadcast media categories in question were newspapers and magazines containing print advertisements as well as mobile phones and other electronic communications devices upon which advertisements might be received. The broadcast media categories in question were television and radio sets, which happened to receive advertisements.

4.5.2. The UK Government recognised these concerns as valid and offered reassurances during the passage of the Olympics Bill that any secondary legislation eventually issued governing advertising in the vicinity of venues would grant the necessary exceptions to such media. (Relevant ministerial references by Rt Hon Richard Caborn MP and Lord Davies of Oldham can be found in Official Report, Commons, 6 December 2005, Column 809 and Official Report, Lords, 2 February 2006, Column 224 respectively.) Whilst these binding ministerial reassurances were welcome in respect of any secondary legislation that may eventually be issued under the 2006 Act, the AA would request that the Scottish Executive ideally address these concerns at the outset by including them on the face of the Bill.

4.5.3. Depending on how the Scottish Executive quantifies the concept of vicinity, there might also be a risk that advertisements exhibited on cinema screens located close to

venues might also fall foul of any regulations issued under Clause 9 (“Ban on advertising in the vicinity of Games events”) of the draft Bill. This would be despite the fact that such advertisements would only actually be seen by those within the enclosed space of the cinema. In respect of the Olympics legislation, the Westminster Government offered reassurances to the Cinema Advertising Association (CAA) after the passage of the Act on this subject. (Clearly it would have been preferable for the CAA to have received a ministerial reassurance during the Parliamentary passage of the Bill.)

4.5.4. In light of the issues raised in Paragraphs 4.5.1, 4.5.2 & 4.5.3 above and to offer the greatest reassurance to the advertising industry, the AA would request that the Scottish Executive incorporate a sub-clause within Clause 9 to the effect that any advertising regulations would provide exceptions for cinema, newspapers, magazines, television, radio, mobile telephony and other electronic media.

4.6 Introduction of new criminal offences: safeguards

4.6.1. The AA considers that the provisions aimed at combating ambush marketing in respect of the physical location of advertising contained within the draft Bill and the new powers they introduce, not least in rendering breaches of the legislation criminal offences, are substantial.

4.6.2. In light of the proposed creation of these criminal offences, the AA is of the view that the Scottish Executive should consider the conclusions arrived at by Professor Macrory in his review of regulatory justice, commissioned by the Westminster Government, where the utility of such sanctions is assessed, before proceeding down that route in Scotland.

4.6.3. In addition to the creation of these criminal offences, the draft Bill also empowers enforcing authorities to enter and search premises. These are significant powers of which the introduction should not be treated lightly.

4.6.4. Given the creation of these new criminal offences and the empowerment of enforcing authorities to enter and search premises, the AA would recommend that any Bill be screened against the Human Rights Act 1998 first to ensure it is compliant and, if it passes this test, to make a declaration to that effect. (The AA can find no reference to the Human Rights Act 1998 Act within the consultation material issued by the Scottish Executive.)

4.6.5. The AA is also concerned at the prospect that the draft Bill would allow any Glasgow Organising Committee for the Commonwealth Games (GOCCG) to appoint Enforcement Officers and empower them to enforce advertising offences. If such individuals are empowered to enforce what will amount to criminal offences, the AA is firmly of the view that only the Scottish Executive should be able to confer this status, rather than a body that, ultimately, is a registered company – GOCCG - with its own commercial interests to protect.

4.6.6. Finally, and in particular, the AA notes that no reference to the inclusion of statutory defences (over and above the exceptions requested in part 4.5 of this submission) against breach of the advertising Regulations appears on the face of the draft Bill. The AA would call for this apparent omission to be corrected before any final version of the Bill is published and introduced into the Scottish Parliament.

5. Ambush marketing through advertising content

5.1. Adequacy of protections for sponsors under existing body of law

5.1.1. The AA is firmly of the view that the existing body of law in the UK will provide sufficient protection to sponsors in the event that the Glasgow bid is successful. The AA is deeply concerned that introduction of an association right, as the Scottish Executive currently proposes, would be disproportionate, because damaging to the wider advertising sector, as the Association anticipates the one contained within the London Olympic Games & Paralympic Games Act 2006 is. This jurisprudence presently incorporates the common law of “passing off” and such statute as: The Trade Descriptions Act 1968; The Control of Misleading Advertising Regulations 1988 (as amended); The Copyright, Designs and Patents Act 1988; and, The Trade Marks Act 1994.

