

REPORT FROM THE NEW YORK STATE SENATE

COMMITTEE ON INVESTIGATIONS AND GOVERNMENT OPERATIONS

CHAIR
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Final Investigative Report: Live Event Ticketing Practices

MAY 18, 2021

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I. EXECUTIVE SUMMARY

New York State is among the premier national and global live entertainment event markets and destinations for performers and fans. The home of Broadway, thousands of renowned venues large and small, iconic professional sports franchises, and some of the most famous artists, producers, and names within the industry, one timeless lyric embodies what it means to play and succeed on arguably the biggest stage in the world: “If I can make it there, I’ll make it anywhere. It’s up to you, New York, New York.”¹

New York’s ability to attract top talent to its illustrious theaters, amphitheaters, stadiums, and arenas – from Midtown Manhattan’s Carnegie Hall and Madison Square Garden to Harlem’s Apollo Theater, from The Bronx’s Yankee Stadium to the Bethel Woods Center for the Arts, and from the Saratoga Performing Arts Center to Brooklyn’s Barclays Center – has never been in doubt. However, the likelihood of a resident or tourist securing tickets at an affordable price to attend a live entertainment event at one of these locations remains an uncertain reality – at best – for a multitude of reasons, including, but not limited to, influence and direction from all corners of the industry such as performers (i.e. artists, teams, etc.), promoters, venues, primary ticket vendors, secondary resellers and marketplaces, and the demand of the public itself.

The far-reaching and tremendous economic impacts arising from the ongoing COVID-19 pandemic and the related fiscal consequences faced by the live event industry at-large do not go unnoticed and remain extremely relevant. At the time of this report’s publication, the lights on Broadway remain dark and patrons have only recently begun attending sporting events with capacity expected to grow within the coming weeks.² In New York City alone, arts, entertainment, and recreation “accounted for 93,500 private sector jobs at 6,250 establishments in 2019 [...] [having] an average salary of \$79,300 and provid[ing] \$7.4 billion in total wages.”³ The NYC

¹ “(Theme From) New York, New York,” as composed and written by John Kander and Fred Ebb (1977).

² *See gen* “Governor Cuomo, Governor Murphy and Governor Lamont Announce Significant Easing of COVID-19 Pandemic Restrictions on Businesses, Gatherings and Venues” (May 3, 2021). Available at <https://www.governor.ny.gov/news/governor-cuomo-governor-murphy-and-governor-lamont-announce-significant-easing-covid-19>

³ *See* “Arts, Entertainment and Recreation in New York City: Recent Trends and Impact of COVID-19,” by the Office of the New York State Comptroller (February 2021). Available at <https://www.osc.state.ny.us/files/reports/osdc/pdf/report-12-2021.pdf>

performing arts and spectator sports subsector “accounted for half” of those jobs, as well as “an average salary of \$114,600.”⁴ The arts, entertainment, and recreation sector as a whole experienced “the largest decline among the City’s economic sectors,” suffering a 66% reduction in employment from 2019 as of December 2020.⁵ It cannot be overstated how much of an economic driver the arts and cultural sector (of which live entertainment is a major component) is for this state, as it “contributed \$120 billion to New York’s economy, or 7.5% of the state’s economic output, and employed nearly half a million people, according to the U.S. Bureau of Economic Analysis” before the pandemic.⁶ For New York City – arguably “the hardest-hit metropolitan area,” “taxable revenue from performing arts companies fell 85% [from spring 2020] compared to 2019, dropping from \$25.2 million to just \$3.8 million” with much more lost in related spending activity at restaurants, hotels, etc.⁷ We must continue to recognize and internalize the fiscal and cultural value associated with this broad economic sector to ensure its future success with so many lives dependent on its survival.

With support for various industry stakeholders in light of COVID-19 also in mind, policymakers must now address the looming expiration of Article 25 (“Article 25” or “Ticket Law”) of the New York State Arts and Cultural Affairs Law (“ACAL”) in its current form as of July 1, 2021, which governs many aspects of “transactions involving tickets for admission to places of entertainment.”⁸ As will be discussed at greater length within this report, Article 25 has been subject to numerous amendments and regular extenders for much of its history. The New York State Legislature is once again tasked with deciding what provisions of law to amend, supplement, extend, and/or sunset this year. Though we must do all that is possible to allow every musical, concert, and sporting match to thrive as we reopen the state and national economy, we must fully consider adjusting pre-pandemic practices that negatively impacted the affordable, accessible, and transparent distribution of tickets sold to fans. Simply put, legislation must be enacted to further ensure that ticket sales across New York State are fair and transparent for all parties involved.

⁴ *See id.*

⁵ *See id.*

⁶ *See* “One Lost Weekend,” by The New York Times (September 23, 2020). Available at <https://www.nytimes.com/interactive/2020/09/24/arts/new-york-fall-arts-economy.html>

⁷ *See id.*

⁸ *See* NYS ACAL Sec. 25.01.

This report, as well as the findings and policy recommendations incorporated herein, is the culmination of the New York Senate Standing Committee on Investigations and Government Operations’ (“Committee”) examination into multiple facets of the live event ticketing industry in the state that will be further discussed in Section IV.⁹ In sum, the following findings have been identified by the Committee, which will be detailed along with related recommendations in Section V:

- Bots still loom large over ticket sales;
- Broker licensure requirements deserve updating;
- Refunds demand expansion in certain circumstances;
- Risks of speculative tickets outweigh rewards;
- All-in pricing empowers customers;
- Fees, price floors, and staggered sales deserve greater regulation;
- Reselling free tickets offers no consumer value;
- Holdbacks are opaque and lead to less inventory for fans;
- Membership passes should be allowed for all professional sports; and
- Exclusivity clauses in primary ticket vendor contracts reduce competition.

II. STATE AND FEDERAL LIVE EVENT TICKET LEGISLATION

a. Article 25 of the New York State Arts and Cultural Affairs Law

i. History and Background of New York Law

Outside of federal legislation from 2016 that restricted ticket-buying software (or “bots”), virtually all matters related to live event ticketing are controlled by state and local jurisdictions. Accordingly, there is a strong statutory patchwork across the country – and even within states themselves – regarding pricing, fees, resale, transparency and disclosures, and other aspects surrounding the buying and selling of tickets to live entertainment events. Much of the legislation enacted or considered by states and municipalities has largely focused on regulating – or outright eliminating – activity related to “scalping” (i.e. the legal or illegal resale of tickets) and the

⁹ Reference to the “Committee” within this report refers to the actions and opinions of a majority of Investigation and Government Operations Committee members.

associated expansion of consumer protection measures that promote an open, safe, and informed purchasing experience.¹⁰

As previously identified, Article 25 (Tickets to Places of Entertainment) of ACAL is New York’s current “Ticket Law.” Subject to regular renewal by the Legislature, Article 25 is periodically updated to reflect contemporary practices employed by a plethora of industry stakeholders.

