

Impact case study (REF3)

Institution: University of Westminster		
Unit of Assessment: 18 Law		
Title of case study: Improving the enforcement of secondary ticketing law in the UK and Europe		
Period when the underpinning research was undertaken: 2008-2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Guy Osborn	Role(s) (e.g. job title): Professor & Co-Director of the Centre for Law, Society and Popular Culture	Period(s) employed by submitting HEI: Oct 1991 ongoing
Period when the claimed impact occurred: Aug 2013 – Dec 2020		
Is this case study continued from a case study submitted in 2014? Y/N		
1. Summary of the impact (indicative maximum 100 words)		
<p>The first detailed investigation into the legal issues associated with the unauthorised resale of tickets to sporting and entertainment events has generated significant social and political outcomes. This unique collaborative project, led by Professor Guy Osborn (University of Westminster) and Professor Mark James (Manchester Metropolitan University) – Co-Director and Associate Fellow, respectively, of Westminster’s Centre for Law, Society and Popular Culture – has been underway for two decades. Impacts achieved include:</p> <ul style="list-style-type: none"> • Shaping UK policy and enforcement of consumer legislation through the disambiguation of forms of ticket touting. • Amending EU policy so that it protects consumers from paying overly inflated prices for resold tickets they couldn’t initially access for purchase due to the inappropriate use of software (‘bots’). • The standardisation of legally compliant resale terms & conditions (T&C) for ticketing vendors across the UK, via the inclusion of guidance on the application of the model T&C produced by the self-regulatory body for the entertainment ticketing industry in the UK. 		
2. Underpinning research (indicative maximum 500 words)		
<p>In 2019 the UK secondary ticketing market was estimated to be worth in the region of £1bn per year. Ticket touting and the operation of the secondary market in event tickets have a controversial and contested relationship with the law [see outputs 1, 2, 3, 4]. Technically, any unauthorised resale of an event ticket is a breach of contract and, in some limited cases (for instance, regulated football matches, the London 2012 Olympics, and the Glasgow 2014 Commonwealth Games), it is a specific criminal offence [2, 3]. In addition to possible public order and commercial impacts, the practice potentially has a negative effect on widening access and social inclusion, due to the pricing out of individuals [4].</p> <p>The research undertaken by Prof Osborn and Prof James has analysed existing and proposed ticketing laws from around the world and their inability to cope with this rapidly evolving commercial context. For instance, regulatory regimes around the world focus on the mechanisms by which tickets can be bulk-bought by touts, especially by the use of automated systems (‘bots’ – computer programmes that can, <i>inter alia</i>, simulate human activity), and make legislative interventions intended to regulate the operation of the market more effectively. Such interventions are undertaken almost exclusively at the expense of upholding the terms of the original contract of sale, which has led to a normalisation of the breaches of contract where ticket touting is concerned and an assumption that the operation of the secondary ticket market is ‘perfectly legal’ [2].</p> <p>Osborn and James have also sought to ensure their research is dynamic and responsive to stakeholder needs and concerns. Interviews with, and analysis of, a range of stakeholders, lobbying groups, and ticket agencies in the UK and Europe have established how the law and ticketing practice have evolved into this unique position, where breaches of contract are considered normal and are, in many countries, facilitated by the state [1, 2].</p> <p>On the basis of the findings of this research, Osborn and James have been able to develop a number of key recommendations that are informing the policy and legal agenda in this area within the UK and Europe:</p>		

- *There needs to be a legally consistent definition of an event ticket.* There is currently no clarity on the definition of an event ticket in law, nor is there a definitive ruling on the legality or otherwise of the restrictive terms and conditions by which event organisers attempt to prohibit the unauthorised resale of their tickets. This has resulted in diametrically opposed views of the legality of the secondary market: touts claim tickets are tradable commodities, whereas event organisers claim they are non-tradable personal revocable licences [6].
- *There needs to be a legally robust means of determining the legality of the terms and conditions that seek to prohibit or restrict a purchaser's ability to resell their tickets.* This is to say there is currently no legally robust definition of the secondary market or of what constitutes a ticket tout [1, 2, 3].
- *There needs to be a more nuanced understanding of the meaning of a ticket tout and a disambiguation between types of resellers.* The term 'tout' covers a spectrum of behaviour stretching from the commercial tout reselling tickets for profit to the innocent seller passing on a spare ticket at face value; a one size fits all approach to law in this area does not work and a more sophisticated way of dealing with these different types of behaviour is required [2,6].
- *Private entities can be the drivers of specific, self-interested, legislation when operating as a transnational organisation from within the global administrative space.* Using two case studies, those of ambush marketing and ticket touting in the context of the 2012 Olympic Games, the researchers have identified the potential dangers of such legal transplants that arise because of the ambiguities described above [1].
- *There needs to be a more effective campaign of education concerning what purchasers can and cannot do with event tickets.* The legal status of such transactions needs to be established in regard to the consumer to ensure they are not breaking the law [2, 6].

