

Written evidence submitted by
Society of London Theatre and UK Theatre Association
to the Digital, Culture, Media and Sport Committee's inquiry into Live Music

Introduction

1. Society of London Theatre ("SOLT") and UK Theatre Association ("UK Theatre") are the trade associations and members' organisations representing the interests of those engaged in the production and presentation of medium to large-scale dramatic and lyric theatre in the UK. Both memberships are drawn from subsidised and commercial theatre.
2. The combined box office income of SOLT and UK Theatre's memberships was more than £1 billion across London and the rest of the UK, with 34 million tickets sold, in 2016.
3. SOLT represents approximately 200 London-based producers, theatre owners and managers, including all the major subsidised theatrical organisations in London.
4. UK Theatre represents approximately 220 theatres, concert halls, dance companies, producers and arts centres throughout the UK. UK Theatre also operates as a professional organisation, supporting over 1,000 individuals working professionally in theatre and the performing arts in the UK.
5. We recognise that this is an inquiry into live music. We write on behalf of our members, some of whom present live music, because the same issues apply to the theatre industry when considering ticket abuse. We are aware that this inquiry will aim to incorporate the evidence submitted previously to the ticket abuse inquiry. To that end, please note that we responded to the ticket abuse inquiry in written evidence dated March 2017.
6. In relation to this inquiry, we respond only to the question relating to ticket abuse.
7. Our evidence covers the following:
 - the secondary ticketing market as it affects the theatre industry;
 - abuse in the secondary market;
 - measures taken by producers and theatres;
 - Consumer Rights Act 2015;
 - 'Bots' legislation;
 - Unique Ticket Number;
 - further observations.

Summary

8. Much has been done to attempt to address problems in the secondary ticketing market. There are still various ongoing investigations and though we understand that some reforms are pending, we are not aware of any reforms being introduced since the Consumer Rights Act 2015 (“CRA”). It is too early to say how successful any reforms will be and we await the outcomes of the investigations. Therefore, we are not yet in a position to be able to say what more needs to be done to act against market abuse from ticket touts, other than that the existing law needs to be enforced.
9. We do have views and comments on the various investigations and pending reforms, which we set out below. In particular, we have concerns about the ‘bots’ and UTN legislation, due to be introduced via secondary legislation later this year.

The secondary market in the theatre industry

10. Whilst ticket abuse issues are largely similar for theatre as for live music, there is a difference between the secondary market for theatre compared with music and other sectors, such as sport. This is largely due to the fact that in such other sectors, the “event” usually occurs only once, whereas the opportunity to see a theatre production exists for a period of time.
11. For theatre, the use of online secondary ticketing platforms to exploit consumers is generally confined to resellers taking advantage of sold-out or high profile shows, usually being presented in the West End. For those shows, the reselling of tickets is a major issue.
12. The secondary market has little bearing on primary market prices, but it can have an adverse impact on the availability of tickets in the primary market, by reducing the number of tickets available to bona fide customers at the box office price. The combination of this reduced availability (or non-availability) of tickets and the high prices stated on the secondary platforms (even though this is not necessarily the price at which tickets are ultimately resold) generates a negative perception of the theatre industry in the eyes of the public.

Abuse in the secondary market in the theatre industry

13. Although some secondary ticketing platforms may offer certain guarantees to buyers (eg replacement tickets or a refund if tickets are invalid or not delivered), if there is an issue with a ticket bought on such a platform, it will still, primarily, be the theatre which has to resolve it, dealing with the customers and potentially having to turn them away. Not only does this require resources, but it also casts the theatre in an unfavourable light. It certainly ruins what should otherwise be an enjoyable experience for the customer and has the potential to undermine the confidence of theatregoers generally.
14. We are therefore strongly in favour of legislation imposing greater restrictions on secondary ticketing platforms and offering greater transparency and protection for consumers.

