

Responses to the consultation should be sent by Friday 31 March 2017 by e-mail to

conspol@djei.ie

Response to consultation on the resale of tickets for entertainment and sporting events on behalf of toutless.com.

To whom it concerns,

I represent Toutless, aka toutless.com, toutless.ie, toutless.co.uk.

Toutless is a volunteer run, not for profit, website/webforum (<https://www.toutless.com>) which facilitates the person to person ethical resale/redistribution of concert and event tickets at face value or less. It was founded in 2008. Our administration and moderation staff is based in Ireland. There is no geographic bar on the people who join or the events we list however our market is predominantly Irish or Irish people attending popular European events.

Toutless came into existence based on the personal experience of the founders. As frequent gig goers and ticket buyers we were often faced with having excess tickets for concerts due to unforeseen circumstances. Reselling these to touts, the then only readily available course of action, was never a good experience for numerous reasons from financial to safety to ethical. As music fans, and mostly technology workers, we felt there was an opportunity to facilitate peer to peer in person ticket resale via a website. Ultimately to connect gig goers to gig goers and music fans to music fans. This was as much an ethical stance as it was a practical one as often the tickets we would be reselling were not for the largest sold out gig in town but a small local band.

The model followed by Toutless is similar to that found in other regions. It is in effect a single purpose web forum with custom moderation rules around the resale of tickets. Toutless does not produce or sell tickets directly but facilitates like-minded members in finding each other. We connect people to one another who then conduct the transaction as they agree. Any transaction is completed between the users without our involvement and no cut or other fees are charged. We are very strict in relation to our price rulings and this is moderated by a small volunteer team. Guidelines are issued to users around being vigilant to fraud but the examples and cases of fraud involving the website have been very small and all have occurred when people stepped outside our issued guidelines.

Toutless has over 70,000 registered users with 57,000+ registered from Ireland. This number is all the more impressive given we are a volunteer run site which for the most part does not advertise outside word of mouth. The success of the site and its continued use and popularity is, we believe, a testament to the fact that most people do not like touts and where they have an alternative will actively engage in a fairer redistribution model. Toutless will typically see 1,000 unique visitors a day with peaks of up to 4,000 during busy events.

We are not unaware of the popularity and usefulness of our site but are somewhat dismayed that in 2017 there is still a requirement for it. We welcome the fact that this is now being looked at by the Irish State but also note that the international entertainment industry is a multi-billion dollar corporate entity which has at its disposal the technical capability of solving most of these issues but it clearly lacks the appetite to do so. After 9 years running a website of this nature we do consider ourselves the preeminent website involved in ticket resales in Ireland. We also consider ourselves to be subject matter experts on ticket resales within the Irish market and would like our submission to

be given due consideration on account of our experience and expertise. As ticket purchasers, music lovers and sports fans we genuinely look forward to a day where our service is no longer required.

Further contact can be made to info@toutless.com or via the @toutless twitter handle.

With regards ticket resales.

It is our belief that all forms of ticket resales should be exempt from additional fees beyond those that can be reasonably expected to cover incurred costs in transferring ownership (such as registered post fees etc). We also believe any form of restrictions on resales need to allow for transfer of ownership from the original purchaser to a new purchaser in the event of an inability to attend an event. If this is via refunds and reissuing via the original provider, thereby negating the requirement for our service, this is perfectly acceptable to us.

Suggestions not fully covered in Answers below.

Regards fraudulent tickets.

A common complaint regards our function is an inability to vouch for the legitimacy of a ticket.

Considering advances in technology now have most people with a portable device capable of scanning a barcode on a ticket and verifying the details against a database it is just access to said database that has prevented us implementing such a feature.

A provision to allow for third parties to access any information in a manner that allows verification is suggested. We acknowledge appropriate trust/records etc. would be required to allow for verification in a manner that doesn't allow the data required to access the event to be duplicated but as concepts of encryption have many one way ciphers this shouldn't be a difficult obstacle to overcome.

