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Going spare? Concert tickets, touting and cultural value

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This article explores recent events around the secondary market for concert tickets in the UK. It first outlines the nature of the primary and secondary markets for concert tickets and then the story of attempts in the UK to regulate them over a twenty-year period, providing the political and industrial context. It moves on to examine key aspects of the political debates around tickets and the findings of enquiries into the subject – including the rhetoric around ‘real fans’ – and discusses the gradual dilution of legislative proposals (from an outright ban, to a cap, to mandating transparency) and legitimisation of the secondary market. We then discuss the broader ramifications of the secondary ticket market for access to cultural events and suggest that those who wish to mobilise against the secondary market could gain much by looking beyond the market value of tickets towards ideas of cultural value which have hitherto played little part in the debate.

Keywords: concert ticket; secondary market; regulation; touting; cultural value

Introduction

In March 2017 leading concert promoter Stuart Galbraith appeared before the UK Parliament’s Culture, Media and Sport Committee (CMSC) and told them that ‘we have lost control of our own industry’ (CMSC 2017, Q. 274). He was referring to the fact that as a concert promoter he could not retain control of who resold tickets to events that he had organised. Galbraith’s appearance before the Committee was merely the latest action in an array of activity spanning twenty years around what has become known as “the secondary market” or, frequently, by the less complimentary label of “touting”. These years witnessed the issue of the selling-on of tickets for sporting matches, concerts and other events attract widespread political and media interest. For example, in 2015 clauses were inserted into what became the Consumer Rights Act stipulating the information that sellers on the secondary market must supply. Likewise, in 2016 there

was a government-funded independent enquiry (Waterson 2016) and another enquiry from within Parliament (CMSC 2016), while in 2017 the focus on touting resulted in changes to the law via the Digital Economy Act. In this article we trace the development of this interest, outline its political and industrial context, highlight some characteristics of the debate and provide some thoughts on how those concerned about the secondary market might proceed.

Part 1: Live music and secondary ticketing

In 2008 the economic value of live music in the UK exceeded that of recorded music for the first time in living memory (Page 2009). Since then the gap between them has grown (UK Music 2016) and in 2016 the difference in gross value added was estimated to be £340M (UK Music 2017, 11). There are nuances to this relationship, not least in the changes wrought to the recorded music sector through often illegal peer-to-peer services that circumvented rights-holders, then i-tunes and, latterly, streaming services. The situation for recorded music is complex, with a lower bar to entry for production (Prior 2010, 402-403), a concomitant increase in workplace precarity (Watson 2016, 12) and surrounding concern about artists' remuneration (Marshall 2015). However, the broader industrial context is that while music fans are spending less on recorded music, they are willing to spend more and more on live music. Ticket prices, anyway, far outstrip overall inflation (Towse 2013, 319; Frith 2015, 269; Curran 2016) and the rhetoric around the value of live music echoes across the music industries (see Cloonan 2012). In short people are seemingly willing to pay considerable sums of money to see live music and in such a context a secondary market for concert tickets is likely to thrive.

To show the importance of the secondary market a short diversion is necessary

to explain how the live music market works. In simplified form, artists above a certain level of economic activity generally employ agents who help them determine which gigs they will play. Such agents get contacted by concert promoters who wish to engage their artists to perform shows. If a deal is agreed, the promoter will arrange the hire of the venues and work with the agent to construct a tour. Promoters often use third parties – such as venue box offices – or a primary ticket agent – like Ticketmaster (TM, the largest such business) – to sell and distribute tickets, commonly online. Using such outlets is often necessary for promoters, who may have several events taking place across, and beyond, their home country with various box office arrangements to manage and they generally lack the facilities to undertake their own large scale ticketing operations.

The subsequent selling of tickets can be categorised as falling into two stages, encompassing the primary and secondary markets. In brief, the primary market consists of tickets for events sold by either the event organisers themselves or their designated agents. The re-sale of tickets after their initial release, usually for profit, is the secondary market, or “touting” to give its more vernacular, often derogatory, label. In simple economic terms a secondary market arises because the primary one has not satiated demand, sometimes because the product has been under-priced in market terms. We return to such concerns below.

Meanwhile touting has a long history, traditionally associated with shady figures operating outside venues. Leakage between the primary sellers and the touts has a similarly long lineage. Controversy surrounding ticketing practices goes back to at least the eighteenth century when impresarios complained of booksellers profiting from selling on single event tickets from seasonal subscriptions (McVeigh 2006, 19). In interview artist manager, and former chair of the Music Managers Forum, Peter Jenner

said, ‘they’ve *always* been doing that’ and spoke of top promoters, going back to the 1960s passing tickets to family members to tout, or rows of seats being ‘taken off of the plan’¹ (2008, emphasis Jenner), while veteran promoter Harold Davison (2010) reported problems with touts in the 1950s. But through the combination of electronic purchase of tickets online and particularly since the rise of e-bay and other reselling sites, alongside the movement of e-commerce into the home, the practice has become scaled-up, normalised and internationalised. It should be noted that while not immune from touting, ‘grassroots’ venues are less likely to be overly concerned with it since reselling mainly affects the limited availability of tickets for bigger acts in larger capacity venues. The reality behind the term ‘grassroots’ is also somewhat complex and, as with ‘major’ and ‘independent’ record labels, integration in the industry means that there are multiple nuances as major companies have a stake in ostensibly independent venues. It remains the case, however, that touting generally has a smaller effect at the ‘grassroots’. There is also, in fact, some scope for smaller venues and companies to benefit from internet technology since cheaper data processing and technical services afford the possibility of running their own ticketing, keeping transaction charges, and databases of fan information for use in local marketing (Johansson et al, 123-4).

