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Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

## **INQUIRY INTO TICKET SCALPING IN AUSTRALIA**

### **Senate Economics References Committee**

#### **Live Performance Australia Submission**

Dear Committee,

Thank you for the opportunity to provide comment on the issue of ticket scalping in Australia.

#### **About LPA**

Live Performance Australia (LPA) is the peak body for Australia's live performance industry. Established in 1917 and registered as an employers' organisation under the *Fair Work Act 2009*, LPA has over 390 Members nationally. We represent producers, music promoters, venues, performing arts companies, festivals and industry suppliers such as ticketing companies and technical suppliers.

#### **Ticket Scalping in the Live Performance Industry**

LPA supports the findings published in the 2010 report, *'Consumers and the Ticket Market: Ticket Onselling in the Australian Market'*, conducted by the Commonwealth Consumer Affairs Advisory Council (CCAAC). The findings of the CCAAC are based on extensive research and consultation with industry stakeholders and consumers across Australia. The report states, "**CCAAC considers that the existing consumer regulatory framework in Australia...is adequate to protect consumers from unfair trading practices. As such, CCAAC believes that industry can respond to the specific consumer concerns.**"<sup>1</sup>

We recently conducted a consultation process with our Members on the effects of ticket scalping on the live performance industry for this submission, which received responses from a range of industry stakeholders. We recognise that there are mixed views amongst our membership on this issue, and some Members will be preparing their own submissions.

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<sup>1</sup> Commonwealth Consumer Affairs Advisory Council. (2010). *Consumers and the ticket market: Ticket onselling in the Australian market*. Canberra: Commonwealth of Australia, p iv.

**LPA is not aware of any evidence or changing trends since the release of the CCAAC report that would suggest their findings need to be reviewed or revised.** However, we welcome the opportunity to provide our views and have included comments on each of the Senate Committee's Terms of Reference below.

In sum, LPA finds that:

- Current available evidence, both domestically and internationally, illustrates that specific anti-scalping legislation is unwarranted, ineffective and unenforceable due to the inability of legislation to have an impact on the online operations of the secondary market
- Free market industry solutions are the most effective in preventing large-scale illegitimate ticket scalping
- Federal Government resources would be best committed to:
  - adequately supporting the ACCC and State and Territory based consumer agencies in protecting consumers through the Australian Consumer Law;
  - investigating how the use of computer bot programs and fraudulent activities could be minimised; and
  - improving consumer awareness and education initiatives

#### **A. The Prevalence of Ticket Scalping and its Impact on Ticket Prices and Sales**

Overall, unauthorised onselling or ticket scalping has **minimal impact** on the live performance industry. Larger-scale scalping operations primarily target high profile events that are predicted to sell out quickly, for which few sold out events occur in Australia each year.<sup>2</sup> In these instances when ticket scalping occurs for sold out shows and is highly publicised, it can have a potentially negative impact on the relationship between event organisers and genuine consumers. Event organisers expend a great deal of energy on setting a fair price for tickets that allow fair access to genuine consumers. This customer service objective is undermined when scalpers sell tickets for sold out shows at exorbitant prices on unauthorised onselling websites, leaving consumers with the perception that they have been denied fair access to events.

Our Members recognise that it is important to allow consumers the opportunity to onsell tickets in a **legitimate secondary marketplace** if they genuinely can no longer attend an event. Without legitimate avenues for genuine onselling, consumer confidence would be severely eroded and there would be a great deterrence to purchasing tickets in advance, which would have a detrimental impact on the live performance industry. Our Members authorise resellers and establish fan-to-fan marketplaces to provide a secure avenue for consumers to onsell in the secondary market. Such mechanisms are also an effective free market solution for deterring consumers from using unauthorised reselling sites by providing a safe and secure alternative to find tickets to sold out events.

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<sup>2</sup> Commonwealth Consumer Affairs Advisory Council. (2010). *Consumers and the ticket market: Ticket onselling in the Australian market*. Canberra: Commonwealth of Australia, p 8.