Regards transfer of ownership

As mentioned we see the need for a method to transfer a ticket to a new owner. The concept of tickets as physical is already fading and once again most people have access to mobile devices with NFC technologies. Optionally contactless RFID based cards are common and cheap to produce. A likely technological solution to the issue is to think of tickets as a license that can be transferred much in the same way travel cards can be "charged". If such an infrastructure is mandated the functional transfer of these licenses can be easily monitored with appropriate payment also being controlled by the same system. These concepts and systems can be implemented in ways that shouldn't alienate technologically illiterate members of the public as they've already been introduced by systems such as LEAP.

Communication regards restrictions mentioned in Section 12.

Any move that restricts resale of particular tickets that is binding we request suitable communication within a reasonable period of same to all impacted parties including ourselves be included in any such legislation. Particularly for volunteer based operations like ourselves keeping abreast of all potential combinations of what is allowed and what isn't may not be possible if there is a lot of fragmentation introduced. We typically treat any such restrictions as binary as possible with a blanket ban on events that request no resales on particular tickets to keep communication simple between ourselves and our users.

Question 1

What proportion of primary ticket sales are accounted for respectively by –

- a) online sales
- b) telephone sales
- c) sales through agents in retail outlets
- d) box office sales

We have no data on this as we are not a primary seller. Use of our site for secondary sales is entirely via online.

Question 2

Approximately how many entertainment and sporting events each year in which you are involved or about which you have information give rise to a significant level of secondary ticket sales? What characteristics, if any, do these events have in common? Do they wholly or mainly involve large-scale events in major venues?

Each individual music or theatre event on our website is represented with a topic. We recorded approx. 800 individual topics posted last year. The venues ranged from small clubs such as Pygmalion to arenas such as the 3 Arena.

The full list of past topics is available here: <https://www.toutless.com/viewforum.php?f=12>

Sports events are treated slightly differently with several larger topics maintained for popular clubs and seasons rather than individual event topics as interest is usually less based on an individual fixture and more on all games in a particular clubs season. Approximately 100 individual topics were posted last year regards sporting events but as stated several of these would be regards several matches.

Historic sporting topics are available here: <https://www.toutless.com/viewforum.php?f=20>

Both wanted and for sale requests are recorded in a topic. A manual task by moderators will judge the overall feel of a topic tagging it green for greater amount of available tickets and red for a greater amount of requests for tickets. Last year approx. 450 of approx. 800 topics leaned towards availability by the time of their closure. Large venues with higher capacities will typically have the most ticket availability with smaller venues (sub 1500 capacity) often having the least.

13800 posts were made in the events forum last year but only half of those chose to identify their request with an icon. Those that did we see an almost 50:50 split between wanted and for sale requests.

Question 3

What proportion of tickets offered for sale on secondary marketplaces and platforms are sold

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- a) for a price above the face value of the ticket (plus any applicable service charges or booking fees)
- b) at the face value of the ticket
- c) for a price below the face value of the ticket
- d) fail to sell.

Information on the size of the mark-ups above, or discounts below, face value prices would also be welcome.

We do not allow trading above face value so all trading can be considered to be at a maximum of face value.

Functionality exists to allow people record if they successfully traded or obtained a ticket but it is rarely used by users and we do not consider statistics obtained as likely to be accurate. We do not involve ourselves in the transaction and simply provide a platform for users to arrange meetings. Anecdotally it is not uncommon for events with a glut of tickets for sale to have lower than face value listings made and as before these are typically the higher capacity events. We allow below face value selling but also provide some transparency from offers from buyers to avoid "race to the bottom" style bidding by sellers. Our market can be considered artificially manipulated to try and give both buyers and sellers their best chance. A typical initial reduction is simply to waive fees from the original booking agent but reductions typically get more heated towards an event as the likelihood of being left with a ticket increases. Reductions rarely go below 50% though with 70% being a common minimum. It would be likely most users will give a ticket to a friend for free at this point rather than sell at such a loss to a stranger.

Question 4

How common is ticket fraud involving the supply of fake tickets or the non-delivery of tickets? How frequently, and in what numbers, are persons producing fake tickets denied access to entertainment and sporting events?

As we are not directly involved in the ticket transaction we do not confirm validity of tickets and this is left as an exercise for our users to police. We do request any incident is flagged with us and on receiving such a notification we will remove or "ban" a user from our site.