Across venues types, however, both primary and secondary ticketing now operate mainly via the internet. While the digital age of music has also witnessed an apparent “boom” in live music², it should be acknowledged that the internet has had important implications for traditional business practices in the live music sector which have received much less attention than those surrounding recorded music. Differences between the two sectors make direct comparisons difficult, yet we would contend that the internet has also affected the live sector significantly. Promotional practices are now

increasingly centred around social media, for instance. Likewise, tactics such as Taylor Swift's 'Verified Fan' initiative (Hann 2017), which rewards purchases of recordings or merchandise with a preferential place in the online queue for tickets, illustrate the increasing convergence of marketing and sales across sectors, partly driven by changes to the way that tickets are exchanged, especially at the upper end of the market. Moreover, as we shall see, the status of tickets brought in to question the very nature of a key component of neoclassical economy theory – property.

Our focus here is primarily the UK. However, this immediately requires addressing two important contextual issues. The first is that it is hard to unravel the UK live music sector from the international framework in which it sits, especially regarding commercially successful, large scale touring acts (precisely those whose tickets are in high demand and likely to end up on the secondary market). The key actor for an individual event is the aforementioned promoter – the person or company who organises the concert by booking the artist and the venue. A major tour may involve numerous promoters in numerous cities across various national boundaries. On the face of it, the bulk of the commercial risk rests with the promoter (Cloonan 2012) and it is the promoter who will ultimately, depending on fee negotiations with artists and venue, set a price.

Artists may deal with several promoters over the course of a tour (although some tours may involve exclusive arrangements). Meanwhile major promoters may be working with many artists in various countries at any one time. Ticketing agents are the primary point of contact for customers - and a means of rationalising the process for all concerned - for musical, theatrical and sporting events alike. However, the business of concert promotion in particular has seen greater integration since the 1990s, with a smaller number of multinational players owning stakes in both venues and promotional

companies internationally. For example, US-based Live Nation is arguably the world's largest music company and has a significant stake in UK venues and promoters (Behr *et al* 2016, 10), alongside other companies like AEG, within a market which is increasingly oligopolistic, especially at the upper end. Additionally, Live Nation also acts in other areas of the music industries including artist management, agencies and record companies. We return to its importance later.

Further complications arise from the fact that this integrative trend is extended beyond promotions into the ticketing companies themselves, notably by the merger in 2010 of Live Nation with Ticketmaster, which overcame some regulatory hurdles and associated controversy in both the U.K and U.S (Street 2012, 581–583), thus illustrating the fundamentally transnational aspects of the live music sector. This also leads onto the second key contextual factor, namely, the entanglement of the primary and secondary markets.

In his independent report on the secondary market, Mike Waterson noted that it is impossible to understand that market without understanding the primary market from which it emerges (Waterson 2016, 7). This is perhaps best exemplified via a brief discussion of Ticketmaster, the world's largest such retailer.³ This primary agent was initially highly critical of the secondary market. A memorandum submitted to the UK Parliament's Culture Media and Sport Committee (CMSC) in 2007 called touting 'wrong in principle' and stated that '[t]he *unauthorised* resale of tickets for profit does not promote fair and equitable distribution of tickets, and drains tickets away from the primary market, thus restricting the opportunity for *genuine* fans to purchase them legitimately' (CMSC 2008, Ev. 29, emphasis ours). It also called for the CMSC to recommend 'strongly that the Government act to make the *unauthorised* resale of all event tickets, at higher than face value, a criminal offence through primary legislation'

(ibid., Ev. 32, emphasis ours). As will become, clear the word “unauthorised” took on greater importance as the story progressed.

Initially it appeared as if Ticketmaster was performing something of a *volte-face* in 2008 when it purchased the ticket reselling website GetMeIn, arguing that this would bring reliability and security to the resale market. Its then MD, Chris Edmonds, referred to a ‘responsibility upon us to offer a trusted resale and exchange service, which offers consumers choice, flexibility and, most importantly, increased protection’ (Edmonds 2008). However, in the longer term it became apparent that Ticketmaster was never opposed to the secondary market *per se*, just its “unauthorised” sections.

Meanwhile Ticketmaster’s claim to be bringing legitimacy to the secondary market merely served to highlight how much such legitimacy was needed. One example of this came in 2012 when the Channel 4 documentary series *Dispatches* aired an episode – ‘The Great Ticket Scandal’ – alleging that two secondary sites which ostensibly existed for fans to exchange tickets – Viagogo and Seatwave – were actually engaged in industrial scale ticket purchases specifically for the purpose of reselling at large mark-ups. Furthermore, the programme claimed that some promoters were selling directly to these sites, cutting out the primary market and effectively forcing fans to pay sums vastly above face value for tickets. Aside from the moral implications of this, and the controversy surrounding the documentary (Channel 4 2013), this is significant since it illustrates both the internecine nature of ticketing as a whole and, accordingly, the difficulty in discussing the secondary market without assessing its relationship to the primary.