3. References to the research (indicative maximum of six references)

- [1] James, M. and Osborn, G. [2015](#). 'The Olympics, Transnational Law and Legal Transplants: The International Olympic Committee, ambush marketing and ticket touting', *Legal Studies* 36(1): 93-110.
- [2] James, M. and Osborn, G. [2016](#). 'Criminalising contract: does ticket touting warrant the protection of the criminal law?', *Criminal Law Review* 1: 4-19.
- [3] Greenfield, S., Roberts, S., Osborn, G. [2008](#). 'Contradictions Within The Criminalisation Of Ticket Touting: What Should Be The Role Of The Law?', *Web Journal of Current Legal Issues*, Vol. 3.
- [4] James, M and Osborn, G. [2009](#). 'Tickets, Policy and Social Inclusion: Can the European White Paper on Sport deliver?', *International Sports Law Journal* 1-2: 61-64.
- [5] James, M and Osborn, G. [2012](#). 'Consuming the Olympics: the fan, the rights holder and the law', *U. of Westminster School of Law Research Paper No. 10-24*. (Commissioned by Dr Jon Sims, British Library, for their 'Summer Olympics and Paralympics through the lens of Social Sciences' project.)
- [6] James, M and Osborn, G. 2018. 'Tickets, touting and the law'. Briefing paper for All-Party Parliamentary Group on Ticket Abuse, presented in House of Commons on 25 April.

4. Details of the impact (indicative maximum 750 words)

Impact on UK policy and enforcement of consumer legislation

Prof Osborn and Prof James have strengthened the enforcement of laws on ticket touting by **informing policy positions on the need for disambiguation in this area**. The benefits of ensuring such disambiguation are that consumers will be better aware of who they are buying from – and therefore of their rights under existing law; secondary ticketing sites are made accountable for the range of sellers they host; and MPs do not need to spend time producing new legislation on this matter, since existing laws can be enforced.

The importance of disambiguation within the secondary ticketing market was highlighted via a key recommendation of the 2016 Waterson Review on ticket resale within the context of Consumer Rights Act 2015 (CRA) [a-i, p.136], whose evidence base Osborn and James contributed to via a submission on this aspect [a-ii]. The March 2017 'Government Response' to the review from the Department for Digital, Culture, Media & Sport (DCMS), and Department for Business, Energy &

Industrial Strategy (BEIS) stated: ‘the government agrees with recommendation 3, i.e. that operators of secondary ticketing facilities need to take responsibility for the identification of traders, to ensure that ticket brokers falling within consumer law definitions of “trader” meet their obligations to consumers under such legislation, including the Consumer Contracts (Cancellation, Information and Additional Charges) Regulations 2013 and The Consumer Protection from Unfair Trading Regulations 2008’ [a-iii §17].

Osborn and James have since provided policymakers with crucial insights in this area to ensure secondary ticketing sites actually abide by this clarified law. In April 2018, the researchers were invited by the Chair of the All-Party Parliamentary Group (APPG) on Ticket Abuse, Sharon Hodgson MP, to make a presentation at the House of Commons, attended by around 100 persons (parliamentarians and industry stakeholders), and to write a briefing paper for circulation to the same (output [6], above). The research presented by Osborn and James highlighted the need for a ‘specific definition of a “trader” to ensure that consumer protection legislation can be applied more effectively to ticket touting’ and for a ‘working legal definition of a ticket and clarity of the legality of the restrictive terms and conditions that are routinely included in ticket contracts’. Indicating the ongoing impact of the researchers’ intervention, Hodgson writes that ‘[w]hen considering what legislation should be put in place to do this, I have often gone back to this research to ensure that any changes aren’t one dimensional but consider the spectrum of behaviours cited in the research’ [a-iv]. Hodgson adds that: ‘The research of Professor Osborn and Professor James therefore had an impact beyond academia as it **allowed cross-party legislators, in the Commons and Lords, to consider the significance of what tickets are in a legal context and how we can legislate around that to prevent secondary ticket touting on an industrial scale**’ [a-iv].