New York has had a long experience and mixed results of dealing with unscrupulous ticket buyers and sellers, originating over 150 years ago in the 1800s when “scalpers lined up at Broadway box offices early to purchase large percentages of tickets for resale on the secondary markets at much higher prices,” and “it was common practice for theater staff to thoroughly check physical tickets [...] in attempts to prohibit entry to anyone possessing counterfeit tickets.”¹¹ The ongoing difficulties presented by unregulated and underground resale – namely bribery and corruption, exorbitant prices for attendance, and fake tickets – persisted into the 20th century and led to New York’s first “anti-scalping law” in the 1920s.¹² Much of the law “retained its basic characteristic for 70 years, broadening in scope, and adding various provisions to ban bribes paid to venues by brokers for tickets,” as well as implementing a price cap for resold tickets.¹³ However, the stereotype of men in trench coats conducting back-alley transactions with fans just trying to secure seats to see their favorite act or team remained very much a normal occurrence on New York streets from Broadway to Buffalo.

Perhaps the most significant changes to NYS ticketing law happened in 2007 when “New York substantially amended ACAL in order to facilitate a more expansive resale market – including the removal of the \$2 resale price cap.”¹⁴ This sea change acknowledged that tickets

¹⁰ See *gen* “Secondary Ticket Marketplace, Guide to US Ticket Resale Regulations” (Third Edition), by Laura D. Nemeth of Squire Patton Boggs (January 2020) (stating that although “some common themes have developed in the regulations in recent years (such as refund requirements, prohibition on the use of deceptive domain names and prohibition on the use of software to circumvent website security measures or ticket volume limitations), there is significant variation in the regulatory scheme from jurisdiction to jurisdiction”). Available at <https://www.squirepattonboggs.com/en/insights/publications/2020/01/2020-secondary-ticket-marketplace-guide-to-us-ticket-resale-regulations>

¹¹ See “The Battle Against the Bots: The Legislative Fight Against Ticket Bots,” by Jennifer Sherman. New York State Bar Association’s Entertainment, Arts and Sports Law Journal (Spring 2020, Vol. 31, No. 2).

¹² See *gen* “Obstructed View: What’s Blocking New Yorkers from Getting Tickets,” by the New York State Office of the Attorney General (January 2016).

¹³ See *id.*

¹⁴ See “Further Ticket Sale (and Resale) Reforms Come to New York State,” by Anthony J. Dreyer and Andrew Green. New York Law Journal Outside Counsel Expert Analysis (September 2018, Vol. 260, No. 58).

were increasingly being bought and sold on both primary and secondary levels through large, integrated software platforms and marketplaces on the internet. This new approach to ticketing in New York sought to “legalize [resale] pursuant to regulation and taxation [by] introduc[ing] a revised licensing system supervised by the Secretary of State [...] requir[ing], among other things, various disclosures of tickets sold, the posting of a bond to cover counterfeit tickets, and the payment of a \$5,000 annual fee.”¹⁵ The law also began to address the rise of egregious, extra charges by primary ticket sellers, “requir[ing] that fees added to a ticket’s face value must be tied to ‘special services.’”¹⁶

The New York State Legislature continued to enhance Article 25 in 2010 by “add[ing] provisions restricting service fees, paperless tickets, and the use of ticket purchasing software (‘bots’).”¹⁷ To further fight ballooning costs tacked on to purchases, the special service fees charged by primary ticket vendors were required to be “reasonable.”¹⁸ The 2010 law also ushered in a fairly unique – albeit somewhat controversial – concept at the time to deal with the rise of digital, electronically delivered tickets and issues related to transferability via “restrict[ing] a venue operator’s ability to offer nontransferable paperless tickets by requiring that purchasers be offered an independently transferable option [...] such as a paper ticket or PDF.”¹⁹ To the chagrin of venues, teams, performers, and primary sellers, New York sent a strong signal that an individual’s right to freely transfer (or resell) a ticket would be preserved in the secondary market. Moreover, the 2010 law was the Legislature’s first attempt at combating various types of automated ticket-buying software used by dishonest resellers to secure countless tickets to the top live performances. In 2016, the Legislature expanded and clarified bot protections, most notably by amending Section 25.24 of Article 25 to criminalize the activity as a Class A misdemeanor, increase civil penalties for using such software, and make these safeguards permanent despite other sections of the law that are subject to regular renewal.²⁰

¹⁵ See 2016 NYSOAG Report, p.8.

¹⁶ See 2018 New York Law Journal Outside Counsel Expert Analysis, p.2.

¹⁷ See *id.*, p.1.

¹⁸ See NYS ACAL Sec. 25.29.

¹⁹ See 2018 New York Law Journal Outside Counsel Expert Analysis, p.2 (describing NYS ACAL Sec. 25.30).

²⁰ See New York State Assembly Bill 10713 (Crespo) of 2016.

ii. 2018 Legislative Reform to Article 25

The last comprehensive changes to Article 25 transpired through Chapter 110 of the Laws of 2018, which mostly centered on promoting transparency while curbing certain deceptive practices such as:

- Requiring a clear and conspicuous disclosure to purchasers if a reseller neither owns nor has a contractual right to obtain tickets that are being advertised for resale (i.e. “speculative tickets”), as well as guaranteed refund procedures if such tickets cannot ultimately be procured and delivered at the agreed upon price;²¹
- Mandating that resellers provide their broker license number as part of any online platform or marketplace transaction;²²
- Directing online resale marketplaces to clearly and conspicuously disclose the website is for the secondary sale of tickets, prices may exceed face value, and refund provisions connected with cancellation or postponement of an event;²³
- Barring ticket brokers from licensure for up to three years if caught owning, controlling, or using illegal purchasing software or knowingly reselling tickets procured from bots;²⁴
- Requiring all sellers and resellers to clearly and conspicuously disclose all fees and surcharges associated with the total price of the ticket prior to accepting payment;²⁵
- Allowing professional sports teams in larger venues to offer a limited number of discounted, non-transferable membership passes to a fixed amount of games within a certain period of time;²⁶ and
- Prohibiting the use of deceptive naming and representation of websites that attempt to trick customers into believing they are purchasing tickets from the primary market rather than secondary resellers with no affiliation to the venue or performance.²⁷

²¹ See NYS ACAL Sec. 25.10.

²² See NYS ACAL Sec. 25.19.

²³ See NYS ACAL Sec. 25.23.

²⁴ See NYS ACAL Sec. 25.24.

²⁵ See NYS ACAL Sec. 25.07.