The secondary market in concert tickets can be seen as partly resulting from the peculiar nature of the live music sector. One issue here is how prices are set in the first place. This often seems to be a somewhat inexact science. For example, Geoff Ellis,

promoter of numerous stadium and arena gigs, said that when setting prices, he generally charged what he thought comparable gigs were costing (Ellis 2011). Veteran promoter John Giddings also suggested that the existence of the secondary market was evidence that ‘we haven’t charged enough for our tickets’ (Giddings 2010). The equation of how many fans will pay what amount of money for a given show is complicated, especially if the venue has several price points and if the artist’s team is successful in hyping up the event. Ticket sales, and the cachet of a ‘sold out’ event, feed into an artist’s status with a reputational advantage to being an “in demand” act, and financial gain from the perception that fans should act fast to access tickets in scarce supply. Additionally, some acts wish to price tickets *below* what the market might bear to be seen as being fair to fans. Bruce Springsteen is a high profile example of this (Street 2013, 295). Furthermore, some promoters claim to charge below the market rate for newer acts in order to develop a longer-term fan base. While it is, of course, possible to treat such claims with some scepticism, evidence of these practices has been found in official reports (CMSC 2008, 13, 38; Waterson, 77).

Meanwhile one new aspect of the online world was a vastly increased scale of secondary market activity. This was heightened still further by the development of software tools, known as bots, which potentially allow touts to harvest thousands of tickets as soon as they go on sale. Waterson also found two additional things that pertain here. The first is that official ticket release times to the general public are often inconvenient for large numbers of fans. The second is that various deals done with sponsors mean that at the time of tickets *officially* going on sale around 40% of tickets will already have been sold. Sometimes (in the USA) this figure can be as much as 85-90% of the overall ticket inventory (Waterson 2016, 77). Consequently, Waterson (ibid.) called for greater transparency from *primary* agents.

Having explained the growing economic importance of the live market and some of the complexities of its mechanics, we now turn towards the policy context and an overview of attempts to regulate ticketing.

Part 2: The policy context

A handy starting-point for consideration of the secondary ticket market is the Labour Party's 1997 policy document – *Labour's Sporting Nation*. This proclaimed that 'we will legislate against ticket touting' (Labour Party 1997, 4). While the focus here was sport, ticket touting *per se* was in the Party's sights. However, nothing came of this. Importantly, under current UK legislation the unauthorised resale of tickets for entertainment events is only illegal in the case of most professional football matches where the 1994 Criminal Justice and Public Order Act outlawed the practice following concerns about violent disorder if rival fans were allowed to mix freely. In addition the unauthorised resale of tickets for the London 2012 Olympics was illegal under the 2006 London Olympics and Paralympic Games Act, the International Olympic Committee requiring such restrictions as a condition of the UK being granted the event. Other than this, reselling of tickets is perfectly legal provided that various consumer and trading laws are respected (Waterson 2016, 55).

The next political development came in 2005 when, following several complaints about secondary trading, the Office of Fair Trading (OFT) published the results of its enquiry into the UK's ticket agents. The background to this was a massive growth in the live sector in general – the report noted an increase in turnover of 150% for primary tickets agents between 1999 and 2003 (OFT 2005, 1). It also noted growing concern about the secondary market, which had accounted for half of all complaints about tickets submitted to the Trading Standards Department and 75% of those

submitted to the OFT (ibid., 3). Nevertheless the report concluded that: ‘Secondary agents can provide a useful function and benefit to consumers. Their existence arises in particular because, for some events or individual performances ... the actual demand for tickets turns out to be greater than expected’ (ibid., 73). While it saw evidence of fraudulent activity, this was found to be in contravention of *existing* laws (ibid., 80). It thus did not recommend further legislation, but more stringent enforcement of those existing laws.

However, the scale of the secondary market and the size of the mark-ups therein continued to attract media attention. Meanwhile some concert promoters, deeply unhappy about the expansion of the secondary market, made accusations of unethical behaviour at fans’ expense by third parties who benefitted from promoters’ own risk while putting nothing back into the industry (CMSC 2008, Ev. 17). Such concerns attracted some political attention. The UK Government of the time was reorienting its priorities from ‘cultural’ to ‘creative industries’ policy (Behr 2015) and sought closer relationships with the music industries (Cloonan 2007). Feeling compelled to respond, it met representatives from events organisers and ticket sellers in December 2005. Three further meetings – dubbed “touts summits” by the press – followed (CMSC 2008, Ev. 71). In July 2006 the Minister for Culture, Media and Sport, Tessa Jowell, said that she was giving the ticket industry a year to sort itself out or face legislation (DCMS 2006). After the last “summit” the following February she said that: ‘Exploitation and excessive profiteering by touts puts tickets out of the reach of real fans – it is a corrosive force in entertainment. We are determined to protect consumers against this’ (DCMS 2007).

Political interest was also evident in Parliament, where the cross-party Culture, Media and Sport Committee launched an inquiry into what it explicitly labelled as

‘touting’. This took evidence from across the sector and witnessed vehement denunciations of touts from members of the Concert Promoters Association (CPA) and equally strenuous support of the secondary market from re-sellers such as Viagogo and e-Bay. Ultimately the Committee was not convinced that new legislation was necessary. Here it was partly hindered by the legal ambiguity of the terms and conditions attached to tickets in the primary market. Such conditions are routinely included by promoters, but appear to have little concrete legal grounding in a situation described by Waterson (2016, 102) as one where ‘there is too much conjecture and not enough guidance’. The fact that terms of sale – and, indeed, the very status of a ticket itself – have yet to be subject to case law (ibid., 50) allowed re-sellers to argue that tickets are transferrable property.