5.1.2. The protections afforded by the 1968 Act and the 1988 Regulations to sponsors should also be substantively enhanced shortly. This is due to their partial and full repeal respectively as a consequence of implementing Directive 2005/29/EC “on unfair business-to-consumer commercial practices” and (re-)implementing Directive 84/450/EEC “concerning misleading advertising” (as amended by Directive 97/44/EC to cover comparative advertisements and since codified as Directive 2006/114/EC). The secondary legislation superseding the 1968 Act and the 1988 Regulations will be the Consumer Protection from Unfair Trading Regulations 2007 and the Business Protection from Misleading Marketing Regulations 2007, which are due to undergo their Parliamentary passage in Westminster shortly. Both sets of Regulations are scheduled to come into force throughout the United Kingdom on 6 April 2008. In the event of Glasgow winning the HCC, any Commonwealth Games held in that city would therefore benefit from an even more stringent legislative regime than that the sponsors of the Manchester Commonwealth Games enjoyed in 2002, which were regarded as extremely successful. (The AA comments further on the example of the Manchester 2002 Commonwealth Games in Paragraph 5.1.4. of this response below.)

5.1.3. The AA considers that the body of law set out above is more than sufficient to provide protection to official sponsors against ambush marketers seeking to give the impression that they are somehow associated with the Games and misleading the public into the belief that they are an authorised partner or otherwise officially connected with the event somehow. To reiterate, the AA can detect no gaps in the laws relating to intellectual property that could be exploited by potential ambush marketers, particularly given the opportunity for the Scottish authorities to seek trade mark protection over the official marks for any Glasgow Games, for example.

5.1.4. It is worthwhile in this context to consider the success of the organisers the last time the Commonwealth Games were held on UK territory. This was in Manchester in 2002. As identified previously, the body of law available then did not include the additional protections afforded by the secondary legislation cited above that is due to come into on the 6 April 2008 throughout the UK. It is worth considering the experience of and the conclusions drawn by the brand protection team at those Games responsible for combating ambush marketing. This can be found in Volume 3 of *The Manchester Commonwealth Games 2002: Post-Games Report* published by the Organising Committee. In it the team responsible for brand protection concluded that they had been very successful in combating ambush marketing. The brand protection team was of the view that this success had been achieved by relying solely on the intellectual property rights they enjoyed over the official marks for those Games and introducing with Manchester City Council, restrictions on planning permission for temporary structures and prioritising action against illegal poster sites.

5.2 Attraction of major sporting events to sponsors without recourse to additional legislative protections

5.2.1. In its consultation material, the Scottish Executive cites the Vancouver Winter Olympic Games 2010 as an example of where specific legislative protection is being introduced to protect sponsors from ambush marketing at a major sporting event. It is noteworthy that during the passage of the Olympics legislation here in 2006, the Organising Committee for those Games in Canada (which has a body of law very similar to that in the UK), was having little difficulty in attracting sponsors despite the absence of additional intellectual property protection in the form of an association right. As a consequence of the passage of the London Olympic Games and Paralympic Games Act 2006 here, the Canadian Government appears to have initiated action to introduce an association right for the Vancouver Games. Whether the Canadian Government had simply overlooked it (and had no intention to introduce one) or the IOC had not required it in its contractual terms is irrelevant. The key observation to make here is that the sponsors were readily signing up to sponsor the Games despite the absence of any association right.

5.3. Apparent absence from CGF's contractual terms to introduce additional intellectual property protections

5.3.1. The Scottish Executive signals in the consultation material its intention to introduce an association right similar to that contained within the London Olympic Games & Paralympic Games Act 2006. Of the material to which the AA has had access thus far, however, the CGF does not appear to require that certain words, for example, enjoy additional protection over and above what the existing body of law offers. The AA is sure the Scottish Executive would otherwise have cited such a CGF requirement to support its case for introducing an association right. Until the AA has had sight of *The Commonwealth Games Manual: Brand Protection*, in the event that the Glasgow bid is successful, the Association can only surmise that the CGF does not actually require the Scottish Executive to introduce any intellectual property rights over certain words. (In the case of the London Olympics, the IOC required the protection of the host city and the games year via its contractual terms, although in practice the UK Government, unjustifiably in the AA's view, gold-plated upon this to incorporate many other entirely unrelated words without any obvious justification.)

5.3.2. The AA would therefore reiterate that the Scottish Executive should not gold-plate upon what the CGF actually requires of it through its contractual terms. If, however, the Scottish Executive (mistakenly in the view of the AA) carries through its intention to create an association right delivered through the Westminster Parliament (given that intellectual property is a reserved matter), the AA and other interested parties within the advertising sector should be involved from the outset to ensure that the scope for detrimental impact is minimised.

6. Specific AA comments on the Pre-Regulatory Impact Assessment

6.1. Although certain references within the PRIA might lead one to consider that the Assessment relates to the two types of ambush marketing described in this submission, the AA appreciates that the document actually pertains solely to the proposals of the Scottish Executive in respect of placing restrictions on the physical location of advertising within the vicinity of Games venues. The AA only comments here on those parts of the PRIA that have not already informed discussion of the issues raised by the proposals of the Scottish Executive and thus already been addressed elsewhere in this response.