²⁶ See NYS ACAL Sec. 25.12.

²⁷ See NYS ACAL Sec. 25.34.

The 2018 legislative package “reflect[ed] continued attempts to strike a balance between an open marketplace, affordable tickets, and consumer protections.”²⁸ Additionally, the Legislature once again chose to retain the right to revisit the aforementioned reforms, as well as the general efficacy of Article 25 as a whole, by refusing to make the overwhelming majority of statutory provisions everlasting and thereby attaching a three-year expiration to the law that only allows it to exist through June 30, 2021. The Committee agrees these reforms were needed and believes they should be renewed, with modifications where necessary.

iii. Sunset and Reversion of Article 25

As mentioned, New York’s modern ticketing law has purposefully been designed to lack permanency, requiring relatively frequent reauthorization by the Legislature that allows for the adjustment of its provisions from time to time. However, if the Legislature fails to act then the law could sunset – or expire – with serious consequences on the secondary market by reimposing a resale price cap. In 2009, “reselling tickets to concerts, sports events and other attractions at large markups [briefly became] illegal because state lawmakers [hadn’t] agreed to extend [the] ticket resale law that expired.”²⁹

Despite sustained legislative attention and willingness to preserve and enhance New York’s laws governing the major industries linked to the sale and resale of tickets, the possibility for expiration remains. As of July 1, 2021, Article 25 of NYS ACAL – and the state’s ticketing landscape – would look markedly different absent renewal by the Legislature. Except for prohibitions against reselling tickets within buffer zones of venues and penalties for utilizing ticket purchasing software, virtually every other section of law within Article 25 would be repealed or changed.³⁰ Among the most notable expiring provisions would be all of the aforementioned consumer reforms linked to the 2018 legislation (outside of bot protections), fee disclosures, automatic refund mechanisms, transferability safeguards, and more firmly delineated oversight and penalties by licensing and law enforcement agencies including the Department of State and

²⁸ See 2018 New York Law Journal Outside Counsel Expert Analysis, p.3.

²⁹ See “Law Expires Allowing Unlimited Markup for Ticket Scalpers, Times Just Got Far Tougher for Ticket Scalpers in New York,” by The Associated Press (June 4, 2009) (stating “among its stricter provisions: markups are capped at \$2 over the face value of a ticket”). Via The Daily Gazette. Available at https://dailygazette.com/2009/06/04/0604_scalp/

³⁰ See NYS ACAL Secs. 25.11, 25.24.

Office of the Attorney General.³¹ Although reverting statutory language would technically allow for the resale of tickets with a broker license, the secondary sale of tickets would be capped at “two dollars over and above the original price charged for admission as printed on the face of each ticket [...] plus lawful taxes.”³² While exceptions would remain for an individual to purchase tickets on behalf of others and resell them at or below the original price, profitability from resold tickets would be severely restricted and would greatly reshape the secondary market.

b. United States Better Online Ticket Sales Act

The 114th United States Congress passed the Better Online Ticket Sales (or “BOTS”) Act of 2016, which was signed into law by President Barack Obama on December 14 of that year.³³ This legislation directly targeted rampant and unfair use of sophisticated ticket purchasing software on the federal level for the first time. The BOTS Act made it illegal for anyone to:

- Circumvent a security measure, access control system, or other technological control or measure on an Internet website or online service that is used by the ticket issuer to enforce posted event ticket purchasing limits or to maintain the integrity of posted online ticket purchasing order rules; or
- Sell or offer to sell any event ticket in interstate commerce obtained in violation of [the preceding provision] if the person selling or offering to sell the ticket either (1) participated directly in or had the ability to control the conduct in violation of [the preceding provision] or (2) knew or should have known that the event ticket was acquired in violation of [the preceding provision].³⁴

Thus, Congress effectively outlawed the usage of bots by unethical resellers to scoop up large sums of tickets to the detriment of fans forced to pay marked up prices to their favorite shows, and enforcement authority was left to the Federal Trade Commission and State Attorneys General.³⁵

³¹ See *gen* NYS ACAL Secs. 25.07, 25.10, 25.12, 25.19, 25.30, 25.31, 25.35.

³² See *gen* NYS ACAL Secs. 25.03, 25.13, effective July 1, 2021, upon expiration.

³³ See *gen* “S.3183 – BOTS Act of 2016.” Available at <https://www.congress.gov/bill/114th-congress/senate-bill/3183>

³⁴ See 15 U.S.C. 45c, Sec. 2. Available at <https://www.congress.gov/bill/114th-congress/senate-bill/3183/text>

³⁵ See *id.*

Despite this powerful federal protection, an overall lack of prosecution has been conspicuous and a major barrier to effective oversight. In January 2021, the Federal Trade Commission announced the “first case brought under the BOTS Act,” which was against “three ticket brokers based in New York who allegedly used automated software to illegally buy up tens of thousands of tickets for popular concerts and sporting events then subsequently made millions of dollars reselling the tickets to fans at higher prices.”³⁶ Even though a \$31 million judgment was entered against the defendants, they were only required to pay \$3.1 million – due to financial difficulty – for their crimes, including “using automated ticket-buying software to search for and reserve tickets automatically, software to conceal their IP addresses, and hundreds of fictitious Ticketmaster accounts and credit cards to get around posted ticket limits.”³⁷

The Committee appreciates and supports the underlying intentions of this major legislation, which provides a uniform, national standard outlawing nefarious bot activity. However, given the approximate four-year gap between enactment of the BOTS Act and its first corresponding federal legal action, the Senate Investigations and Government Operations Committee concludes: (1) prosecution of this activity does not seem to be a pressing priority or is difficult to accomplish, at the very least, (2) the widespread usage of bots still remains largely unaddressed by law enforcement agencies, and (3) notwithstanding prevention measures employed by primary and secondary sellers, bot activity and the associated resale of improperly procured tickets is likely not being referred to the appropriate prosecutorial and governmental bodies by major platforms and marketplaces.

³⁶ See “FTC Brings First-Ever Cases Under the BOTS Act,” by the Federal Trade Commission (January 22, 2021). Available at <https://www.ftc.gov/news-events/press-releases/2021/01/ftc-brings-first-ever-cases-under-bots-act>

³⁷ See *id.*

c. United States Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act

First introduced in 2009 and reintroduced as part of the 116th Congress (2019-2020), the Better Oversight of Secondary Sales and Accountability in Concert Ticketing (or “BOSS”) Act of 2019 attempted to move beyond bots to more comprehensive consumer protections related to certain ticketing practices; however, the bill stalled in committee.³⁸ Specific policy measures would require the Federal Trade Commission to promulgate rules regarding the primary and secondary sale, distribution, and pricing of tickets that provide for:³⁹

- Requirements for all-in pricing to ensure ticket sellers (and resellers) disclose all ancillary charges before customers select a ticket for purchase;
- Transparency in use of holdbacks by requiring primary ticket seller to disclose a week before the general on-sale the total number of tickets available to the public;
- Restrictions on preventing reselling or instituting a price floor on tickets;
- Transparency in the sale of speculative tickets;
- Disclosure to purchasers when the secondary seller is the primary ticket seller, venue, team, or artist associated with the event;
- Prohibitions on employees of venues, primary ticket sellers, teams, artists, online resale marketplaces, or box offices involved in hosting, promoting, performing in, or selling tickets to knowingly resell tickets at a higher price; and
- Restrictions on selling a ticket for the same seat to more than one person at the same time.