Concert promoters disagreed, arguing that tickets remained their property even once sold and that all that the purchaser had bought was a set of entitlements that included entry to the event, subject to certain conditions. One right which was often specifically *excluded* was that of selling the ticket on to a third party. This was held by promoters to invalidate the ticket. Seeing themselves as the owners of the tickets, promoters argued that they could set limits to what could and could not be done with them. The CPA contended that the ticket was simply ‘a licence to enter [a] performance on private property’ (CMSC 2008: Ev 18). Thus, for the CPA, when a ticket was in the purchaser’s hand, this signified that the holder had a certain level of rights, *not* that it was the buyer’s property. If such notions seem far-fetched it should also be noted that they have some longevity. For example, in 2017 Ticketmaster’s website still proclaimed that: ‘Any ticket you purchase from us remains the property of the Event Partner and is a personal revocable licence which may be withdrawn and admission refused at any time’ (Ticketmaster nd.) and many sporting bodies still maintain that a ticket is indeed a

revocable licence (Waterson 2016, 98-99). Ticketmaster's proclamations above should be seen in the light of the fact that it owns the GetMeIn and Seatwave reselling sites. But what was at stake here was the status of a ticket as *property* and this helps to illustrate the questions this issue raises in terms of economic theory.

In 2008 the Committee ultimately baulked at legislating against the secondary market arguing that:

Any attempt to ban the secondary market outright would also be a very serious step in that it would criminalise what has been a perfectly lawful activity, which is evidently valued and freely made use of by many consumers, in order to support the industries' endeavours to target particular audiences. We do not consider that it would be either practicable or right to do so (CMSC 2008, 4).

It recommended investigating the potential for 'voluntary agreements' (ibid., 35) with 'regulatory intervention [to] be considered only as a very last resort' (ibid., 40). The then (Labour) government's response was a press notice calling for a voluntary agreement from secondary agents that tickets for major sporting events - dubbed "the Crown Jewels" (ibid, Ev. 27) - would not be put on sale and a new code of practice to be developed by the Society of Ticket Agents and Retailers (Ward 2010, 13).

In February 2009 the Government announced a consultation on the secondary market in tickets for concerts and sporting events. This Department of Culture, Media and Sport enquiry (DCMS 2009) was followed by a Government response proposing further consultation, codes of best practice and better information and service, stating that 'the industry itself is best placed ... to provide day-to-day consumer information' (DCMS 2010,17). The Government also maintained its longstanding position of supporting self-regulation, stating that: 'the best way forward is to encourage a strong,

self-regulated primary market, but one which recognises the need for a healthy and safe secondary market' (ibid., 4).

Meanwhile that market had been developing briskly as – having failed to get the legislation they wanted – promoters and primary sellers moved to protect their commercial interests. This was most dramatically evidenced by Ticketmaster's aforementioned purchase of GetMeIn in 2008 and subsequent merger with Live Nation in a deal which was eventually approved by the UK's Competition Commission in December 2009. Meanwhile support for new legislation came from music industries' personnel under the heading 'Ticket Touting Campaign' (CMSC 2008, Ev. 123-125). which noted risks to 'young, enthusiastic sport and music lovers' (ibid, Ev. 123) and called for 'legislation to outlaw ticket touting' (ibid.). It also came from the author of *Labour's Sporting Nation*, Lord Tom Pendry, who wrote that: 'The support for outlawing all ticket touting is there, the legislation is there, now is the time to strengthen the current powers and stamp out this illegal trade once and for all' (ibid., Ev. 120). The All Party Parliamentary Group on Music also endorsed the introduction of new legislation (ibid., Ev. 110-114).

However the general picture was one of less distinction between the primary and secondary markets and of diminishing legislative hurdles for reselling music tickets. By 2010, with an outright ban on the secondary market off the political menu, Labour MP Sharon Hodgson launched a Private Member's Bill, the Sale of Tickets (Sporting and Cultural Events) Bill. This aimed to cap the mark-up on resales at 10%. Hodgson said that she wanted to 'take the money out of it' (Live Music Exchange Newcastle 2016, 32mins 44sec) as a disincentive to touts. The Bill was filibustered by Conservative backbenchers in January in 2011 and fell there. But it is worth noting that it did *not* explicitly oppose the secondary market in principle, concentrating instead on excessive

profiteering. This was symptomatic of a wider trend whereby the problems of the secondary market were cast as being more about regulation than whether such markets had a legitimate role to play in the provision of cultural goods. The question increasingly came to focus on regulation and *authorised* resale.

Political circles were also keenly aware that technology was changing the face of ticketing. One key development here was the aforementioned bots/botnets which allow touts to buy hundreds of tickets the instant they go on sale online and then to immediately place them onto the secondary market – often at several times the face value of the ticket - while simultaneously subverting limits which events organisers put on the amount of tickets an individual is allowed to buy. These featured alongside the use of stacks of credit cards in the *Dispatches* documentary, illustrating the tactics used to scoop up face value tickets for re-sale at swingeing prices. All this elicited further political concern that the scale of the secondary market was locking fans out of access to events.