## **B. The Effectiveness of Current State-based Consumer Protection Legislation, and How These Measures Can be Improved, Including Through a Federal Approach**

LPA has taken a longstanding position against illegitimate ticket scalping operations; however we believe the current available evidence shows that anti-scalping legislation is **unwarranted, ineffective and unenforceable**. This is because illegitimate ticket scalping primarily operates online (and often offshore), where the impact of State or Federal legislation is severely hindered due to its **jurisdictional restrictions**. For example, LPA notes that anti-scalping legislation cannot practically and effectively be enforced on unauthorised overseas websites that are located completely offshore. The unintended consequences of legislation in this area could likely result in overseas websites becoming even more attractive to scalpers and consumers being outside of enforceable reach.

### **STATE-BASED LEGISLATION**

The limited state-based anti-scalping legislation in Australia is generally futile and ineffective. Queensland has had anti-scalping legislation (Major Sports Facilities Act 2001) in effect since December 2006, which applies to a limited number of larger state-owned venues. LPA has not seen any evidence that legislation in Queensland has had any effect on ticket scalping. We have not seen any reports of successful prosecutions for live performance events under the Act. Furthermore, similar quantities of tickets are advertised on unauthorised onselling websites for numerous live performance events at the Brisbane Entertainment Centre, a major venue covered by the Act, as any other venue in states without anti-scalping legislation. For example, the Viagogo website currently has over 100 tickets advertised for the Bruce Springsteen concert at the Brisbane Entertainment Centre, ranging from \$284 – 888, the original price set by the promoter being between \$100 – 228.<sup>3</sup>

The Victorian legislation (Major Sporting Events Act 2009) has not impacted upon the live performance industry, as only a very limited number of sporting events are “declared” and covered under the legislation each year. LPA has expressed major concerns to the NSW Government in regard to the proposed amendment to the Fair Trading Act 1987 (Fair Trading Amendment Ticket Reselling Bill 2013), which places the onus on event organisers to invest additional resources into monitoring the proposed regime to be effective in identifying scalping, and does not address how the proposed requirements against scalping can be enforced.

### **INTERNATIONAL LEGISLATION**

Specific anti-scalping laws have proved both ineffective and unenforceable internationally. The CCAAC report on ticket onselling notes that there is an **international trend toward deregulation** of the secondary ticketing market, including countries that have a much higher incidence of scalping compared to Australia. In the US, many states have repealed legislation that capped the price to resell tickets.<sup>4</sup> Michigan is currently in the process of repealing its anti-scalping legislation, which has been lauded by

<sup>3</sup> Figures attained at Bruce Springsteen Brisbane Entertainment Centre, Viagogo: <http://www.viagogo.com/au/Concert-Tickets/Rock-and-Pop/Bruce-Springsteen-Tickets/E-570210>, accessed 10 February 2014.

<sup>4</sup> Commonwealth of Australia, p 31.

representatives from both sides of the aisle as “outdated and difficult to enforce”.<sup>5</sup> In 2007 New York repealed its price cap legislation due to the practical inability of enforcement and recognition that free market industry solutions could more effectively combat problems that arise due to ticket scalping.<sup>6</sup> The CCAAC report states “evidence from the US does not suggest that legislation has been effective in eliminating the practice or improving consumer access to tickets. Rather the evidence suggests that the legislation had an inflationary effect on the face value of tickets in jurisdictions where reselling is restricted or prohibited”.<sup>7</sup> Additionally, the UK government ruled in 2010 after extensive research and consultation was commissioned, that legislation of the secondary ticketing market is not necessary.<sup>8</sup>

## EFFECTIVENESS OF FREE MARKET SOLUTIONS

The most effective avenue for combating ticket scalping is through **free market industry solutions**. Industry stakeholders are consistently implementing measures to deter illegitimate ticket scalping in the live performance industry.