This intervention has been strengthened through Osborn and James’s sharing of their expertise with FanFair Alliance (FFA), an organisation that campaigns against industrial-scale online ticket touting and – as representatives of key industry stakeholders (for instance, the music managers of some of the UK’s biggest live acts) – regularly attends the APPG as an external contributing organisation [a-v]. Adam Webb, the FFA’s campaign manager, states that Osborn and James’ ‘collective generosity in taking time to answer questions and discuss issues around ticketing’ has been of significant importance to their engagement with the Parliamentarians: ‘Presenting to the APPG about your work, and offering practical insights and advice to members - especially in reference to the long-running Competition & Markets Authority enforcement investigation into secondary ticketing [...] has been invaluable’ [a-v].

An especially notable impact created through the above engagements is **the government’s demand that the CMA enforce their rules against repeat offender viagogo**. Osborn and James’s work with FFA included ‘[a]dvising and inputting into FanFair Alliance-commissioned research on consumer attitudes to secondary ticketing [which] was widely quoted in the 2019 DCMS Select Committee report on Live Music and received widespread national media coverage’ [a-v]. This FFA report [a-vi] was used by the Committee to highlight how viagogo ‘present[s] itself as an official—not resale—ticketing site’ and to present examples of consumers who have fallen victim to this site [a-vii, p.20]. The DCMS’s ‘Government Response’ to the Committee’s report singles out viagogo as having ‘yet to prove itself a trustworthy operator given its history of resisting compliance, court orders and parliamentary scrutiny, and flouting consumer law’ and states that ‘[i]t is imperative that the CMA acts promptly and decisively to bring viagogo into line with consumer law’, adding that, ‘until it does so, we advise the public not to buy or sell tickets via viagogo’ [a-viii].

As a result of this response, in July 2019 the CMA ‘move[d] forward with legal proceedings for contempt of court against viagogo following concerns it has failed to comply fully with a court order [...] that obliged the secondary ticketing site to overhaul the way it operates its UK website and ensure that it complies with consumer protection law’ [a-ix]. In September 2019, the CMA reported that the legal action had been dropped due to the **positive change in the reselling practice of this major offender, relating to the disambiguation of the tickets available on its site**: ‘The viagogo website UK customers now visit is worlds apart from the one they faced before the CMA took action. Key information needed to make informed decisions before buying a ticket is now much clearer, including on where you’ll sit in a venue and whether you might be turned away at the door’ [a-x]. As such, the enforcement of consumer protection rules has been demonstrably

improved as a result of Osborn, James, and their partners' efforts to clarify the law in the area of secondary ticketing.

Impact on EU policy and the protection of consumers from 'bots' usage

Osborn and James's engagement with the APPG led to the researchers' first meeting with the Face-value European Alliance for Ticketing (FEAT), an organisation lobbying on behalf of a pan-European group of promoters, agents and artists whose aim is to outlaw above-face-value ticket resales.

In December 2018, the researchers were approached to **provide expert guidance to the FEAT for their submission to the European Parliament's Committee on the Internal Market and Consumer Protection** [b-i]. This submission concerned proposed amendments to European Parliament and Council Directive COM(2018)0185 – C8-0143/2018 – 2018/0090(COD). This directive is aimed at creating better enforcement and modernisation of EU consumer protection rules.

As the Director and the Campaign Lead of FEAT confirm, the researchers' 'involvement included offering advice on FEAT's goals, pointing us towards various UK regulations and providing a UK perspective, providing a detailed analysis of the suggested amendments to the new regulation, as well as suggesting additional amendments, and helping re-word the amendment on the banning of bots' [b-i]. In regard to the latter, Osborn and James recommended that FEAT call for the criminalisation of the use of 'automated systems (bots) or human workforces armed with multiple credit cards to purchase thousands of event tickets' in breach of their Terms and Conditions (T&C) [b-ii, p.1]. This formed the central focus of the submission, which puts forward 'FEAT's view that the 2005 Unfair Commercial Practices Directive should be revised to ban secondary sellers from using techniques, including automated software and human workforce, to bulk buy event tickets, and/or sell them on for a profit' [b-ii, p.4].

FEAT 'fed this [document and position] back to the EU via meetings with the rapporteur and other members of the parliament and council, and also letters to other EU representatives. This led to the adoption of the first EU ticketing law, banning touts from using bots to bulk-buy tickets' [b-i]. The European Parliament directive became law in November 2019 and states: 'Traders should be prohibited from reselling to consumers tickets to cultural and sports events that they have acquired by using software such as 'bots' enabling them to buy tickets in excess of the technical limits imposed by the primary ticket seller or to bypass any other technical means put in place by the primary seller to ensure accessibility of tickets for all individuals. That prohibition is without prejudice to any other national measures that Member States can take to protect the legitimate interests of consumers and to secure cultural policy and broad access of all individuals to cultural and sports events, such as regulating the resale price of the tickets' [b-iii, §50].