Moreover, the BOSS Act would prohibit resale marketplaces from falsely representing affiliations with venues, teams, or artists without consent, as well as require the face value disclosure of tickets resold on marketplaces.⁴⁰ Enforcement would again fall upon the Federal Trade Commission and State Attorneys General while also allowing for a private right of action.⁴¹ The Committee

³⁸ See *gen* “H.R. 3248 – Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act of 2019.” Available at <https://www.congress.gov/bill/116th-congress/house-bill/3248>

³⁹ See “Pascrell, Pallone, Blumenthal Reintroduce BOSS Act,” Press Release by Rep. Bill Pascrell (June 13, 2019). Available at <https://pascrell.house.gov/news/documentsingle.aspx?DocumentID=3931>

⁴⁰ See *gen* Section-by-Section Breakdown of the BOSS Act, by Rep. Bill Pascrell. Available at <https://pascrell.house.gov/uploadedfiles/boss.pdf>

⁴¹ See *id.*

acknowledges and supports the sentiment of Rep. Pascrell from 2019 regarding the need for this legislation:

[T]he \$9 Billion live events market resembles the Wild West: bereft of regulation and order, with bad actors around too many corners making a living by ripping people off. [...] Americans have been gouged and gouged and then gouged some more. Ticket buyers don't know how many tickets are going on sale or how many are being held back, can't see what fees will be tacked on, and sometimes don't even know if the tickets they are purchasing exist yet. For too long on these issues, our government has failed to hear the ghost of Tom Joad, the common man and woman. It's high time government stands up for him and for them. [This] legislation is for the fans, not Ticketmaster.⁴²

III. EXTERNAL REPORTING AND NOTABLE ACTIVITY

a. Office of the New York State Attorney General

In 1999, the Office of the New York State Attorney General issued a report on ticketing practices. As history quite often repeats itself in whole or in part, the report's findings, by and large, continue to ring true more than 20 years later:⁴³

- Consumers are most harmed by the illegal practice of ticket brokers paying substantial bribes, known as “ice” to various people who have control over tickets at their source;
- Tickets to popular events are systematically diverted to ticket brokers by box office employees, venue managers, and promoters;
- The best seats for events are often withheld from the public; and
- Ticket speculation is a huge business producing gross revenues of millions of dollars a year for certain premium ticket brokers.

At the time, the Attorney General recommended outlawing or heightening penalties associated with the aforementioned issues, removing the statutory resale price cap that was still in effect, and ensuring adequate disclosures for seller information as well as the number of tickets available for

⁴² See “Pascrell, Pallone, Blumenthal Reintroduce BOSS Act.”

⁴³ See “Spitzer Issues Report on Ticket Sales,” Archived Press Release by the New York State Office of the Attorney General (May 27, 1999). Available at <https://ag.ny.gov/press-release/1999/spitzer-issues-report-ticket-sales>

public sale for events. Acknowledging the reduced role of “ice” in the industry, the Committee generally agrees with these more than 20-year-old conclusions and recommendations, finding that they still have bearing on today’s ticket transactions.

In 2016, the New York State Office of the Attorney General (“NYSOAG”) released a seminal report on the primary and secondary ticket markets, “Obstructed View: What’s Blocking New Yorkers from Getting Tickets.” Recognizing frequent complaints by New York consumers who were “frustrated by their inability to purchase tickets to concerts and other events that appear to sell out within moments of the tickets’ release [only to discover that] the same tickets can appear moments later on [...] another ticket resale site [...] at substantial markups,” the Attorney General embarked on a sweeping investigation into “the entire industry and the process by which event tickets are distributed.”⁴⁴ The following findings were announced:⁴⁵

- *Holds & Presales Reduce the Number of Tickets Reserved for the General Public* – Over half of the available tickets for the top-grossing shows in New York from 2012-2015 were either put on “hold” and reserved for a variety of industry insiders including venues, artists, agents, promoters, etc. or reserved for “pre-sale” events available to non-public groups, such as users of particular credit cards and members of fan clubs. Approximately 46% of tickets, on average, were reserved for the public with the remaining 54% of tickets split between holds (16%) and presales (38%).
- *Brokers Use Inside Knowledge and Often Illegal Bots to Edge Out Fans* – Ticketmaster previously estimated that “60 percent of the most desirable tickets for some shows” offered for sale are bought by bots, and NYSOAG established that bots annually buy tens of thousands of tickets. Some brokers also engage in the practice of “speculative ticketing” that is risky to consumers and raises prices before tickets even go on sale. Resellers also take advantage of presales and fan clubs, use multiple devices and purchasers to secure tickets, maintain direct relationships with teams and venues to gain special access to tickets, often resell tickets at substantial markups over face value, and skirt ticket purchasing limits.
- *High Fees for Unclear Purposes Raise Concerns* – Under New York State law, fees added by venues and vendors to the face value of tickets are only permissible if they are directly

⁴⁴ See 2016 NYSOAG Report, p.3. Available at https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

⁴⁵ See *gen id.*

ted to special services and are set at a reasonable amount. However, the purpose of fees are often unclear and may reach extreme levels, averaging 21% of face values, which are frequently higher than other online platforms like Amazon and airline ticket sellers.

- *Restraints of Trade Exist* – Resale price floors set by ticket issuers artificially inflate the price of resold tickets and deprive the public of lower prices on a competitive secondary market. Additionally, delayed delivery of PDF versions of resold tickets, threats of cancellation of season ticket subscriptions when owners resell tickets on unauthorized platforms, and ticket issuers generally mandating tickets to be sold through a single platform all adversely affect consumer choice in a supposedly open market.

The Committee generally agrees with those findings and supports proposals that would curb the aforementioned activities.