Such initiatives include:

- setting up authorised re-sale marketplaces which are secure and hence more appealing to consumers than high risk unauthorised websites;
- delaying the dispatch of tickets and staggering their release;
- limiting the number of tickets per transaction; and
- increasing protection through advancing technology; such as barcoded ticketing systems and website security features

## RECOMMENDATIONS FOR A FEDERAL APPROACH

LPA does not support any legislation which would place an administrative burden on the industry, and concur with the CCAAC assertion that the current **Australian Consumer Law (ACL) adequately protects consumers legislatively from unfair trade practices**. Specific anti-scalping legislation both at the State and Federal level would be onerous on the industry to police, with no quantifiable evidence that it can be effectively implemented to minimise illegitimate ticket scalping. LPA believes that the ACCC and State and Territory consumer protection agencies need to ensure that adequate resources are committed to working jointly and consistently in implementing the ACL to effectively protect consumers of live performance events.

One possible initiative would be to introduce Federal legislation banning the use of **computer bot programs** (bots) to minimise the effects of ticket scalping on sold out events, if such legislation can be effectively enforced. Bots are used by scalpers to buy up large quantities of tickets online before genuine consumers have the opportunity to secure tickets. While ticketing agents regularly upgrade their security

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<sup>5</sup> Tower, M. Tower, M. (2014, February 1). *Bill allowing ticket scalping hurts buyers. Dow Event Center manager says*. Retrieved February 7, 2014, from MLive.com. House Bill 5108 would repeal a 1931 law that prohibits scalping, or selling tickets for more than face value unless granted permission by the venue. The bill was recommended for approval by the State House in an 8-0 vote in committee on 29 February 2014.

<sup>6</sup> Commonwealth of Australia, p 32.

<sup>7</sup> Commonwealth of Australia, p 31.

<sup>8</sup> Commonwealth of Australia, p 33.

software to protect against bots, it is an ongoing battle as technology is consistently evolving and sophisticated scalpers are constantly updating their own technology.

Increasing **consumer awareness** through education campaigns effectively empowers the consumer to make informed purchasing decisions. We address ticket scalping issues in the *LPA Ticketing Code of Practice Consumer Guide*, and have worked with state governments in the past to release public alerts that inform consumers of the risks in purchasing tickets from unauthorised websites. LPA would be happy to liaise further with the Federal Government to improve consumer awareness on these issues. LPA believes that any Federal Government resources on this matter would be best directed to consumer education.

State-based legislation is particularly confusing to consumers as it varies greatly from state-to-state, hence ultimately any approach to ticket scalping legislative or otherwise that is adopted should be nationally consistent and implemented at the Federal level.

### **C. Issues of Illegality, Including the Prevalence of Counterfeit Tickets**

Our Members have indicated that counterfeit tickets are practically non-existent, as ticketing agents have invested in technology that easily identifies counterfeit tickets. While instances of fraud are infrequent, it is a concern for the industry as it becomes **easier for fraud to occur online** via risky and insecure unauthorised websites. Several Members reported that they have come across instances of duplicated and cancelled tickets being advertised online recently.

LPA supports any federal initiative that can effectively minimise the occurrence of ticketing fraud. Sufficient resources should be committed to protecting consumers under existing laws to effectively investigate and pursue fraudulent online activities. Improving consumer awareness is integral to deterring the public from purchasing tickets from insecure websites, and resources should be committed to educating consumers on the occurrence of fraud on unauthorised onselling websites.

### **SUMMARY: LPA GENERAL COMMENT**

- Current available evidence, both domestically and internationally, illustrates that specific anti-scalping legislation is unwarranted, ineffective and unenforceable due to the inability of legislation to have an impact on the online operations of the secondary market
- Free market industry solutions are the most effective in preventing large-scale illegitimate ticket scalping
- LPA recommends that Federal Government resources would be best committed to:
  - adequately supporting the ACCC and State and Territory based consumer agencies in protecting consumers through the Australian Consumer Law;
  - investigating how the use of computer bot programs and fraudulent activities could be minimised; and
  - improving consumer awareness and education initiatives

Thank you for the opportunity to provide comment on the issue of ticket scalping in the live performance industry. If you have any queries regarding our submission, or would like to discuss these issues further, please do not hesitate to contact us via the contact details below.

Yours sincerely

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