Out of 73000 members 3981 have been banned from the board for some reason since 2008. Typically this will be for breaking rules involving face value selling or trying to sell items other than tickets (typically automated spamming).

Approximately 100 have a reason that is described in some manner as "scam" which would be the term we use for a user reported to be providing fraudulent tickets in some manner.

An important caveat of this number is that we've found many times the actual individuals behind this will attempt to register multiple times and anecdotally we believe this number of accounts actually represents < 20 users.

Another caveat is that we only have other users word that fraud has occurred and we've no way of proving legally such a situation. We always advise informing local law enforcement for advice in this situation.

To this end we've been contacted and provided information on three users in accordance with data protection laws after a verified request for data from the Gardaí.

We would consider this number low given our registered userbase though the number of issues that were created by these users before we were informed were unfortunately numerous and caused distress for both our staff and users. Exact numbers are not available as to how many tickets were involved.

We believe the fact we aggressively insist on a face value maximum makes us less attractive to fraudsters who wish to maximise profit. It might be a case that this would change in the event of a change in the law to limit to face value selling hence suggestions regards the ability to verify tickets and transfer ownership securely as given above.

Question 5

What proportion of tickets for high-demand entertainment events are typically allocated for pre-sale or other allocation prior to going on general sale to the public? What parties or groups are the main recipients of such pre-sales and preallocations?

As we are not a primary seller we do not have access to this information.

Question 6

Are you aware of tickets being supplied to secondary sellers or marketplaces by persons involved in the primary market for entertainment or sporting events such as artists and their representatives, promoters or primary ticket sellers? If so, how prevalent is the practice and what is its scale?

We've no evidence beyond what was already included in the original document that this is occurring.

Question 7

Are parties who engage in ticket resale on a systematic basis and on a significant scale a feature of the secondary ticket market in Ireland? What proportion of secondary sales for high demand events are accounted for by such sellers? Do such sellers receive more preferential terms, such as early payment, from secondary marketplaces?

We firmly believe there are people who behave in this manner as our users frequently mention encounters with same when using our service. We have no data on figures requested though.

Question 8

Is there evidence of the use of software (bots) to source multiple tickets for high-demand events on the primary market in Ireland and to circumvent security measures? How common or extensive is the use of such software for this purpose?

We're unlikely to be a target of such automation as we're not a primary seller and all transactions on our site require interaction with the holder of a ticket that couldn't be implemented by a bot. We do encounter automated scans which use similar technology for reasons of posting SPAM (adverts) and based on that experience it would be our belief primary sellers should be able to identify the existence of similar bots without much difficulty.

Question 9

What means other than bots are used to obtain large numbers of tickets on the primary market for the purpose of resale?

We've no data on this.

Question 10

What proportion of tickets offered for resale for major entertainment and sporting events in Ireland are listed by sellers from outside Ireland?

Based on geographical stats provided by Google Analytics for the last year

85% of our users are from Ireland.

8% are based in the UK

1.5% are based in the US

A breakdown of how these visitors used the site (buying, selling, or both) is not available.

Question 11

What actions are currently taken by primary ticket sellers and ticketing service providers to prevent purchases in excess of the contractually permitted number of tickets or resales in breach of the terms of the primary ticket contract? What is the level of ticket cancellations for the breach of such terms? What is the level of denial of access to venues and stadia for breach of such terms?

We've no data on this.

Question 12

Do secondary marketplaces consider themselves to be under an obligation to assist event organisers who wish to identify ticket resellers acting in breach of their contract with the primary seller? Should they do so? Should they be required to do so?

We are prohibited from identifying individuals who use our site except under allowances for criminal situations in the Data Protection Laws of Ireland. Breach of contract would be considered a civil manner. If a legal way was available for us to report touting to prevent the person in question getting tickets again we'd be happy to make use of it but how such an identification could be accurately be made is not clear to us.

Question 13

Should websites which sell tickets for an event on the primary market redirect purchasers to secondary platforms selling tickets to the same event? Should any such redirection be subject to a requirement that the consumer be informed of the status of the secondary site and that ticket prices are likely to be higher?

