SUMMARY OF THE REPORT
“SECONDARY TICKETING MARKET”

Research Centre for Consumer Law of the University of Bayreuth
INTRODUCTION

The submitted report regarding the secondary ticketing market consists of six national reports (Germany, France, the United Kingdom, Italy, the Netherlands and Spain) and of a comparative legal analysis.

In the framework of the national reports, the experts investigate the questions of how event tickets are legally classified, which contractual relationships are relevant and which provisions govern the transferability.

GENERAL OBSERVATIONS WITH REGARD TO THE TRANSFER OF TICKETS

1. LEGAL NATURE OF TICKETS

The determination of the legal nature of tickets is a decisive factor with regard to the question of how tickets can be transferred. In this context, two basic models were identified:

- On the one hand, tickets are classified as a security, which embodies the right to participate in the respective event; therefore the ticket itself is the basis for the provision of the service.

  The security model is characterised by the fact that the organiser (or a distribution company acting on his behalf) issues a document (i.e. the ticket) and this document entitles the respective holder of the document to request access to the event. The holder is the person that holds the ticket in his hands and is able to present it if required. In this case it does not depend on how the holder received the ticket.

- On the other hand, tickets are considered as mere documents of legitimation. In favour of the organiser, the ticket is then considered as proof of a contractual claim against the issuer of the ticket.

  If this applies, the organiser is only obliged to provide the service if the holder of the ticket proves his/her entitlement. In case of any dispute, the holder may not simply refer to the fact that he/she is in possession of the document, but instead has to prove that he/she effectively acquired the entitlement to the service documented by the ticket.

  The classification as security is mainly practised in Germany and the Netherlands – but even there many kinds of tickets are not included. The decisive factor is, whether the debtor (i.e. the organiser) and the original purchaser of the ticket agree that the respective service shall be provided vis-à-vis the holder of the ticket. In Germany this only applies to tickets that are not personalised, while personalised tickets are regarded as mere documents of legitimation.

  The other jurisdictions do not always have such a clear differentiation. Overall, however, the experts noticed that there is a tendency that the tickets are mainly regarded as documents of legitimation or have similar effects.
According to the opinion of the experts, the security model will also increasingly lose its importance in Germany. They argue that organisers increasingly tend to personalise tickets. Tickets are also issued as digital tickets more and more frequently. According to the predominant opinion these digital tickets are not considered as securities. Furthermore, the classification as a document of legitimation does not work for digital tickets in Germany (and some other jurisdictions).

### 2. LEGAL CLASSIFICATION OF THE TRANSFER PROCESS

The differentiation regarding the legal nature has an effect on the question of the legal principle according to which the ticket, respectively the right securitised in the ticket (i.e. the right to participate in the event) is transferred.

With regard to securities – and therefore in Germany with regard to non-personalised tickets – the transfer takes place just like any other transfer of movable things. Therefore, the ticket is delivered with the intention that the secondary purchaser shall become the owner. With this transfer of ownership, the rights to participate in the event are also transferred.

Whereas if the ticket is regarded as a document of legitimation, the transfer is effected by assignment. In this case, all rights to participate in the event that arise from the contract concluded with the organiser are transferred. Initially and seen from an external point of view this does not differ from the transfer of ownership of a thing: The assignment is generally effected by the delivery of the ticket and in case the contracting parties agree that the purchaser shall now participate in the event.

For the effectiveness of the transfer this is, however, not sufficient in all countries. In other jurisdictions the effectiveness of the assignment depends – unlike in Germany – predominantly on the agreement of the debtor (i.e. the organiser in this case) or on whether he/she is at least notified.

### 3. POSSIBILITIES TO RESTRICT OR EXCLUDE THE TRANSFER

The legal classification of the transfer process (transfer of ownership of a thing or assignment) also affects the possibilities of the organiser to effectively restrict or exclude the transferability.

Thus, in case the transfer was made by transferring the ownership of the ticket as a security, any exclusion of the transfer that was possibly specified has no effect on the validity of the transfer. Even if the organiser excludes the transferability in his general terms and conditions, the secondary purchaser regularly becomes the owner and therefore obtains the right to participate in the event. A possible contractual ban on the transfer of the ticket may, at most, result in a claim for damages against the original purchaser.

