



## BRIEFING

### DIGITAL ECONOMY BILL 2016-17

### Public Bill Committee (27 October 2016)

#### AMENDMENT: NEW CLAUSE 13 tabled by Nigel Adams MP

##### Offence to use digital ticket purchasing software to purchase excessive number of tickets

*(1) A person commits an offence if he or she utilizes digital ticket purchasing software to purchase tickets over and above the number permitted in the condition of sale.*

*(2) A person commits an offence if he or she knowingly resells or offers to resell a ticket that the person knows, or could reasonably suspect, was obtained using digital ticket purchasing software and was acting in the course of a business.*

*(3) For the purposes of subsection (2) a person shall be treated as acting in the course of a business if he or she does anything as a result of which he makes a profit or aims to make a profit.*

*(4) A person guilty of an offence under this section shall be liable on summary conviction to— (a) imprisonment for a period not exceeding 51 weeks, (b) a fine not exceeding level 5 on the standard scale, or (c) both.*

*(5) In this section— (a) “digital ticket purchasing software” means any machine, device, computer programme or computer software that, on its own or with human assistance, bypasses security measures or access control systems on a retail ticket purchasing platform that assist in implementing a limit on the number of tickets that can be purchased, to purchase tickets. (b) “retail ticket purchasing platform” shall mean a retail ticket purchasing website, application, phone system, or other technology platform used to sell tickets.”*

*(6) Subsections (1) and (2) shall apply in respect of anything done whether in the United Kingdom or elsewhere.”*

#### AIM

This amendment creates an offence to use digital ticket purchasing software to purchase tickets for an event over and above the number permitted in the condition of sale. It also creates an offence to knowingly resell tickets using such software.

This amendment will implement – through legislation - some of the recommendations made by Professor Michael Waterson’s report on event ticketing which was commissioned by the Government (DCMS/BEIS) in 2015.<sup>1</sup>

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/525885/ind-16-7-independent-review-online-secondary-ticketing-facilities.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525885/ind-16-7-independent-review-online-secondary-ticketing-facilities.pdf)

## ARGUMENT

Banning bots via legislation would be a further step towards ensuring the ticketing market works more fairly for consumers, along with other measures recommended by the Waterson report focusing on enforcement of existing consumer law (including the provisions of the Consumer Rights Act 2015) and more effective industry action.

The Waterson Report, published in May 2016 as a requirement of the Consumer Rights Act 2015, revealed clearly how the current ticketing market is dysfunctional and often harms consumers, as well as artists such as those represented by the manager members of the Music Managers Forum. We still await a Government response to the Waterson Report.

In July 2016, FanFair submitted written evidence to the compliance review being undertaken by the Competition and Markets Authority (the successor body to the OFT and Competition Commission)<sup>2</sup>. The review is considering whether the four main online secondary ticketing websites (StubHub, Viagogo, Seatwave and GetMeIn!) are complying with the existing consumer law; the review was commissioned after the Waterson Report suggested the current law was not being effectively enforced. Two of these websites (Seatwave and GetMeIn!) are owned by the leading primary ticket agent Ticketmaster.

In our response, we submitted three case studies to illustrate the extent of the problem in ticketing. To take one example: in June 2016 Black Sabbath announced a final 7 night tour in February 2017. A pre-sale opened on 15 June and the tickets went on general sale on 17 June. On 15 June, one hour after the pre-sale opened, there were 2,280 tickets for sale on the four main secondary websites. On 16 June at 9 am, this had increased to 5,321. By 2.50 pm, it had increased further to 9,113 tickets. When the general sale opened on 17 June, 11,695 tickets were for sale on secondary ticketing websites, equating to another night of the tour.

It is our simple contention that, at the most sought-after events, bots are being used to hack into primary ticket sales - blocking out legitimate buyers, with the intention of 'scalping' inventory for the sole purpose of re-selling for profit. This result is that many genuine fans are deprived of the opportunity to purchase a ticket at face value.

It is worth noting that a similar law has been successfully passed by the New York state legislature in 2016<sup>3</sup> while theatre impresario Cameron Mackintosh, when recently asked about ticket touting in the UK, said "*It's horrible and it has got to stop. In the old days, with Cats, you knew who the touts were. You'd pick them out of the queue and tell them to hop it. Now you've got these sophisticated computer programs hoovering up tickets – and you've also got members of the public tempted by those inflated prices trying to sell tickets themselves*".<sup>4</sup>

Writing in 2012 about the secondary ticketing market, Paul Latham, then the COO of Live Nation (the firm that owns Ticketmaster which in turn owns Seatwave and GetMeIn!) commented:

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<sup>2</sup> <https://assets.publishing.service.gov.uk/media/57601c4540f0b66bda000041/cma-compliance-review-of-secondary-ticket-platforms.pdf>

<sup>3</sup> [http://gothamist.com/2016/06/17/forget\\_jake\\_its\\_scalper\\_town.php](http://gothamist.com/2016/06/17/forget_jake_its_scalper_town.php)

<sup>4</sup> <http://www.telegraph.co.uk/theatre/playwrights/cameron-mackintosh-my-war-on-ticket-touts/>

*“Any home-spun theories by past Government officials that [secondary ticketing] it is a free market and people must be able to resell their tickets if they cannot go to events is blown out of the water by the fact that more than 70% of these tickets posted are by “power-sellers”. They have no other connection to the music business other than they are tech-savvy enough to gain access to vast swathes of tickets.”<sup>5</sup>*

In the same way as the existing consumer law was clarified by the Consumer Rights Act 2015 (sections 90-95) by placing additional legal obligations on the ticketing industry, this amendment will clarify the law on the misuse of computer technology on ticketing which disadvantages ordinary consumers, especially genuine fans. It will assist the ticketing industry in its efforts to tackle this problem.