We'd welcome redirects to face value maximum facilities . Any other such redirection we'd be against with or without warning about the price increase.

Question 14

How many events in Ireland, and what proportion of their tickets, have featured 'Platinum Tickets' or other dynamic-pricing approaches to ticket pricing? What was the average price of such tickets? Did they sell out?

We've no data on this.

Question 15

Is a dynamic pricing approach to event tickets likely to be adopted on a significant scale? If so, when and for what type of event is this likely to occur? If not, what are the main reasons why it will not be pursued?

As we do not sell tickets we do not have any information on future plans to implement this. However we will mention this is currently in place for several music festivals already in the guise of "early bird tickets". It is not uncommon for touts to buy early bird tickets and try and sell them at a later time at the higher face value still allowing a profit. It would be advised any such legislation covers this to prevent opportunistic rushes on cheaper tickets.

Question 16

What additional steps, if any, could performers and their managements, sporting bodies and event promoters take to minimise secondary ticket selling at inflated prices and ensure fairer access to tickets for fans?

As mentioned before a form of digital ticket license with appropriate audit trail appears to be the only system that would approach a level of effectiveness that it should be worth implementing.

Question 17

What additional technical measures, if any, are primary ticket sellers planning to implement or develop to prevent purchases made with the aid of bots?

While Toutless is not a primary ticket seller I do have 15 years' experience in IT systems including implementing technologies involved in dealing with management of automated intrusion.

Any such measure should never be considered "fire and forget" as it can be worked around as stated if left static for some time. However most automated systems are currently built to a specification and do not handle change well.

As such a simple way of reducing the effectiveness of bots would be to actively change the interface in ways that can be easily detected by humans but likely to break automated systems.

Changing these interfaces with short notice close to large sales would likely cause many bots to accidentally identify themselves as they will be the only users hitting areas involved with the older interface. This can form the basis of blacklists that prevent further access from hosts that can be considered compromised.

Legislation on bots should consider the saying "perfect is the enemy of good". While it may change in the future the amount of resources to program semi intelligent bots or to quickly fix bots is not insignificant and can be a successful deterrent if large revenue streams are denied several times in succession using methods such as described.

Question 18

Are personalised or paperless tickets an effective method for curbing ticket resale? What drawbacks, if any, are associated with such approaches? Has experience with these methods in Ireland been positive, negative or mixed?

It is our belief that this is a flawed solution.

While we do not want people profiting from tickets we still wish that a facility is in place for people who can no longer attend and wish to recoup the face value by selling to another person.

Currently no form of transfer allows this.

A combination of ID based ticketing as well as allowing a trusted party to broker the sale at no more than face value and allow the transfer of the ticket to another user is required. I describe what such a system may involve in a bit more detail at the beginning of this response.

As we do not allow trade of events that have these restrictions currently we've had several anguished users argue about the restrictions due to the inability to purchase unused tickets locked to the original purchaser so we believe the experience has been at best mixed.

Question 19

Do primary sellers or venues offer a facility for the return and refund of tickets that purchasers are unable to use? If so, what conditions apply to this facility? If not, what are the reasons why primary sellers do not offer this facility? Would they consider the introduction of such a facility and, if so, under what conditions?

We are not aware of any such facility.

Question 20

Do secondary ticketing websites consider themselves under an obligation to ensure that resellers who qualify as traders under relevant consumer protection legislation inform consumers of their status as traders and of the rights that consumers buying from such sellers have under that legislation?

If anything can assist our users in protecting themselves further we would happily implement it but it is unlikely that our model would attract anyone who could be considered a trader.

Question 21

Should legislation be introduced to regulate ticket resale and the secondary ticketing market? If so, what form should such legislation take and what penalties should apply to breaches of its provisions? If not, what are the reasons why legislative measures should not be pursued?

After working for 9 years to try and provide an alternative to touts in the hope that we could diminish the market by providing another supply without obvious success it seems to us that legislation is required. Suggestions and recommendations on how we'd like that shaped have been mentioned above. Penalties need to be strict enough to dissuade people from what are significant profits and as such fines in line with what can be assessed to be the income of a professional tout charging 4 figures regularly for multiple tickets would make sense.