The situation is different if the transfer was made by assignment of the ticket as a document of legitimation or in other corresponding ways that protect the debtor. In principle, it is possible to exclude the transfer of claims in all jurisdictions that were analysed. In most cases, such an exclusion makes the transfer process ineffective and prevents the secondary purchaser from effectively obtaining the right to participate in the event. However, it has to be examined on a case-to-case basis whether such an exclusion of the transfer constitutes an unreasonable disadvantage for the original purchaser and may therefore possibly be considered ineffective. In Germany, this examination is performed by reviewing the content of the general terms and conditions.
SPECIFIC RULES WITH REGARD TO THE TICKET MARKET

Specific legal provisions for the secondary ticketing market exist in all examined countries, except Germany and the Netherlands. In the Netherlands, there was at least a corresponding draft law. However, it was not adopted.

As far as rules were adopted, these aimed predominantly at curbing the commercial secondary ticketing market because it was generally considered as problematic (France, Italy, Spain). Often, this has been justified with risks for the consumers resulting from the secondary ticketing market. In the United Kingdom, legislation was not aimed at avoiding a secondary ticketing market – it rather intended to achieve a consumer friendly arrangement and promotion of a fair secondary market. The same objectives were also pursued by the failed Dutch initiative.

Apart from ensuring consumer protection, the existing rules quite frequently aim at protecting the organisers. In order to protect the organisers rules particularly ensure that the prices of the original market – that are defined by the organisers and not seldom subsidised by the state or cross-subsidised by an organiser – are not undermined by the secondary market.

Due to the divergence of the objectives pursued by the different rules, the regulatory measures in the respective countries also differ significantly:

**United Kingdom**

For the UK legislator it was crucial to guarantee the possibility of a conscious decision by the purchasers. Therefore, it particularly focused on *information obligations* which must be met vis-à-vis the customers. These information obligations especially affect the resellers of the tickets and the operators of “secondary ticketing” facilities, such as websites where tickets can be purchased. This particularly included information on the actual value (or the initial price) of the ticket.

A violation of these information obligations can lead to a fine of up to 5,000 pounds.

Additionally, the operator of the platform is obliged to report illegal activities that come to his knowledge to the police and generally also to the organisers.

Furthermore, the use of automated ticketing bots – that is the use of bots that acquire large amounts of tickets and withdraw them from the original market – was prohibited by the Digital Economy Act 2017. The specific arrangement of this provision by means of implementing provisions is, however, still unclear.

The provision regarding a cap of price surcharges (a limit of 10 per cent above the initial price was suggested) could not be maintained during the legislative process.
France

In France, the secondary ticketing market was already regulated at the beginning of the year 1919. At the time, the resale of state subsidised tickets at a higher price than the determined selling price was prohibited under criminal law. Moreover, a criminal-law provision was created in 2012 that generally prohibits the customary resale of event tickets without the consent of the organiser (Art. 313-6-2 of the French penal code). In the meantime, special provisions have also been introduced for sports law. These have, however, outdated themselves due to the far-reaching provision of 2012.

For offences against Art. 313-6-2 of the French penal code a penalty of up to 15,000 euro or up to 30,000 euro in the case of a repeated offence may be imposed.

Based on this provision there have already been judgements against the hosts of websites that establish their responsibility to monitor the provider.

Apart from the mere consequences for the seller under criminal law, a violation also has a direct effect on the transfer process, with the result that the transfer is ineffective and the purchaser is not entitled to participate in the event.

Spain

At national level in Spain, there is also a ban on the resale of tickets at a price higher than the authorised price. However, this only concerns the street trading up to now – at least at national level.

The (re)selling via internet or at a lower price is therefore not prohibited.

Additional bans are envisaged (or planned) in different regions of Spain. In some cases these also include bans on ticket reselling via the internet. Violations of these prohibitions are punishable by fines.

Italy

Italy only recently introduced a far-reaching ban on ticket reselling. With the corresponding provision, the Italian legislator implemented a ban on the professional secondary ticketing market with the result that an exchange of tickets is only permitted between private individuals. Therefore the reseller has to be a natural person who transfers his/her ticket occasionally and not for commercial purposes.