6.2. Subject to the concerns expressed previously about regulations restricting the physical location of advertising, the AA is not opposed in principle to the Scottish Executive supplementing the Town and Country Planning (Scotland) Act 1997 to meet any contractual obligations it may have to the CGF in this field in the event that the Glasgow bid is successful.

6.3. That said, although the Scottish Executive suggests in its PRIA that there are three options open to it, there are not, given that it has *already* committed to legislating and would sign the contract on that basis in the event of the Glasgow bid being successful. Thus the options of doing nothing and hosting the 2014 Games with existing legislative measures in place (“Option 1”) or attempting to meet the CGF requirements through non-legislative means (“Option 2”) are entirely irrelevant, without the Scottish Executive reneging on the legal guarantees it has already offered the Federation. The AA is therefore at something of a loss to understand why the Scottish Executive appears to be consulting on these options, when it has already determined that legislating to meet CGF requirements (“Option 3”) is the one that it will pursue. The key point of the Scottish Executive consulting on restrictions on the physical location of advertising is surely solely to determine what their content should be and it is this aspect that the AA has addressed in this submission.

6.4. Notwithstanding the above comments, the AA would take this opportunity to comment upon the conclusions arrived at by the Scottish Executive in those sections of the PRIA headed “Competition assessment” and “Small / micro firms impact test”. These are dealt with in turn below.

Competition assessment

6.5. The AA would add to this analysis by the Scottish Executive that the introduction of advertising restrictions around Games venues have the potential to impact inequitably and unfairly in competitive terms upon owners of commercial media (most obviously those of outdoor advertising hoardings) falling within the scope of any secondary legislation issued under Clause 9 of the draft Bill. The AA considers that this section of the PRIA should better reflect this fact before the Scottish Executive publishes the next Regulatory Impact Assessment on its legislative proposals in this area. Furthermore, whilst the AA accepts that although it may indeed be too early at the present moment in time to estimate the likely impact of secondary legislation in this area on competition, the Association is deeply concerned that the Scottish Executive apparently only intends to conduct any such evaluation once the regulations are made - in other words retrospectively. The AA would argue that it is incumbent upon the Scottish Executive to conduct some assessment of the likely impact on competition well ahead of any regulations being made the better to inform their content if good policy-making practice is to be pursued in this field.

Small / micro firms impact test

6.6. The AA agrees that the impact on small / micro firms should be evaluated at a later date (as the Association accepts should be the case with the competition assessment), but that once again any such evaluation should inform the drafting of the regulations rather than be considered retrospectively. The Scottish Executive appears to give a commitment to this effect (unlike with the competition assessment). The AA is, however, keen to ensure that in addition to Scottish Ministers consulting business now on the draft Bill it remains intimately involved during any consultation conducted with the sector by the Organising Committee when the latter prepares its recommendations for secondary legislation. This is because the AA considers that the Scottish Executive owes a duty of care to ensure it hears the views of business direct and not those mediated through the Organising Committee – ultimately a registered company with its own commercial interests. This should serve to ensure that the process of drafting the secondary legislation when the time comes is as transparent as possible.

Jim Rothwell
28 September 2007

List of non-substantive proposals for improvement to the text of the draft Glasgow Commonwealth Games Bill (typos etc)

A1 Clause 4(a)(i) (“Authorised trading”)

Delete: “in respect that place”

Replace with: “in respect of that place”

AA’s rationale for amendment: The current wording does not make sense grammatically.

A2 Clause 11(4)(c) (“Authorised advertising”)

Delete: “a advertising licence”

Replace with: “an advertising licence”

AA’s rationale for amendment: The current wording does not make sense grammatically.

A3 Clause 30(3) (“Offences by bodies corporate etc.”)

Delete: “the 1995 Act”

Replace with: “the Proceeds of Crime (Scotland) Act 1995 (c.43)”

AA’s rationale for amendment: It is not clear from the draft Bill, which Act of 1995 is being referred to within this sub-clause (in the absence of any earlier or later reference elsewhere to a piece of statute dating from that year). In proposing text to clarify the situation, the AA has assumed the statute being referred to is in fact the Proceeds of Crime (Scotland) Act 1995 (Chapter 43). The AA would recommend that if this is the case it should be specified within Clause 30 (or somewhere else suitable within the Bill). If the AA has made an incorrect assumption and the Proceeds of Crime (Scotland) Act 1995 is not the relevant legislation, then the Scottish Executive should of course insert the appropriate statutory reference accordingly, but not leave it unspecified, as at present.

A4 Clause 37(3) (“Orders and regulations”)

Delete: “or an under made under section 41”

Replace with: “or made under section 41”

AA’s rationale for amendment: The current wording does not make sense grammatically.

A5 Clause 43(1) (“Commencement”)

Delete: “This following provisions”

Replace with: “The following provisions”

AA’s rationale for amendment: The current wording does not make sense grammatically.