Such concern coincided with high profile debates around tickets for the 2012 London Olympics. The Metropolitan Police’s Operation Podium, which monitored tickets during the event, released a report on ticket crime in February 2013. This, again, flagged up the scale of the secondary market (£1billion) arguing that: ‘The lack of legislation outlawing the *unauthorised* resale of tickets and the absence of regulation of the primary and secondary ticket market encourages unscrupulous practices’ (Metropolitan Police 2013, 3, emphasis ours). Once more, the concentration was on unauthorised resale, rather than reselling itself. However, the fact that the International Olympic Committee’s demand for banning the resale of tickets was met, alongside a ban on reselling football tickets, illustrated that it *is* possible to legislate in the area – that is to limit or even prohibit a secondary market,⁴ albeit that this might have a range

of practical implications.

In 2013 an All Party Parliamentary Group (APPG) on Ticket Abuse was formed under the co-chairs Hodgson and Tory MP Mike Weatherley, the latter subsequently being replaced by Tory peer Lord Colin Moynihan. The Group aimed to pursue ‘on a cross-party basis... action to reform the secondary ticketing market in the interests of consumers and rights holders, particularly by increasing the transparency of ticket supply’ (APPG 2014, 2). Having conducted its own short investigation of the market, the Group decided to piggy-back its call for transparency onto the Consumer Rights Bill which was then moving through Parliament. It called for amendments to the Bill to ‘ensure that all relevant information about a ticket sold on a secondary platform, including on the individual selling them, is available to consumers [and] that secondary platforms should make clear at every stage of the purchasing process where tickets are being resold in contravention of the terms and conditions stated on them’ (ibid., 5).

It warrants mention that, again, this is a tacit approval of the secondary market since it implies that as long as it is transparent, it is legitimate. This is somewhat removed from Pendry’s 1997 quest (repeated ten years later) to legislate against touts. While the initial tranche of provisions in the clause inserted into the Bill by the House of Lords in 2014 was rejected by the government in January 2015, backing for changes to the secondary market had started to reach a tipping point with support coming from ever higher-profile music industry personnel. Prominent acts such as Iron Maiden threw their weight behind the Put Fans First campaign (Malt 2015). They were amongst a host of signatories from the music and sport worlds to an open letter calling for greater transparency (Merrick 2015). Once again the secondary market *itself* was no longer the target, but its machinations and excesses.

Following further political wrangling, a clause inserted by Moynihan in the House of Lords was accepted by the Government and formed part of the 2015 Consumer Rights Act (CRA). This required sellers in the online secondary market to provide details about the tickets including: the location of seats, any restrictions which might apply to their usage, face value and any links which the seller had with the event organiser (UK Parliament 2015, Chapter 5).

The Act also mandated the DCMS and Department of Business, Innovation and Skills (BIS)⁵ to commission an independent review of ‘Consumer Protection Measures related to Online Secondary Ticketing Platforms’. Chaired by economist Professor Mike Waterson, the review published its report in May 2016. Waterson also did not see the need for further regulation although he called for a review of compliance with the CRA (carried out by the Competition and Markets Authority from December 2016 – www.gov.uk/cma-cases/secondary-ticketing-websites), actions to ensure enforcement, the possibility of licensing secondary sellers and reform of information provided by primary sellers. He believed that a new law on bots was unnecessary, suggesting that their use might contravene existing legislation and calling for clarification of this question (Waterson 2016, 45-47). As noted above, another key finding was that many tickets had already been sold by the time official general sales began. This was perhaps the most problematic aspect of the primary market and clearly troubled Waterson. However, rather than proposing further legislation, he recommended tighter enforcement of existing laws and greater transparency in both markets. The Government accepted his recommendations in March 2017 (HM Government 2017a) and we examine some of the issues raised in, and by, the review in part three below.

The CMSC returned to the issue in November 2016 and held two public hearings on ticket abuse before its work was derailed by the announcement of the 2017

general election. At the first hearing, in November, MPs questioned Ticketmaster about its ownership of GetMeIn which, as noted above, resells tickets in contravention of TM's *own* terms and conditions. The second, in March, was notable not only for Galbraith's evidence, but also that of Ed Sheeran's manager, Stuart Camp and especially for the fact that leading touting firm Viagogo refused to appear.⁶ In the March 2017 budget it was announced that the Government was taking action against 'unexpected fees' (HM Government 2017b), suggesting that local Trading Standards Authorities would get more money to help them enforce the Consumer Rights Act.⁷

A final political twist to the story prior to the June 2017 general election came in April with the passing of the Digital Economy Act. This included provisions - again arising from the House of Lords - that required further information to be given about tickets and empowered the Minister to outlaw the use of bots (UK Parliament 2017, Part 6, Section 106). While this was certainly a move against touts, the general picture is one whereby at each attempt to deal with the secondary market for tickets, the proposed legislative bar has been lowered – from an outright ban (Pendry), to a financial cap (Hodgson) to transparency (the CRA). Certainly, there was no outright restriction on re-selling tickets at hugely inflated prices, simply the provision of more information for purchasers. Overall, the political journey over twenty years was away from banning touts towards regulating them. However, there are certain other dimensions to these events that warrant closer examination.

Part 3: Characteristics of the debate.

In this section we highlight some features of the debate around touting. These are technology, the rhetoric of "real" fans, the issue of "unauthorised" reselling, what fans actually think and the growing respectability of touting.