The NYSOAG also offered several recommendations on how to deal with these issues. Some have subsequently been enacted in part while others have been left unaddressed.⁴⁶

- *Ticket Resale Platforms Must Ensure Brokers Comply With the Law* – Secondary marketplaces are best equipped to force broker compliance by distinguishing professionals from everyday fans based on volume and profitability of resale activity. Marketplaces should require posting of license numbers as a prerequisite to using the platform and providing the face value of resold tickets in accordance with NYS law.
- *Industry Players Must Increase Transparency Regarding Ticket Allocations and Limits* – Venues, promoters, performers, and ticket vendors should publicly disclose how many tickets are allocated for holds, pre-sale events, and public on-sales. Ticket vendors should also actively enforce per-person ticket purchase limits, as applicable.
- *Ticket Vendors Must Address the Bot Epidemic* – Longer-term technological and oversight solutions must include improvements in detection and prevention, as well as preemptively enforcing ticket limits, analyzing purchase data to discover irregularities, referring evidence to prosecutors, and regularly investigating resellers offering large amounts of tickets to the most sought after events.
- *End the Ban on Non-Transferable Paperless Tickets* – Electronic tickets with restrictions on transferability may be one of the only effective solutions to limit excessive secondary

⁴⁶ See id.

market prices and increase a fan’s chance to buy face value tickets. Permitting non-transferable paperless tickets would likely make it harder for brokers to amass tickets and resell them at inflated prices. However, the Legislature should balance the need for safeguards that would allow non-transferable paperless ticketing with the need to ensure that primary sales remain competitive and companies such as Ticketmaster do not further extend or leverage their market power as an exclusive selling platform.

- *Impose Criminal Penalties for Bot Use* – Civil penalties for using bots only do so much; criminal prosecution may be a better deterrent.
- *Cap Permissible Resale Markups* – New York should reinstate a reasonable limit on resale markups that would still permit the existence of brokers in the secondary market but ensure that customers are not being unfairly price gouged.

b. United States Government Accountability Office

In 2018, at the request of several members of Congress interested in reforming national ticket policy, the U.S. Government Accountability Office (“GAO”) released a report entitled “Event Ticket Sales: Market Characteristics and Consumer Protection Issues.”⁴⁷ Several industry wide findings and concerns were identified:⁴⁸

- Primary and secondary market fees vary widely, as a sample of companies showed that added surcharges averaged 27% and 31%, respectively, of the ticket price.
- Professional resellers hold a competitive advantage over consumers when buying tickets at the public on-sale. Brokers may employ large staffs and advanced software (“bots”) to quickly buy as many tickets as possible, leaving many consumers with a substantially marked up resale market as the only option to buy tickets.
- Some ticket websites do not clearly disclose fees attached to tickets or only stated them after customers entered payment information.
- “White-label” resale sites are disingenuous to customers (as they often show up as paid results of Internet searches for venues and events), typically charged greater fees than similar online resellers – sometimes higher than 40% of the ticket price, and used

⁴⁷ See 2018 U.S. GAO Report. Available at <https://www.gao.gov/assets/gao-18-347.pdf>

⁴⁸ See *gen id.*

naming and iconography frequently intended to mislead users into believing they were purchasing tickets from the venue itself.

- Nontransferable tickets may allow more consumers to access tickets at face-value prices, but they also restrict a purchaser’s ability to resell tickets they cannot use, can sometimes inconvenience the ticket holder by requiring a form of identification at the venue, and may forestall efficient apportionment of tickets.
- Caps that govern the price at which tickets can be resold are frequently ineffective due to enforcement issues.
- Clearer and earlier disclosure of ticket fees are generally supported, but views vary on the best approach (e.g. “all-in pricing” vs. separate disclosures).

The Committee believes the U.S. GAO’s findings, especially with regard to high added fees, the proliferation of bots and unsavory buying tactics, the early and complete disclosure of fees, eliminating misrepresented affiliations on websites that deceive customers, and the difficulties related to enforcing price caps, showcase issues that need to be addressed. The Committee shares the concerns regarding free transferability of tickets: though restrictions may reduce secondary resale transactions (and the markups attached), primary ticket vendors may be empowered to utilize anti-consumer practices.

c. Federal Trade Commission Bureau of Consumer Protection

In June 2019, the Federal Trade Commission (“FTC”) organized its “That’s The Ticket Workshop,” which brought together stakeholders from across the industry and solicited public comments that “explored consumer protection issues in the online ticket marketplace for events [including] practices that limit ticket availability on the primary market, mislead consumers about ticket prices or availability, and confuse consumers about the entity from which they are purchasing.”⁴⁹ The FTC “Staff Perspective,” issued in May 2020, offered the following observations, highlights, and takeaways:⁵⁰

⁴⁹ See “That’s the Ticket,” An FTC Workshop About Online Ticket Sales (June 11, 2019). Available at <https://www.ftc.gov/news-events/events-calendar/2019/03/online-event-tickets-workshop>

⁵⁰ See “‘That’s the Ticket’ Workshop: Staff Perspective,” by the FTC Bureau of Consumer Protection (May 2020). Available at https://www.ftc.gov/system/files/documents/reports/thats-ticket-workshop-staff-perspective/staffperspective_tickets_final-508.pdf

- Online event ticket sales in the United States were estimated to be \$10 billion in 2019.
- National online marketplaces have delocalized ticket buying and selling, but purchasers are likely not reaping the benefits of such massive economies of scale.
- Intentional underpricing exists in the primary market because venues, artists, and teams like to sell out shows and may choose to pass up short-term revenue for longer-term public relations benefits that preserve their reputations and fan bases. However, intentional underpricing allows the secondary market to capitalize on this “free money” being left on the table, which may lead to higher resale prices.
- Holdbacks, specialized on-sales (e.g. credit card and fan club presales), and staggered sales all contribute to scarce availability of primary tickets to major events. However, there are varying stakeholder views regarding transparency around how many tickets are held back or sold at presales, qualifications for specialized on-sales, and ticket release schedules. There are strong differences of opinion on whether greater transparency would help guide consumer expectations or purely provide direction to brokers in regard to which events they should emphasize their ticket buying resources.
- Permitting or restricting ticket transferability also raises divergent viewpoints. On one hand, promoters and primary sellers argue that artists and teams should be able to limit resale of some or all of their tickets in order to keep prices low and prevent brokers from buying all available inventory. Other stakeholders stated that limiting transferability may lead to higher prices, unfilled venues, imposition of artificial price floors, and abolishment of the role of brokers in assuming risks for teams and entertainers by off-loading tickets that are not selling well.
- Despite the adoption of the BOTS Act, bots continue to plague the ticket industry and outmatch the everyday consumer, leading to higher prices on the secondary market for the biggest events. There should be greater energy toward coordinating the efforts of the primary and secondary ticket markets, utilizing new anti-bot technology, and engaging law enforcement entities to prioritize defeating, deterring, and/or prosecuting this deplorable behavior.
- All-in pricing that provides the entire cost of a ticket, including fees, at the onset of a transaction will help mitigate price obfuscation and increase transparency, but needs to be

imposed industry-wide across every platform (primary and secondary markets) and include a vigorous enforcement element with meaningful penalties.

