



Contribution to the Commission consultation on the Digital Services Act package

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Introduction

Pearle* - Live Performance Europe is the European employers' federation of live performance organisations. Through our members, we represent more than 10,000 organisations in the sector across Europe, including theatres, theatre production companies, bands and music ensembles, orchestras, opera houses, ballet, dance companies, festivals, concert venues, producers, promoters, agents, comedy, variété, circus, event suppliers and others.

We welcome the opportunity to give input to the Commission consultation on the Digital Services Act package. The revision of rules applying to online platforms and marketplaces acting as intermediaries for online traders is a unique opportunity to update certain aspects of EU legislation with the aim to consider the digital transition and address legal gaps and loopholes.

New online services of the live performance due to the Corona crisis

The live performance sector has been, and still is one of the sectors the most hardly hit by the pandemic with nearly all live events (within and outside the EU) being cancelled during lockdown. The shift to online concerts, theatre pieces, opera and festivals during this period has raised questions about new possibilities of sharing creative content online, as it has led to the emergence of a wide range of new forms of presentations online and different platforms sharing and streaming performances and shows.

With the aim to find new ways of working and connecting to the audiences, organisations in the live performance and artists tested numerous formats to share live events, starting from

short pieces of performances by individual artists to bigger (live) shows and concerts of orchestras, music groups, dance ensembles or theatre companies.

Live events and archive material put on these new platforms were, at the large majority, available for free as an act of solidarity in these times of crisis. Only occasionally access was linked to a paying service. For the sector it is crucial to explore business models which can be based on a fair-minded approach with the aim to achieve a balanced economic outcome between all actors involved – right holders, the live arts organisations that produce and stream the concert or performance and consumers. Unlike other media, such as broadcasters, tv production, record companies, publishers and others, live performance organisations cannot earn income from a neighbouring right. Apart from Germany, neither in other EU member states, nor in the EU copyright legislation a producers' right for live performance organisations is included. The pandemic has made clear that this is a missing gap in the European copyright acquis.

Information collected from members in the past months reveals that a rewarding business model is needed to incentivize a shift to digital on a long-term basis and allow for those organisations to - at least - earn back the investment of recording, editing, streaming. We stand ready to discuss lessons learnt from this period with the European Commission as well as Member States authorities.

Online secondary ticketing in the live performance sector

Since several years, the live performance sector has been facing serious problems with a growing online secondary ticketing market, worth €12.14bn in 2019 in the EU. While event organisers are partnering up with online marketplaces to sell tickets for live shows and other events, non-authorized platforms and online traders have created a parallel market on which they sell tickets for prices much higher than face-value to the detriment of consumers, artists and event organisers.

Several Member States have already introduced legislative measures against **the illegal resale of tickets** in recent years. At the same time, the live performance sector took action against some secondary ticketing platforms and, in some countries in partnership with consumer organisations, informed consumers in campaigns about the impact of illicit secondary ticketing.

Despite these joint efforts, the illicit secondary ticketing market is flourishing. Numerous court cases against online ticketing platforms by governments or consumer organisations¹ – some of them still pending – show the dimension and impact of the problem for consumers, artists and live performance organisations and reveal unfair commercial practices and fraud used by those platforms.

¹ Most recent court cases in Austria, Hungary and Norway. Other court cases in Germany, the UK, Switzerland, Italy, France, Belgium

Given the scope and the fact that it concerns a cross-border issue, a European initiative is in this sense the only appropriate way to tackle such illegal form of trading tickets, by addressing the **liability of platforms** and **clarifying the responsibilities, the oversight and the enforcement of rules**.

It has been observed in recent years that problems related to the illicit resale of event tickets is reinforced by the **lacking liability and transparency** of online secondary marketplaces acting as intermediaries for third parties and online traders. The lack of liability makes it difficult to get reliable and clear information about the online traders. Consumers as well as event organisers, concert halls and festivals struggle to trace them back when issues about booked tickets arise. In that respect we call for a **clarification of responsibilities** of online secondary ticketing platforms, with the following legal obligations:

- Follow the principle of the 'know your customer' policy and request from professional online traders using an intermediary platform to identify themselves clearly
- Provide technical means on a platform allowing professional online traders as well as individuals to comply with their obligations and enable them to publish the pre-contractual information consumers need to receive in accordance with applicable consumer law
- Detect illicit secondary ticketing on the platform, timely inform consumers about it and block the trader or individual involved in these activities

A second key concern is the **enforcement of rules**.

Secondary ticketing platforms have moved their business outside the EU and as a matter of fact escape from enforcement of European law for companies acting on the territory of the EU. In this way, even in countries in which the resale of tickets above face-value is prohibited², platforms continue selling tickets to EU consumers from a "safe haven".

These safe havens can also be located inside the EU market though. If a secondary ticketing marketplace selling invalid or illegal tickets is based in one of the EU Member States where the reselling of event tickets is not clearly regulated, enforcement across borders is virtually impossible. The DSA consultation questionnaire points out that "the current system of cooperation between Member States foresees that the Member State where a provider of a digital service is established has the duty to supervise the services provided and to ensure that all EU citizens are protected."

However, if an online secondary ticketing marketplace is established in one EU Member State and illicitly sells event tickets to consumers in other EU countries, the cooperation mechanism for cross-border cases which is established in the E-Commerce Directive is ineffective, as criminal law in this field is not harmonised at EU level. Citizens are therefore

² This is the case in Portugal, Spain, France, Belgium, Norway, Denmark, Germany, Poland, Croatia

not equally protected across the single market when it comes to the acquisition of invalid event tickets.

Conclusions

In the undergoing DSA consultation which has the aim to shape the future legislation on digital services, we underline the effects of the current health crisis on online offers of live performance and events. We call on the Commission and Member States authorities to:

- **Discuss lessons learnt from the pandemic and the shift to online events and performances**
- **Further investigate new emerging online business models to share creative content following the loss of income and activities during the Corona crisis**
- **Assess European copyright legislation and explore with a fair-minded approach how to achieve a balanced economic outcome between all actors involved**

Secondly, we urge the Commission and Member States to take legal action to tackle illicit secondary ticketing for live events. In this context we reiterate the following demands:

- **Upgrade the liability regime of secondary ticketing marketplaces when selling illegal or invalid event tickets promoted on their platform by third parties and online traders**
- **Clarify responsibilities of online secondary ticketing platforms and impose legal obligations to identify online traders; ensure pre-contractual information is published; monitor activities on platforms to detect illicit secondary ticketing**
- **Create a common legislative framework and enhance the cooperation of national authorities to ensure better enforcement of rules in the context of illicit secondary ticketing**
- **Strengthen the oversight of online platforms based within and outside the EU**