

Bot battling and more – new initiatives to stem online ticket abuse

There have recently been some notable advances in the fight against abuse of the online ticket market. Government, consumer-protection bodies and the advertising industry – alongside event producers and artists themselves – are taking measures in tandem that are helping to protect ticket buyers from rip-offs on the secondary market. This article examines what the continued lobbying from the entertainment industry has achieved.

Background

In 2016 the Economist reported that bots – high-speed computer programs that automate the ticketing-buying process – tried to buy 5 billion tickets, or 10,000 a minute, on Ticketmaster's website.¹ The use of bots by professional touts has apparently become so prolific that even ticket-hungry consumers have been getting in on the act by using free bot software, available from sites such as ticketbots.net, in an attempt to beat the professionals.²

Ticketing platforms have been working with Ticketmaster to combat bots, and Ticketmaster has introduced the "Verified Fan" presale service to the UK following a successful trial in the US.³ Users must register for each presale and notify Ticketmaster of the event that they are interested in attending. Ticketmaster is "deliberately opaque" about how it works, but the tool reportedly uses sophisticated algorithms and unique data analysis software to delve into user's social media activity and to examine which events and bands they follow.⁴ If selected, verified users receive a unique code that enables them to buy presale tickets. Former White Stripes frontman, Jack White, is using the service for presales for upcoming London dates in June, as is Elton John for the Dublin date of his Farewell Yellow Brick Road tour.⁵

But technological improvements are only part of tackling bots, and it has been long argued that the UK should address the problem with bespoke legislation like other jurisdictions. The USA, for instance, banned bots in 2016 when Congress passed the Better Online Ticket Sales Act.⁶ That legislation was strongly advocated by the creator of hit Broadway musical *Hamilton*, Lin-Manuel Miranda, who now famously told the New York Times that: "You shouldn't have to fight robots just to see something you love."⁷

UK government steps up fight against bots

So it was welcome news earlier this year when the UK government notified the European Commission of its plan to introduce The Breaching Limits on Ticket Sales Regulations 2017 under section 106 of the Digital Economy Act 2017.⁸ This will make it a criminal offence to use bots to override any limits

¹ <https://www.economist.com/news/united-states/21713869-2016-bots-tried-buy-5bn-tickets-or-10000-minute-ticketmasters-website>.

² <https://www.theguardian.com/money/2016/may/21/ticket-touts-powerful-software-assist-widely-available>.

³ <http://www.ticketmaster.co.uk/verified-fan>.

⁴ <https://www.theguardian.com/money/2018/jan/20/tickets-ticketmaster-facebook-twitter-verified-fan>.

⁵ <https://www.thetimes.co.uk/article/elton-fans-sacrifice-data-in-anti-tout-test-j0zq652cf>.

⁶ <https://www.nytimes.com/2016/12/08/business/media/ticket-scalping-bots-act.html>.

⁷ <https://www.nytimes.com/2016/06/07/opinion/stop-the-bots-from-killing-broadway.html>.

⁸ <https://www.gov.uk/government/news/2018-to-be-a-great-year-for-music-and-sport-fans-as-government-bans-the-ticket-tout-bots>.

put on the number of tickets that a single purchaser can buy for a recreational, sporting or cultural event in the UK. In England and Wales, those who break the law will face an unlimited fine.

The way in which the ticketing market operates is intricately linked to technology and, as technology evolves, it may be necessary for the government to revisit the details of the offence, how it can be committed, and what it comprises. By using regulations, the government can in theory amend the provisions to keep pace with technological developments and ensure that the behaviour at which the measure is directed continues to be targeted effectively.

Fairness and transparency for consumers

There is clearly an appetite for the secondary ticket market, and the ability to resell tickets can be positive for both consumers and the entertainment industry. Yet, as Matt Hancock, who is now the Secretary of State for Digital, Culture, Media and Sport, commented to the NME in January: “What we need is a secondary market that is fair – not skewed.”⁹

There is ever-increasing pressure on the secondary market to shape up. The Competition and Markets Authority announced on 27 November 2017 that, following a “thorough investigation into the sector”, it had identified “widespread concerns about the information people are given” when buying tickets and gathered evidence that it considers “reveal breaches of the law”.¹⁰ The CMA has said, in no uncertain terms, that it will be taking enforcement action against secondary ticket websites suspected of breaking consumer protection law.

The CMA has also broadened the scope of its investigation and will now be considering additional issues, including speculative selling (where businesses advertise tickets for sale that they have not yet acquired and so may not be able to supply), pressure selling (where claims about the availability and popularity of tickets create a misleading impression), and concerns about whether organisers for some events have sold tickets straight to the secondary market without making this clear to purchasers.

Although some sites have made changes since the CMA opened its investigation, the CMA ultimately expects all secondary sites to ensure that customers are fully briefed about the tickets they are buying by: (a) making it clear whether there are any restrictions on using a resold ticket that might cause the holder to be refused admittance to an event; (b) who the seller is; and (c) where exactly in the venue they will be seated.

The CMA investigation is bolstered by new government guidance on the Consumer Rights Act 2015, which was issued in February 2018 and is specifically aimed at secondary ticketing businesses.¹¹ The guidance explains clearly that ticket resellers must provide additional detailed information about the tickets, including identifying the seat, disclosing any restrictions that affect the ticket (such as age restrictions), specifying the face value of the ticket, and notifying the consumer if the seller has a relationship with the ticketing website or promoter. With effect from 6 April 2018, resellers will also need to provide the buyer with the unique ticket number (if available), which will further help to identify the specific area or seat to which the ticket gives access.