- Face value resale disclosures may be difficult to implement and are made harder due to dynamic pricing and package deals. However, stating the price difference alone may alert consumers to the fact they are shopping on the secondary resale market.
- Speculative ticketing remains a risky proposition for purchasers, disclosures only go so far and are often inadequate, and refunds are typically insufficient to make the purchaser whole for tangential expenses like airfare and hotels. Amid debate on whether to partially restrict or entirely ban the practice, some participants argued that it should at least be illegal to sell these types of tickets before the public on-sale.
- Despite advancement of state legislation, ticket resellers continue to use deceptive websites that are hard to distinguish from primary vendors. Thus, stronger and more consistent statutes and oversight efforts are needed.

In examining these observations, the Committee shares the concerns regarding holdbacks and specialized on-sales that create limitations on inventory, the overarching need to eliminate and prosecute bot activity, the benefits of all-in pricing, the likelihood for consumer harm from purchasing speculative tickets, and the general need for more uniform legislation and stronger enforcement to address bad actors in the market. However, the Committee again expresses its support to preserve the broad transferability of tickets.

IV. NEW YORK STATE SENATE INVESTIGATION

The New York Senate Standing Committee on Investigations and Government Operations began an investigation of the state's live event ticketing industry in 2020 due to concerns about potentially unfair, deceptive, and anti-consumer practices occurring in the primary and secondary markets. Beginning in March 2020, comprehensive interrogatories and document requests were issued to major industry stakeholders, including the largest promoters and primary ticket vendors, secondary resale marketplaces, Broadway theaters and other major venues, sports teams, and credit card companies by this Committee (hereafter referred to as "the Committee's 2020 informational request"). In part, questions were posed on the following topics: ownership and management of operations and subsidiaries, agreements with ticketing entities and third parties, policies and

determinations about fee schedules and distributions, average resale markups, market share, utilization of all-in pricing and other disclosures, refund mechanisms, tickets withheld from public on-sale (or “holdbacks”), broker relationships, price floors, transferability issues, speculative ticketing practices, white-label websites and deceptive advertising, monitoring or using bots, and transaction limits. Unfortunately, due to substantial proprietary restrictions, as well as the onset of the COVID-19 pandemic, much of the materials received were limited. To the degree possible, select responses will be included within the “Investigative Findings and Recommendations” Section of this report.

As was the case with almost every other aspect of life, the Committee’s live event ticketing investigation was mostly paused due to the COVID-19 pandemic. Business entities were understandably too consumed with the operational difficulties and economic fallout linked to the mandatory shutdowns across New York and the United States to dedicate suitable resources and attention to this examination. Communications with key stakeholders were reinitiated in January 2021, leading to extensive interviews with the Committee on issues affecting numerous components of the industry.

On April 22, 2021, the Committee formally continued its examination of the live event ticketing industry by co-hosting a joint public hearing with the Senate Standing Committee on Commerce, Economic Development, and Small Business.⁵¹ Oral testimony was received from the hearing’s participants, including representatives from Ticketmaster, Times Union Center, The Broadway League, The Shubert Organization, Treasurers & Ticket Sellers Union Local 751 I.A.T.S.E., StubHub, TicketNetwork, Vivid Seats, Coalition for Ticket Fairness, National Consumers League, Consumer Reports, NetChoice, and Sports Fans Coalition. Additional written testimony was submitted by BSE Global, the Buffalo Bills, the New York State Department of State, Eventbrite, and the New York Yankees.⁵²

⁵¹ See *gen* The New York State Senate Calendar on April 22, 2021 (providing video of the joint public hearing, written testimony submitted, and a full transcript of the event). Available at <https://www.nysenate.gov/calendar/public-hearings/april-22-2021/joint-public-hearing-examine-potentially-unfair-and-deceptive>

⁵² See the Appendix to this report for a full collection of all written testimony submitted to and received by the Committee.

V. INVESTIGATIVE FINDINGS AND RECOMMENDATIONS

a. Measures Against Using Bots

It is clear that despite the measures in place to prevent bot activity, ticket-purchasing software continues to negatively impact a consumer’s ability to buy tickets at face value through a public on-sale. Primary ticket sellers like Ticketmaster often state they “spend an inordinate amount of time and money defending [their] site[s] against bots, working with third parties, building [their] own software [and proprietary] platform[s], and having teams in real-time at every on-sale, trying to identify bot traffic and defend against it.”⁵³ While improvements may have been made in the ensuing years, the 2016 NYSOAG report found “epidemic” levels of bot use across the industry, including “three brokers [that] collectively purchased more than 140,000 tickets to events in New York [between] 2012 and 2014” and many of the most prized seats to prime events being scooped up by bots.⁵⁴ However, active and productive enforcement remains a significant issue. As previously mentioned, the FTC only recently announced its first enforcement action under the U.S. BOTS Act in January 2021, nearly four years after enactment.

One issue may be the willingness of primary and secondary ticket sellers to proactively refer suspected bots activity to law enforcement agencies. Despite actively engaging with law enforcement to support bot prosecutions, Ticketmaster testified that it was unsure whether referrals have been “unprompted.”⁵⁵ On the other hand, The Shubert Organization – through its primary ticketing subsidiary, Telecharge – has “gone to the AG’s office to give them instances where [they] have information about what [they] believe to be people using bots, in an effort to get enforcement.”⁵⁶ All hearing participants that testified about bots approved of the previous New York reforms that enhanced penalties but overwhelmingly called for greater enforcement in general.

National Consumers League strongly suggested the passage of “legislation, requiring entities such as primary ticketers, venues, promoters, or other actors in the live event ecosystem, who have knowledge of illegal bot use to report such activity to the Attorney General’s Office.”⁵⁷

⁵³ See Joint Public Hearing Transcript, p.45.

⁵⁴ See 2016 NYSOAG Report, p.19.

⁵⁵ See Joint Public Hearing Transcript, p.45.

⁵⁶ See *id.*, p.86.

⁵⁷ See *id.*, p.172.