Measures taken by producers and theatres

15. Our members are concerned about the impact of the practices of secondary ticketing platforms and are working hard to combat the issues they encounter. Theatres and producers use various measures to seek to retain control of tickets in order to protect bona fide customers. For example, they might limit the number of tickets per customer, delay sending out tickets until 2 or 3 weeks before the performance, request that purchasers of multiple tickets collect tickets in person at the box office, operate a paperless ticketing system, include a provision rendering the ticket void on resale and/or hold back a number of tickets to make available on the day of the performance (often at a low price).
16. If the seat number is not stated in accordance with the CRA, there is little a primary seller can do as, without the seat number, they will not be able to identify the original or to ensure that a ticket is genuine.
17. Even a combination of the measures referred to above does not prevent tickets appearing on secondary platforms.

Consumer Rights Act 2015

18. We have observed that secondary ticketing platforms are generally not complying with the information requirements in section 90 of the CRA. For example:
 - in many cases, the seat number is not provided;
 - in some cases, the row number or letter is not provided either;
 - in some cases, a range, eg “original face value £10 - £50”, instead of the actual face value of the ticket is given.
19. Unless the CRA is actively enforced, that legislation cannot achieve its purpose. We therefore welcomed the investigation by the Competition and Markets Authority (“CMA”) into the main secondary ticketing platforms (with its recently broadened scope) and we are pleased that the Government pledged to provide funds to National Trading Standards who are now working on this with the CMA.

‘Bots’ legislation

20. We are concerned about the potential implications of the continued and ongoing use of ‘bots’ for theatre audiences. We would welcome legislation to ban the harvesting of tickets by automated software, but we have concerns that the secondary legislation due to be enacted later this year may be ineffective in its aim of tackling automated bulk-buying.
21. Section 2(a) of the draft Breaching Limits on Ticket Sales Regulations 2017 (the “Regulations”) states that the Regulations shall apply where “the offer is subject to conditions that limit the number of tickets a purchaser may buy”.

22. Event owners or ticket sellers may choose to set conditions that limit the number of tickets a purchaser may buy and there are a number of different ways in which they may set this limit, eg per person, per household, per credit card, etc.
23. The Regulations do not appear to address the problem of touts bulk-buying tickets. Notwithstanding the event owner or ticket sellers setting a limit, a tout could still avoid the Regulations by setting up a 'bot' in a way which did not breach the limit and therefore the Regulations would not be effective. For example, if a limit was set at four tickets per purchaser, a tout could set up a 'bot' which made purchases of four tickets in multiple names.
24. We are therefore concerned that touts would be able to harvest tickets in a manner that is not caught by the offence.

Unique Ticket Number (“UTN”)

25. The Digital Economy Act 2017 (“DEA”) brought in a requirement “so far as applicable” for resellers on, and operators of, secondary ticketing platforms to provide any “unique ticket number that may help the buyer to identify the seat or standing area or its location”.
26. We understand that rules applying to UTNs will enter into force in April 2018.
27. The legislation requires a UTN to be given only where there is one. UTNs are not currently used in the theatre industry and we are not aware of there being any intention to introduce them.
28. We believe that the inclusion of a UTN on tickets (if they did exist) would not enable ticket purchasers to identify the seat or standing area or its location any better than is now possible (or would be possible if existing laws were complied with – as explained in points 18 and 19 above).
29. The current position in the theatre industry is that purchasers of tickets can identify their booking through an “Order Reference” or a “Booking Reference” number which relates that booking to the ticket seller’s own systems. This Order or Booking Reference number is usually stated on the ticket and would usually cover all the tickets purchased in a particular transaction, so each individual ticket would not necessarily have a unique Order or Booking Reference number. The Order or Reference number bears no relation to where the seat is, but usually the ticket will detail the location of the seat by aisle, row and seat. The purchaser’s name is also sometimes stated on the ticket. This Order or Reference number is not a UTN “that may help the buyer to identify the seat or standing area or its location”.
30. Even if there was a UTN, we find it difficult to see how a UTN would be useful to the consumer because it would not be possible to identify the seat or standing area or its location or verify the ticket from the UTN alone.