In terms of technology, like much commerce, the internet has transformed touting. Initially, promoters railed against so-called “bedroom touts”, individuals who would buy more tickets than they wanted for a gig to sell them on – often in contravention of promoters’ terms and conditions as printed on the tickets. The latest technological fear was bots. In March 2017 the UK Government announced that it planned to introduce legislation which could outlaw their use, justifying this action on the basis that it was trying to protect “real fans” from being ripped off by unscrupulous businessmen. Thus Minister for Digital and Culture, Matt Hancock, said:

It’s unacceptable that touts are misusing technology to bypass security measures and buy up vast numbers of tickets before real fans get the chance, only to sell them on at rip-off prices (BBC 2017)

The fact that this law was passed shows that not all of Waterson’s views were accepted by the Government. His report, though noting the problem of bots, was equivocal about new legislation, observing that some uses of bots to obtain unauthorised access to ticketing platforms might already be proscribed by the Computer Misuse Act 1990 and calling on primary sellers to be vigilant and co-operate with police (Waterson, 19). He also acknowledged that ‘use of bots and botnets is not necessarily malevolent’ (ibid, 23), and called for clarification of their uses under existing law (ibid, 69). Waterson’s qualms at sweeping new legislation over bots speaks to their widespread use across the financial sector, the legal profession and in heavy industry (Hill 2017). An outright ban could have broad implications. Nevertheless, in early 2018 a ban, at least in regard to ticketing, was introduced (Hanley 2018) and while on the surface their criminalisation might be a strange move for a free market inclined government to take it is pertinent to ask why such a government should be opposed to someone seeking to gain a market advantage by using technology. It is here that the rhetoric of “real fans” comes in to

play.

Time and again throughout the debate on the secondary market, the idea of the “real fan” has been mobilised. Labour Minister of Culture Tessa Jowell spoke of ‘exploitation and excessive profiteering by touts [putting] tickets out of the reach of real fans’ (DCMS 2007) and Conservative MP Nigel Adams, who has also campaigned on the issue, referred to ensuring ‘that genuine fans are not fleeced by ticket touts and rogues’ (Davies 2017b). Similarly, the CPA argued that touting ‘prices real music fans out of being able to attend their favourite performances’ (CMSC 2008: Ev. 16) and Ticketmaster stated that ‘[w]e work tirelessly in partnership with artists to get tickets in to the hands of real, verified fans’ (Koebler 2017). In addition Viagogo proclaimed on its website that it was providing ‘real tickets for real fans’ (Viagogo/Web Archive 2008).

The idea of “real fans” has widespread support in political and business circles. Politically it has obvious cachet as it speaks of the average person being ripped off by faceless scammers who exploit fans’ love of music or sport. But the notion of the “real fan” is problematic. In part this is because the concept of “fandom” itself is contested territory. While many accounts celebrate the creativity of fans (e.g Duffett 2013a, 2013b), others associate fandom with the potential for exploitation, manipulation and commodification (Thrift 2006; Stanfill and Condis 2014). It may also raise challenges for notions of the rational consumer as it is at least possible that fandom is a largely *irrational* activity. If neoliberal economics is underpinned by ideas of rational choice, then what about choices which are, in economic terms, irrational? It is also important to note that the notion of a *real* fan suggests that this relationship *is* something which goes beyond the purely economic.

The question also arises of who such people are. Having highlighted the number of tickets already sold (Waterson 2016, 17) by the time of *official* sales starting, Waterson called for greater transparency from *primary* agents about what percentage of tickets actually go on “general sale” (ibid., 77 and 94). Here it would be reasonable to question whether such large amounts of presales benefit “real fans”, or whether they serve the interests of a mixture of corporate sponsors (who generally lack an appreciation of the artists), others with the right credit card and those richer fans who can afford to buy the various expensive packages which promoters and acts now routinely offer. As Waterson suggested, here it could be that it is the *primary* market which hits “real fans” so that if any government *really* wants to protect *real* fans then it has to intervene in the primary as well as the secondary market. If “real fans” are not simply those willing to pay most, then limiting presales could be in their interest. This moves beyond regulation to intervention.

It is important to recognise that the political and business rhetoric around the secondary market for tickets has moved from banning resale to banning *unauthorised* resale. Vertical integrations within the live music industry are potentially important here. If, as in the case of Live Nation Entertainment, parts of the same company that is promoting the show are also selling tickets on the primary market *and* own a reselling site, then such authorisation might be relatively easy to arrange. Here there is a clear pathway from promoter to primary seller and on to the secondary market – with the same company gaining financially at each stage. It is unsurprising, then, that the CMSC questioned TM’s relationship with GetMeIn. The fact that leading sporting organisations now often have official resellers⁸ muddies the water still further. So now it is not touting *per se* which is frowned upon, but touting without the authorisation of events organisers. Indeed it appears that for some analysts it is being *unauthorised*

which defines someone as being a tout rather than a “secondary agent”, with the *Guardian* asking ‘Do secondary sites try to stop touts’ (Davies 2017a) and clearly distinguishing between secondary sites and touts (Davies 2017b).

As for the “real fans”, it is clear that ‘tout’ is a derogatory term and the use of ‘secondary ticketing’ instead can be seen as an attempt to bring respectability to what has often been seen as a questionable practice. Previous research has suggested that people are ambivalent towards touting, often admitting to doing it themselves, while disapproving of it being done on a mass scale (Keegan and Campbell 2007). Similarly the CMSC found that people’s views on this were ‘ambivalent and contradictory’ (2008, 9). This allows for proponents of the free market to argue that they have fans’ best interests at heart. Within political circles Sajid Javid, Culture Secretary at the time of Hodgson’s abortive Sale of Tickets Bill, used the attendant debate to describe secondary sellers as “classic entrepreneurs” (*Hansard* House of Commons, 21 January 2011: Column 1184), castigating their opponents as ‘chattering middle classes and champagne socialists, who have no interest in helping the common working man earn a decent living by acting as a middleman in the sale of a proper service’ (ibid., Column 1187).