Sports Fans Coalition agreed with mandatory reporting; Consumer Reports noted that it may be a step in the right direction but considered potential unintended consequences in the primary market such as lowering bot detections so there is no onus to report behavior.⁵⁸

The Committee strongly supports efforts to drive bot referrals and ensure that bad actors face sufficient penalties to remove them from the marketplace. The Committee agrees with the recommendation of National Consumers League to mandate the referral of known or suspected bot activity to the NYSOAG. The Committee advocates for raising the civil penalty assessed to those caught utilizing or profiting off such software. Additionally, the Committee proposes that using bots should be instant grounds for permanently barring brokers from licensure. Moreover, in order not to completely chill the free flow of information between ticket vendors and law enforcement, the Committee proposes assessment of a civil penalty – rather than a criminal sanction – upon entities that fail to notify the Attorney General when bot activity is suspected. Finally, in order to incentivize and increase referrals to law enforcement, the Committee recommends allowing a referring entity to marginally share in a financial recovery when prosecution results in a monetary penalty.

b. Broker Licensure Requirements

The NYSOAG neatly summarized the current state of law that governs the licensed ticket broker sector in New York:⁵⁹

[NYS] Law prohibits engaging “in the business of reselling any tickets to a place of entertainment” within [the] State without first procuring “a license.” Those who resell, offer to resell, or purchase with the intent to resell five or more tickets without a license are guilty of a misdemeanor and subject to penalties. Additionally, the law requires that brokers post a \$25,000 bond with their license application to ensure compliance with the law’s provisions and cover damages to their customers for any misconduct. Brokers that resell tickets online must also display a hyperlink to a copy of their licenses, and they must display the face value of tickets along with the resale prices.

⁵⁸ See *id.*, pp.222, 226.

⁵⁹ See 2016 NYSOAG Report, p.9 (citing NYS ACAL Secs. 25.13, 25.09(2), 25.35, 25.15, 25.19, and 25.23).

Despite these seemingly clear requirements, the actual distinction between professional resellers (or brokers) and fans looking to unload or make a few dollars off extra tickets is often difficult to discern in the real world. The Coalition for Ticket Fairness testified as to the desire to “see more people licensed in the state,” but New York’s high licensing fee of \$5,000 may be a significant barrier to entry.⁶⁰ Although some brokers may be waiting to renew their licenses until May 19, 2021, due to the extension granted to them through Executive Order 202.11, the Department of State, Division of Licensing Services reported only 36 ticket resellers have renewed their licenses so far this year while 120 brokers who held a license in 2020 have not.⁶¹ These low figures may suggest: (1) ticket brokers are leaving the industry due to the economic consequences of COVID-19, and (2) there are professional resellers without appropriate credentials masquerading as fans in the resale market. The New York Yankees claimed the latter in their written testimony, stating “with certainty that there are far more unlicensed ticket resellers clandestinely doing business in New York State directly or through strawmen” and the real issue is lack of enforcement.⁶²

Although brokers are required to display a license number on an online marketplace in accordance with New York Law, secondary platforms vary in how they actively monitor or police their resellers to determine whether they are professionals.⁶³ Despite marketplaces attempting to vet their resellers and notify individuals to comply with license disclosure requirements, preemptive enforcement seems to be mixed. However, resale platforms did state that illegally operating without a license would be grounds for dismissal from the website.⁶⁴

Therefore, the Committee suggests defining a professional reseller as someone who sells 30 or more tickets a year in order to provide everyday fans with a workable threshold to resell smaller amounts of tickets. Acknowledging the remarks of the Coalition for Ticket Fairness, the Committee supports slightly lowering the broker license fee based upon the volume of tickets an individual resells, which will encourage compliance with licensure requirements. Additionally, the Committee proposes bolstering the online marketplace license disclosure requirement by expressly mandating professional resellers to provide their license numbers as a condition of utilizing the resale platform. Moreover, individual postings on marketplaces by professional resellers would

⁶⁰ See Joint Public Hearing Transcript, pp.123-124.

⁶¹ See Appendix: Department of State, p.2.

⁶² See Appendix: New York Yankees, p.1.

⁶³ See *gen* Joint Public Hearing Transcript, pp.127-128.

⁶⁴ See *id.*

explicitly require a clear and conspicuous disclosure that tickets are being resold by a licensed New York State broker. Lastly, the Committee advocates for online marketplaces to require the established price charged for an event that is printed on the face of each ticket in accordance with NYS ACAL Section 25.07 to be clearly and conspicuously posted as part of an advertisement for the resale of tickets. This information will lead to a more informed customer who will be better able to determine the price increase – or decrease – associated with buying tickets through the secondary market. These protections would enhance existing provisions within NYS ACAL and provide for greater transparency and accountability within the resale industry.

c. Refund Policies

COVID-19 decimated the live entertainment event industry. According to Ticketmaster, the company “refunded over 27.4 million tickets, amounting to almost \$3 billion in gross transaction value” while “95% of all events in 2020 were cancelled or postponed.”⁶⁵ However, it should come as no surprise that some fans were left unhappy by varying refund procedures across the panoply of ticket vendors. As included within the Department of State’s written testimony:⁶⁶

Since March 7, 2020, [the Division of Consumer Protection or “DCP”] has received 238 consumer live event ticketing complaints. Starting early in the pandemic, DCP began receiving complaints from consumers who had tickets to events that were cancelled or postponed. [...] [T]here was a considerable difference in the ticket resellers’ responses, and DCP’s ability to resolve the consumer concerns depended on whether the event was cancelled, rescheduled, or postponed. [...] DCP received similar complaints about both primary ticket sellers and other resellers who also changed their refund policies during the pandemic. [...] Many consumers were left holding tickets for events rescheduled for a future date when they would no longer be able to attend, including events that were rescheduled as much as two years in the future. Worse, some events were classified as rescheduled, but there was no future date announced. Consumers had hundreds of dollars tied up in tickets they couldn’t use, at a time when many of them needed the money the most.

⁶⁵ See *id.*, p.13.

⁶⁶ See Appendix: Department of State, pp.5-6.

The aforementioned remarks capture the frustrations, adversities, and obstructions that customers faced. Unfortunately, NYS ACAL only expressly provides for refunds in the case of cancellations. As many live events were not technically cancelled, the plethora of indefinite postponements and rescheduled dates long into the future led customers to ultimately believe their money had been stolen from them for no services rendered. Though entertainers, promoters, and ticketers wanted to maintain the appearance that shows would eventually proceed as normal, timelines were either artificially generated or not identified at all.

Though the Committee acknowledges the flexibility required of organizers to re-plan live entertainment events – especially in the face of an ongoing world-wide public health emergency, that elasticity must be balanced against consumer certainty in attending the function in the first place. Therefore, the Committee strongly advocates enhancing and expanding refund mechanisms when events are not formally cancelled. As applied to all sellers and resellers, the Committee proposes full refunds of tickets inclusive of fees paid, unless a purchaser elects to retain the tickets or a credit equal to or in excess of the full amount paid within 30 days of receiving notice of an opportunity for a refund, if one of following conditions occur beside outright cancellation: the event is postponed more than once in a calendar year, the event is rescheduled to a date greater than one year from the initial event date, or the event has been indefinitely postponed and not rescheduled within three months of the initial date.

d. Speculative Tickets

In 2018, NYS ACAL was amended to require the express disclosure by a seller, confirmation of the notice by a purchaser, and refund protections whenever “speculative tickets” were being resold, but did not ban the practice outright.⁶⁷ Speculative tickets are not actually possessed by the reseller; an advertisement for speculative tickets is essentially a promise to the purchaser that the selected tickets will eventually be procured and resold at the stated value in time for the event. However, as the NYSOAG clearly pointed out in its 2016 report, “speculative tickets are a risk for consumers and also drive up prices even before tickets are released.”⁶⁸

⁶⁷ See NYS ACAL 25.10.