**FanFair therefore supports New Clause 13.**

## **BACKGROUND**

The Waterson report made two specific recommendations on bots<sup>6</sup>. These were:

- *that the live event industry should be represented in the Cyber-security Information Sharing Partnership (CiSP), a joint industry and Government initiative to share cyber threat and vulnerability information. This will give the industry the ability to share, learn and seek advice from Government and other business sectors (see Chapter 2).*
- *that primary ticket vendors should take note of my comments in this report and take seriously the possibility of mass purchase by individuals using bots who have no intention of attending the event and guard against this. Mass purchases of this kind are usually undertaken with a view to resale at a profit, resulting in the primary sites selling out very quickly and tickets ending up on the secondary ticketing market at inflated prices. This deprives consumers of the chance to acquire tickets at the price originally established by the event organiser (which may have been set at lower than expected levels to increase the participation of certain groups). Supposed limits on ticket purchases that do not take into account the possibility of purchases from a variety of sellers amongst many selling the event, or purchases by the same person at a different point in time, or from the same person under different guises, are next to useless. Captcha-type technologies are not sufficient in most cases. Organisers should seriously consider requirements for individuals to prove they are indeed individuals by means such as confirmed identity technologies. Whilst I accept that primary sellers are in the market to sell tickets, they have longer term interests in ensuring the public feels well served. Primary ticket vendors should also report “bot” attacks to the police so that they can be investigated (see Chapter 2).*

**FanFair is not aware if either recommendation from Prof. Waterson has been acted upon by the ticketing industry; we would therefore welcome an update from the Minister.**

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<sup>5</sup> <http://www.musicbank.co.uk/blog/ticketing-a-statement-from-live-nations-coo-paul-latham/#Tzo5ZokPXL7JJYe.99>

<sup>6</sup> Ibid (Chapter 2)

Prof. Waterson went on to give his view on making bots illegal. His brief thinking was<sup>7</sup>:

- *The existing legislation has broad application and unauthorised access to others' computers systems by bots and botnets may already give rise to breaches of the Computer Misuse Act 1990 (CMA90).*
- *The primary market could and should do more to protect itself from attack from bots including, in particular, reporting such incidents to the police;*
- *As with the ticketing provisions of the CRA, clarification of existing law and enforcement should take precedence over new legislation.*
- *Moreover, use of bots and botnets is not necessarily malevolent – my understanding is that using a “bot” on your own system or with authorisation of the system owner would be lawful.*

**Despite what Prof Waterson suggested about using existing law, FanFair is not aware of any enforcement of the Computer Misuse Act 1990 against bots being used to purchase event tickets, nor that the primary ticketing industry has ever reported breaches to the police. The purpose of this amendment is therefore to bring clarity to the existing law for the benefit of consumers.**

## **ABOUT**

### **FanFair<sup>8</sup>**

The FanFair Alliance was established in July 2016 to unite members of music and creative community who wish to take a stand against industrial-scale online ticket touting. FanFair has been funded initially by four music managers: Adam Tudhope (Mumford & Sons, Laura Marling, Keane); Brian Message (PJ Harvey, Nick Cave & The Bad Seeds); Ian McAndrew (Arctic Monkeys, Royal Blood, Travis) and Harry McGee (One Direction, Little Mix, Alison Moyet). They are all leading members of the Music Managers Forum (MMF).

FanFair believes a coordinated and pragmatic approach between the Government, creative businesses, entrepreneurs and consumers can make major inroads to curbing industrial-scale touting in the secondary ticketing market. Having signed the FanFair Declaration<sup>9</sup> against online ticket touts our supporters are committed to supporting fair and ethical ticketing practices as well as pro-consumer legislation and technologies.

FanFair aims to develop a number of pan-industry initiatives over the coming year, including an educational guide for music businesses<sup>10</sup>, and also to inform and involve fans on how they can tackle ticket touting online.

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<sup>7</sup> Ibid (Paragraph 49)

<sup>8</sup> <http://fanfairalliance.org/>

<sup>9</sup> <http://fanfairalliance.org/declaration/>

<sup>10</sup> <http://fanfairalliance.org/fanfair-alliance-mmf-launch-guide-managers-help-combat-online-ticket-touting/>

## **Music Managers Forum (MMF)<sup>11</sup>**

The MMF is the world's largest professional community of music managers. Since its inception in 1992, the MMF has worked hard to educate, inform and represent UK managers as well as offering a network through which managers can share experiences, opportunities and information. Membership stands at over 500 managers based in the UK with global businesses and a wider network of 1700 managers in the USA.

The three main areas of business are:

- Supporting managers' continuous professional development within an evolving music industry.
- Creating opportunities to develop and grow artist businesses.
- Providing a collective voice and leadership to affect change for a transparent and fairer music industry.

We engage, advise and lobby industry associates and wider industry issues relevant to managers and we continue to recruit members and grow our network so we are truly representative of the wider management community.

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<sup>11</sup> <https://themmf.net/>