31. Because of this, in the absence of a centralised system across the industry, it seems likely that the consumer would have to contact the event owner with their UTN to verify the ticket. The event owner would have to examine each ticket to establish which ticket seller had issued it and then de-code the UTN to find out the seat details. This would be laborious and costly, placing a considerable burden on event owners.
32. In our view, it would be necessary to create and maintain a centralised database with everyone working to the same system of UTN numbering. This system would potentially have to cope with thousands of UTNs being uploaded from hundreds of different ticketing systems every minute. It would have to deal with queries from members of the public to “de-code” and “verify” the UTN; purchasers would have to call a central point of contact or have some other way of “authenticating” the UTN. Such a system goes well beyond what the legislation requires, yet without some form of verification, the UTN would be useless. Introducing a meaningful UTN system would require significant resources and is not feasible.
33. Another flaw in the UTN requirement is that we cannot see that there would be any way of stopping a seller on the secondary market providing a false UTN. We do not think that the use of UTNs would address ticket fraud or provide secondary market purchasers with any reassurance that what they are buying is a valid ticket.
34. Even if it were feasible to set up a successful UTN system, we struggle to see its benefit above and beyond the more simple and practical route of complying with section 90(4) (a) to (d) of the CRA which state that the buyer must be given (where applicable to the ticket):
 - a. the information necessary to enable the buyer to identify the seat or standing area;
 - b. any terms and conditions associated with the resale of a ticket;
 - c. the face value of the ticket.
35. For most seated events, block, row and seat number provide sufficient detail and are already covered by these information requirements in the CRA. “Row” and “seat” do not apply to unreserved seated or general admission events, but it is still possible to provide buyers in the secondary market with the same level of detail regarding location as is provided in the primary market.
36. Section 90(4) (a) to (d) of the CRA needs to be better monitored and enforced. We believe that this would effectively address the issue of informing the purchaser on a resale of what they are buying.

Further observations

37. We think it is important that customers with a genuine reason for selling on a ticket that they can no longer use are able to sell that ticket on at a fair price.
38. There is a concern within the theatre industry that terms banning resale of tickets may be considered unfair and thus void pursuant to the terms of the CRA. We have

welcomed the CMA's work with consumer protection bodies and the live events industry to develop best practice guidance on the application of unfair terms legislation to ticketing terms and conditions. We have participated in the industry meetings discussing this and look forward to the CMA providing much needed clarity on this area.

39. We would welcome updated guidance to reflect the clarification by Ministers in Parliament in the debate on the Digital Economy Bill on 27 April 2017 that CRA section 90(3)(b) "requires secondary sellers to provide information on ticket restrictions on resale".
40. Section 90 of the CRA sets out the information about tickets offered for sale on the secondary market that must be provided to buyers and this includes the face value of the ticket. Section 90(5) states that the face value of the ticket is "the amount stated on the ticket as its price". BEIS's Secondary Ticketing, Guidance for Businesses says that face value will "normally be the price shown on the ticket". In the theatre industry, the amount set for the ticket by the event owner will not necessarily be the amount stated on the ticket. We understand that the purpose of the disclosure requirement is to enable purchasers to see the amount originally paid for the ticket for the purposes of comparison in the context of the amount being asked for its resale. In order for consumers to be able to make a true comparison, there needs to be a definition of "face value" which is applied consistently across live music, theatre and other events.
41. We want theatregoers to have the best experience possible at a fair price and for theatres and producers to have the means to exercise greater control over the resale of tickets for their shows. Unauthorised secondary ticketing platforms and 'bot' attacks undermine this and we therefore believe that the existing law needs to be enforced and whilst there are further reforms pending, we believe that more effective measures are still required.

28 February 2018