This law **protects consumers across the European Union from paying over-inflated prices for resold tickets they could not initially access for purchase** due to the inappropriate use of software. Further, as FEAT point out, it also **provides protection to the live event industry** during precarious times: 'With the global secondary ticketing market expected to rise from €12.14 billion in 2019 to €18.3 billion in 2024 (stats pre-COVID) and the struggles of live event industry as a result of COVID, it is essential that the use of bots is prevented to stop money from being diverted from the sector' [b-i].

Impact on professional guidance for ticket retailers

The research and advice of Osborn and James directly contributed to **the formulation of STAR's new Model Terms and Conditions [T&C] Prohibiting Resale or Transfer of Tickets**. STAR – the Society of Ticket Agents and Retailers – is the self-regulatory body for the entertainment ticketing industry in the United Kingdom and 'has been at the forefront of cross-industry initiatives to improve consumer confidence, make ticket buying safer and combat ticket fraud' [c-i]. As Jonathan Brown, the CEO of STAR, writes, in 2019 the researchers 'work[ed] on developing model terms and conditions for restricting the resale or transfer of tickets; drafted to help support the secondary sale of tickets in a consumer-friendly way' [c-ii].

The key amendments proposed by the researchers related to **the enhancement of the navigability of the Model T&C for the industry users**, and Brown confirms that Osborn and James' 'insight and suggestions regarding those terms, as well as [their] recommendations on the accompanying guidance for ticket sellers, were of tremendous benefit to the process of developing

the terms for the industry’ and ‘[t]here is no doubt that [their] thoughts and contributions were significant to the final drafting’ [c-ii].

The final version of the STAR Model T&C document, published in June 2019, ‘details the background to the issue as well as providing key information on what needs to be considered when putting restrictions in place’ [c-iii, p.2]. This guidance to users of the Model T&C takes the form of a section titled: ‘Things to Consider Before Adding Resale Restrictions’ [c-iii, p.6]. Following Osborn and James’ recommendations [c-iv, p.1 and 4], this section contains six points of consideration that ‘will not only help event organisers to decide which resale terms should apply and how they are enforced, it will also **help to reduce the risk of the CMA prioritising enforcement action against them**’ [c-iii, p.6].

As Brown writes, ‘[t]he increase in authorised, fan-friendly resale by the main live music ticket agents in the UK provides a substantial improvement in the market and is under-pinned by a number of things, including STAR’s model terms’ [c-ii]. This is because this professional body has 250+ members across the UK, encompassing theatre, sports, and travel vendors of tickets, and the adoption of the model T&Cs results in a **standardised approach that ‘introduce[s] reliability and uniformity across entertainment ticketing and improve[s] consumer understanding and education**’ [c-iii, p.4]. Osborn and James’ specific intervention – the inclusion of guidance on applying these terms and condition – is thus particularly important as it facilitates the adoption of these terms by these companies [c-ii].

5. Sources to corroborate the impact (indicative maximum of 10 references)

- [a] (i) Waterson, M. ‘Independent Review of Consumer Protection Measures concerning Online Secondary Ticketing Facilities Presented to Parliament pursuant to section 94(3) of the Consumer Rights Act 2015 May 2016’ [\[link\]](#) (ii) Osborn and James submission to “Review of consumer protection measures applying to ticket resale: call for evidence” (1/04/16) (iii) DCMS and BEIS. ‘Consumer protection measures applying to ticket resale: Waterson review - government response’, 13/3/17 [\[link\]](#) (iv) Testimony from Sharon Hodgson MP, chair of APPG Ticket Abuse. (v) Testimony from Adam Webb, FFA (vi) FFA, “Ticked Off: Consumer Attitudes to Secondary Ticketing”, 10/2017 [\[PDF\]](#) (vii) DCMS Select Committee. “Live music: Ninth Report”, 6/3/19 [\[link\]](#) (viii) Government Response to “Live music: Ninth Report”, 17/6/19 [\[link\]](#) (ix) CMA. “CMA to take further legal action against viagogo”, 4/7/19 [\[link\]](#) (x) CMU. “CMA drops legal action against Viagogo, says site is now compliant with UK law”, 6/9/19 [\[link\]](#)
- [b] (i) Testimony from FEAT Director and Campaign Lead (ii) FEAT Compromise Amendment & Briefing Note (iii) Directive (EU) 2019/2161 of The European Parliament and of The Council of 27/11/19 [\[link\]](#)
- [c] (i) STAR website [\[link\]](#) (ii) Testimony from CEO of STAR (iii) Final published version of STAR Model T&Cs, 06/2019 (iv) Osborn and James’ proposed amendments to STAR Model T&Cs