Waterson also found mixed attitudes with around half of respondents to his call for evidence mentioning profiteering and unfairness in relation to the secondary market, although 25% also reported purchasing from it (Waterson 2016, 154). However it was also clear that many “real fans” often do not know the difference between primary and secondary agents.⁹ This also works against ideas of fans as participating in rational choice. It certainly brings into question the degree to which those choices are *informed* if even the market-oriented aspects of their decisions are coloured by a lack of clarity about the distinction between primary and secondary sellers. Complicating matters further is that the latter will pay for such things as google ads, so that it is the secondary

sites which are more likely to come up if a “real fan” uses a search engine and enters an artist’s name and “tickets”.¹⁰ Overall it is perhaps fair to say that many people feel at best ambivalent about the secondary ticket market, with some avowedly against it.

It is also apparent that in recent years touting has moved from the margins to the mainstream and become increasingly respectable. Waterson (2016, 119) accepted a rough valuation of £1B for the secondary sector in the UK, well in excess of the £662M value given by the music industries’ lobbying group, UK Music, for the live sector overall three years later, in a period of growth (www.ukmusic.org/news/true-value-of-music-industry-to-uk-economy-revealed). So the secondary ticket market is now a major part of the contemporary music industries. It is a highly sophisticated global industry made up of powerful players. Indeed it is now at the heart of key music companies. Thus Live Nation’s quarterly and annual reports for investors contain numerous references to growing the secondary market. Its Annual Report of 2015, for example, noted 34% growth in secondary ticketing, describing it as a ‘major focus’ and signalling ‘Grow[ing] Secondary Ticket Volume’ as a part of company strategy (Live Nation 2016, Introduction and p. 3).

Such reports show Ticketmaster to be a highly profitable part of Live Nation and a large part of this success derives from GetMeIn, which has been cited as having the most impressive growth figures within Live Nation (Cooke 2017a). In other words, the ‘secondary’ market is something of a misnomer as it may well be *the* most profitable part of the modern music industries. It lies at the very heart of Live Nation which proclaims itself to be: ‘by far the largest financial supporter of artists in music’ (Live Nation 2017) and ‘the largest producer of live concerts in the world’ (Live Nation 2016, 2). Meanwhile its subsidiary GetMeIn has been found to provide specialist software, capable of being used by touts, to allow people to sell tickets through their website

(Izundu 2017) and of routinely flouting UK law (Galbraith, CMSC 2017, Q. 286).

Overall, reselling is no longer on the fringes but a key part of the biggest music company in the world. While this may be the legitimate, fan friendly, GetMeIn style internet trade, rather than dodgy characters lurking outside venues, it is still reselling at more than face value – and that effectively constitutes touting.

Part Four: Concluding thoughts.

We conclude here by pointing out another key aspect of the legislative process around ticketing. This is that throughout - and notwithstanding the motivations behind attempts to ensure a fairer deal for fans - the focus was on the ticket as an object of financial transaction, specifically on whether it constituted a piece of property and, if so, who the owner was. The *cultural* value of the activities to which tickets allow entry was secondary, with fans framed first and foremost as consumers. John Street (2013, 295) uses Bruce Springsteen's policy of pricing his tickets below market value as one of several examples to make a broader point about cultural policy.

[T]here is a tension between the logic of the market for economic efficiency and some countervailing political argument. This is where policy operates. The point is that the challenge posed by politics derives from the political value constituted in music. Commonly, this value is expressed in terms of rights – which are cashed out in diversity, or freedom of expression, or of ownership.

Such considerations pertain to the concept of a live music “ecology” (Behr *et al* 2016) wherein audiences, promoters, musicians from grassroots to stadium fillers, and venues of all sizes exist alongside one another and are affected by both local and national policymaking, as well as their own interactions. If such a model is valid then a purely

market approach to ticketing is flawed. Here, considering the rights to which Street refers may serve the long-term sustainability of a thriving ecology and we move now to this as it concerns the cultural and ethical dimensions of ticketing.

One concerning aspect here is the *legitimation* of reselling, especially for large profits. There is certainly a case for arguing that (live) music is just another commodity to be bought and sold. Those who argue that it is are precisely the touts whose case is that they are simply meeting market demand. Indeed one tactic for touts such as StubHub is to say that they are standing up for “real fans” rights to resell.¹¹ It is also noticeable that, as already illustrated, the idea of real fans has been mobilised by secondary agents, with an email from Ticketmaster to customers in February 2017 claiming that it sells ‘real merchandise for real fans’.¹² However, even in commodity terms, live music is a *particular sort* of commodity, which Waterson (2016, 146) related to its “never to be repeated” aspect. In fact concert promoters themselves know that what they are selling is a special sort of commodity – live music is an experiential economy, sold on its uniqueness (Cloonan 2012) and live performance a time bound and therefore ‘specialized practice within distinct domains of cultural production’ (Holt 2010, 245). There is only one night that a gig will take place. At the very least it can be argued that a gig is very different sort of commodity to, say, a can of beans. Despite what StubHub might want to claim, live music is *not* simply just another commodity.¹³