⁹ <http://www.nme.com/news/music/ticket-touts-bots-now-illegal-uk-2202748>.

¹⁰ <https://www.gov.uk/government/news/cma-to-take-enforcement-action-on-secondary-ticketing-sites>.

¹¹ <https://www.businesscompanion.info/sites/default/files/CRA-Secondary-Ticketing-Guidance-for-Business-Feb-2018.pdf>.

Advertising industry gets tough

Aside from specific information about the actual tickets, the advertising of tickets and ticket services is coming under greater scrutiny as well. Running alongside the CMA's enforcement action against secondary ticketing websites, the Advertising Standards Agency is also investigating whether secondary ticketing websites have broken advertising rules.¹²

In January 2018, Ticketmaster was reprimanded by the ASA for misleading consumers with claims that its Platinum product – a dynamic pricing service that offers fans tickets direct from the artist with prices adjusted according to supply and demand at the time of purchase – offered the “best available tickets”.¹³ The ASA considered that consumers were likely to interpret the “best available” claims to mean that those tickets were better than any other available tickets, rather than, as Ticketmaster argued, the best available at the time when the booking was made.

But there was no “tangible benefit” compared with some of the general seating tickets, and the experience offered by the Platinum tickets was “no better than the experience offered by some of the general tickets”. Consequently, the ASA held that the Platinum advertisement breached CAP Code rules 3.1 (misleading advertising) and 3.7 (substantiation). Ticketmaster has duly moved away from referring to these tickets as the “best”, now describing them as “in-demand tickets” instead, a move welcomed by the ASA.

Google has also recently updated its global advertising policy to require that, before ticket resellers can advertise through Adwords, they must be certified by Google.¹⁴ It is hoped that this “should make it easier for consumers to find tickets on the primary market”. Additionally, from March 2018, Google will require ticket resellers to post the face value of the tickets along with the reseller's price in the same currency.

Producers and artists continue to drive changes

Hamilton's West End producer, Cameron Mackintosh, has combatted touts by capping the number of tickets per purchase alongside a paperless ticketing system whereby ticket buyers do not receive a physical ticket. The buyer must produce ID along with the bank card used for the booking in order to collect the tickets from the venue on the evening of the performance. All ticket holders must be present with the lead buyer and enter at the same time as a group. The strategy has been largely successful, and the concerns about long queues unfounded.¹⁵

A spokesperson for Delfont Mackintosh Theatres told the Observer: “Of the four principal unauthorised online secondary ticketing sites such as Viagogo, three are not carrying, nor advertising, any *Hamilton* tickets.”¹⁶ In the same article, security consultant and ticketing expert Reg Walker, of the Iridium Consultancy, said: “*Hamilton* have done an amazing job in disrupting the touting of tickets for their shows. Some touts have listed tickets on Viagogo, and any purchasers will have to meet them at the theatre in order to be walked in. I believe theatre staff have been trained to spot this, and it is likely that test purchases will further disrupt this activity.”

¹² <https://www.gov.uk/government/news/new-rules-introduced-to-protect-consumers-against-ticket-touting>.

¹³ <https://www.asa.org.uk/rulings/ticketmaster-uk-ltd-a17-378277.html>.

¹⁴ <https://support.google.com/adwordspolicy/answer/7577287?hl=en-GB>.

¹⁵ <https://www.thestage.co.uk/news/2017/hamilton-producers-claim-paperless-ticketing-system-has-all-but-eliminated-touts/>.

¹⁶ <https://www.theguardian.com/stage/2017/dec/10/hamilton-west-west-end-war-with-ticket-touts-prices-soar>.

Twickets, the largest fan-to-fan secure ticketing trading platform, continues to offer artists the opportunity to regulate how tickets to their shows are bought and resold, partnering with some of 2018's biggest touring acts, including Ed Sheeran and the Foo Fighters.¹⁷ There is a sense that industry-led strategies like this to combat exploitative activities in the secondary ticket market are gaining real momentum. Adam Webb, campaign manager for FanFair Alliance, commented recently that "it's becoming common practice for artists to implement anti-touting strategies", but he noted that while "this is hugely encouraging ... there remains a deep-rooted resistance from some parts of the live business that needs to be overcome".¹⁸

Comment

While a combination of industry-led initiatives, technological solutions and government support has managed to stem the flood of overpriced secondary tickets, there is still more to be done to safeguard consumers and the events industry from exploitative activities in the ticketing market. Providing clear information to fans on where to buy legitimate tickets and educating them on the dangers of getting ripped off on the secondary market will remain at the forefront of the battle against touts.

Yet given the nature of the technology and the potential financial gains involved, there will always be someone developing a surreptitious work-around with the ability to operate from anywhere in the world. That game of whack-a-mole will undoubtedly continue, but Delfont Mackintosh (among others), continue to demonstrate that, despite the technical and legislative challenges, the entertainment industry can in fact maintain control of the sale of tickets, as well as keeping the touts at bay and the punters happy. Whether individual producers choose to do so is another matter.

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¹⁷ <https://www.twickets.live/about-us>.

¹⁸ <http://fanfairalliance.org/ticked-off-new-research-consumer-attitudes-secondary-ticketing/>.