A violation of this provision may result in the website being blocked or deleted. Moreover, the competent authorities may demand compensation for damages from the ticket-seller.

The Netherlands

The legislative amendments that were proposed – but ultimately failed – in the Netherlands intended to enable the buyer to make a conscious decision. Like in the United Kingdom, this was to be ensured by special information – especially with regard to the initial price of the ticket.

Moreover, obviously inadequate price surcharges are inadmissible. Such an inadequacy is the case if the price charged by the secondary ticket-seller exceeds the initial price that is printed on the ticket by more than 20 per cent.

Reliable figures on the effects of the rules could not be determined by the experts.
TICKETS AS SECURITIES OR DOCUMENTS OF LEGITIMATION

1. Graphic – Legal classification in Germany

- Tickets
  - classic
  - anonymous
  - personalised
    - (not finalised conclusively)
  - digital

security → all rights arising from the ticket are transferred automatically in the case of a resale.

document of legitimisation → consent of the organiser is required.

2. Table – Legal classification in Germany

<table>
<thead>
<tr>
<th>Ticket as ...</th>
<th>Security</th>
<th>Document of legitimation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicable to types of tickets</td>
<td>Non-personalised tickets</td>
<td>• Personalised tickets</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• if applicable, digital tickets</td>
</tr>
<tr>
<td>Legal consequences</td>
<td>Holder of the ticket is entitled to receive the service.</td>
<td>Holder of the ticket must prove entitlement to benefits.</td>
</tr>
<tr>
<td></td>
<td>It does not depend on how the holder received the ticket.</td>
<td>Consent of the organiser is required.</td>
</tr>
<tr>
<td></td>
<td>When reselling the ticket all rights will be automatically transferred.</td>
<td></td>
</tr>
<tr>
<td>Legal basis</td>
<td>Transfer takes place as other transfers of movable things.</td>
<td>Transfer is carried out by way of assignment.</td>
</tr>
<tr>
<td></td>
<td>Secondary purchaser is now the owner.</td>
<td></td>
</tr>
<tr>
<td>Possibilities to restrict or exclude the transfer</td>
<td>Organiser cannot deny the secondary purchaser the rights to participate.</td>
<td>There is the possibility to exclude the transfer of claims.</td>
</tr>
<tr>
<td></td>
<td>A possible contractual ban regarding the transfer may, at most, result in a claim for damages against the original purchaser.</td>
<td>Organiser may refuse admission of secondary purchasers.</td>
</tr>
<tr>
<td>Future development</td>
<td>Will lose its importance.</td>
<td>Will increase in importance.</td>
</tr>
</tbody>
</table>
### Overview – Comparison of National Law

<table>
<thead>
<tr>
<th>GB</th>
<th>France</th>
<th>Spain</th>
<th>Italy</th>
<th>Netherlands</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Specific regulations for the secondary ticketing market</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Resale</strong></td>
<td>Permitted</td>
<td>Only with the consent of the organiser</td>
<td>Allowed in principle</td>
<td>Only between private individuals</td>
<td>Allowed in principle</td>
</tr>
<tr>
<td><strong>Information obligations</strong></td>
<td>In case of a secondary ticketing market / actual value of the ticket</td>
<td>N/A</td>
<td>N/A</td>
<td>Actual value of the ticket *</td>
<td>No</td>
</tr>
<tr>
<td><strong>Sanctions/ Penalties, Fines</strong></td>
<td>Up to 5,000 pounds</td>
<td>Up to 15,000 euros. In case of repeat offence up to 30,000 euros.</td>
<td>Yes</td>
<td>• Blocking / deletion of the website • Damages</td>
<td>No *</td>
</tr>
<tr>
<td><strong>Use of bots</strong></td>
<td>Not permitted</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Capping / Price surcharge</strong></td>
<td>No</td>
<td>Does not apply</td>
<td>Permitted up to the original price in case of street sale</td>
<td>N/A</td>
<td>Max. 20 percent surcharge *</td>
</tr>
</tbody>
</table>

* Information refers to a planned but failed legislative proposal.