Moreover music is not just about the market, and its status as a cultural good means that its health merits market intervention in ways which are only partly justifiable simply via talk of real fans, a term which Waterson (2016,135) reported as not being helpful to his inquiry. In fact music is rarely thought of in *purely* financial terms. We tend to conceive of it as something that makes us human and we suggest here that humanity is more than a set of financial transactions. Every major event in human life

(and death) is marked by the presence of music. Thus while making and listening to music certainly have their economic aspects, they are not *primarily* economic activities. As Frith (2013) has noted ‘Music is not made by the rational economic individual fantasised by market theorists’. Such activities have social and cultural value that lies beyond their financial impact, regardless of how important that might be. Music has been held to have *intrinsic* value as well as – pardon the pun – instrumental (Behr, Brennan and Cloonan 2016).

If (live) music is part of our very humanity then government intervention in its fate is easily justified. Should musicians, industry personnel, legislators and fans want to limit the activities of touts, then they need to mobilise arguments which stress the *cultural* value of the events around which they wish to restrict certain financial transactions. Understanding that audiences themselves see live music as something more than a financial transaction provides potential for a response to the secondary market which also moves beyond the economic and considers tickets as something other than a form of property whose ownership is disputed. Indeed, the potential for even liberal governments to intercede along these lines is evidenced by recent moves in New South Wales to introduce fines for reselling or advertising the resale of tickets for sporting and entertainment events at over 10% of the original price – the same amount proposed by Hodgson in 2011 (Cooke 2017b).

Furthermore, if a reasonable policy aspiration is to achieve the widest possible range of people being able to see the widest possible range of artists, then simply the ability to pay high prices on either the primary or the secondary market is unlikely to bring about this result. Indeed Waterson (2016, 32 and 77) noted a number of reasons as to why tickets are not simply priced on the primary market at whatever the market will bear. This is partly because of a recognition that live music has great cultural value and

a long history of the market not necessarily being the greater guarantor of such value. While conceding that cultural value remains a problematic concept, at a minimum it moves the agenda on from simply financial concerns and this aligns it with the idea that music has intrinsic value (Behr, Brennan and Cloonan 2016, 416). Waterson's suggestion that the government intervene in the primary market has a range of cultural policy implications which bear further thought.

Our previous research has suggested that while people struggle to articulate what they value in live music, such attempts are often couched in a sense of escapism and transcendent experience (ibid.). Respondents saw a range of values in live music, of which the financial was seldom the most important (ibid., 411). For fans – “real” or not – music is not *primarily* an economic activity, for the tout it *has* to be. Fans can be concerned with cultural value as an end in itself, for touts it is at best a means to an end. While the debate has thus far focused on individual property rights, we suggest that it needs to move towards an acknowledgement of collective cultural rights. For example, it is possible to argue that the Glastonbury festival is now part of the UK's common culture, regardless of who owns it. If it is possible to conceive of a “crown jewels” of sporting events on the basis of their importance to national culture then it is a small step to see at least some live music events achieving the same status. There is no reason why a prominent tour or a leading festival (like Glastonbury or the Proms) should be any less of a “crown jewels” event than the F.A.Cup Final.

We suggest that unless we seek to justify intervention in the ticketing markets – both primary *and* secondary – in the name of culture, we will continue to be swamped by the secondary market's *own* culture. There is therefore a need to understand more about what people see as the intrinsic value of live music and perhaps better grounds to trust musicians with the future of live music than to trust StubHub. There is also good

reason to question why Viagogo was accused of “moral repugnance” for reselling tickets for an Ed Sheeran benefit gig to raise money for teenage cancer victims (BBC 2017). Some commodities have value beyond the financial and so should not simply be bought and sold. In short rather than asking “who wants tickets”, we should ask who wants access to the culture that live music provides. If the answer to that is “everyone”, then this has policy implications beyond simply regulating, and ensuring the transparency of, the secondary market through to intervening in both the primary and secondary. “Real fans” deserve no less.

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¹ Interviews were conducted for research into the history of live music promotion in Britain from 1950 to 2011. See Frith *et al* 2013.

² UK Music (2017) spoke of live music having "soared by 14%" to contribute £1bn to the UK economy in 2016.

³ For a good history of Ticketmaster see Budnick and Baron (2011).

⁴ Tickets for air travel are an obvious additional example of outlawing a secondary market (Waterson 2016, 100).

⁵ This is now Business, Energy and Industrial Strategy (BEIS) following a reorganisation in July 2016.

⁶ See www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/inquiries/parliament-2015/inquiry1/

⁷ See www.tradingstandards.uk/news-policy/news-room/2017/budget-statement for a response welcoming the funding. See also CMSC (2017, 247).

⁸ For example the Scottish Rugby Union and Chelsea have used Viagogo as their official resellers.

⁹ This was noted by promoter Stuart Galbraith (CMSC 2017: Q273) and Waterson, who found that 23% of respondents to his consumer survey didn't know (2016, 13).

¹⁰ See evidence from Galbraith (CMSC 2017, 249, 261)

¹¹ See http://fanfreedom.org.uk/?page_id=4

¹² Email from Ticketmaster to one of the authors 8 February 2017.

¹³ Appearing before the CMSC, StubHub claimed that live music was a commodity (2016, Q. 99).