⁶⁸ See 2016 NYSOAG Report, p.4.

Disclosing these types of tickets for what they are and offering refunds if they cannot be delivered only goes so far. For example, “ahead of the 2015 Super Bowl, some people who’d bought airfare and booked hotels learned too late that the tickets they thought they had didn’t even exist.”⁶⁹ In the case of such a large event, hundreds or potentially thousands of dollars in sunk costs (i.e. travel and lodging) are saddled on the purchaser despite the money refunded for the tickets. Ticketmaster testified it does not “permit the posting of any ticket that has not already been sold out of the primary market.”⁷⁰ Times Union Center cited examples of unknowing purchasers buying speculative tickets where the fan “show[s] up at the building with a ticket [...] that was purchased through the secondary market that doesn’t even relate to a seat that exists in the building” in its support of banning the practice as a whole.⁷¹ As part of their 2020 informational responses to the Committee, some resale platforms described internal policies, either formal or informal, where they investigate and even remove listings for speculative tickets. Additionally, significant vetting requirements may be imposed on resellers by certain secondary platforms to mitigate risks related to these types of tickets.⁷²

Consumer groups that testified at the Senate’s joint public hearing largely agreed with the overall lack of benefit to the buyer in comparison to the risk associated with the purchase.⁷³ The Committee recognizes concerns raised by NetChoice, Sports Fans Coalition, and Consumer Reports regarding potential impacts for reselling items like pre-ordered or season tickets; however, these groups acknowledged their support for a straight prohibition if there were such exemptions.⁷⁴ Additionally, National Consumers League and Consumer Reports further identified deceptive elements of speculative ticketing, especially when sold through white-label secondary websites, by misleading customers into believing they were buying a legitimate ticket because it was being sold prior to the public on-sale.⁷⁵

Therefore, the Committee supports the notion that disclosures and refunds do not offer enough protection against the scourge of speculative ticketing. The Committee proposes the wholesale elimination of advertising or offering speculative tickets for sale in New York with the

⁶⁹ See “The Ticket Trap,” as reported by Byard Duncan, Ike Sriskandarajah, and Yoohyun Jung (February 6, 2021). Reveal: The Center for Investigative Reporting. Available at <https://revealnews.org/podcast/the-ticket-trap/>

⁷⁰ See Joint Public Hearing Transcript, p.24.

⁷¹ See id., p.65, 107.

⁷² See id., p.166 (describing Vivid Seat’s authorized “Zone Seating” program).

⁷³ See *gen id.*, p.194-197.

⁷⁴ See id.

⁷⁵ See id.

caveat that tickets that are not physically possessed may be resold if a reseller has a contractual right to obtain them (such as season tickets). Moreover, in order to further prevent confusion on behalf of a purchaser, the Committee recommends that tickets should not be able to be resold until tickets are fully made available to the general public, excluding limited sales to fan clubs and promotional activities.

e. All-In Pricing

An “all-in” pricing structure allows individuals to view the actual and entire price of a ticket, including fees, right at the beginning of a search or transaction on either a primary or secondary ticket platform. As Consumer Reports stated in its written testimony, “hidden fees charged by ticket sellers are frustrating to consumers, and they distort the marketplace and cause consumer harm.”⁷⁶ Consumer Reports continued this sentiment in its oral testimony, saying that “[all-in pricing] would dramatically improve consumer welfare [and if platforms were forced by governmental entities to effectuate such a standard] then it would be a more fair marketplace, and consumers would understand what they’re getting.”⁷⁷ By not having a true picture of the price of a ticket until checkout, the customer lacks timely and valuable information to be able to make a fully informed purchase based on “shopping around” among similar resellers.

NetChoice noted that all-in pricing “should apply not only for secondary ticket sellers, but primary ticket sellers as well.”⁷⁸ National Consumers League stated this concept is not a novel idea and made the comparison to precedence in the airline industry where carriers “are currently required, under federal regulation, to advertise the full fare.”⁷⁹ Moreover, Consumer Reports and National Consumers League made the point that all-in pricing would at least make fees more predictable to the everyday consumer and potentially could better facilitate “reasonableness” of fees by requiring that heightened visibility.⁸⁰ In their 2020 informational responses, several primary and secondary platforms offered support for all-in pricing models and acknowledged actively using such technology. However, these businesses stressed the competitive disadvantages

⁷⁶ See Appendix: Consumer Reports.

⁷⁷ See Joint Public Hearing Transcript, p.190.

⁷⁸ See id., p.191.

⁷⁹ See id., p.192.

⁸⁰ See id., pp.202-203.

compared to other platforms that did not display the total price of tickets at the onset of a transaction. Primary and secondary platforms largely expressed approval for the adoption of all-in pricing but only if it was an industry-wide standard and preferred it to be federal policy with nationwide application.

Therefore, the Committee proposes the effectuation of all-in pricing in New York for both primary and secondary ticketing platforms. Accordingly, the total price of a ticket, as well as the portion representing a service charge or fee, should be disclosed to the purchaser at the earliest stage of a transaction (i.e. when tickets are first viewed on a website). The Committee advocates that the price should not change during the purchase process but for the inclusion of reasonable delivery fees. Many primary and secondary platforms already offer the option to view tickets under an all-in pricing model; thus, the technology is currently available. As it will have industry-wide applicability for both primary and secondary markets, there will not be any competitive disadvantage among different online marketplaces. The Committee strongly recommends that all-in pricing should not only be an option, it should be the default standard to ensure an informed purchasing process.

f. Fees, Price Floors, and Staggered Sales

In accordance with NYS ACAL Sec. 25.29, venue operators and their ticket vendors are allowed to attach a “reasonable” fee or surcharge connected with the “special services” that are provided. The NYSOAG has interpreted this area to mean that “charges added to a ticket’s face value violate State law if they are either (1) mandatory, general fees, unconnected to the provision of ‘special services,’ or alternatively, when (2) such fees reach levels that are no longer ‘reasonable.’”⁸¹ This standard also only fully applies to primary sales of tickets, leaving secondary resale platforms to truly test what the market will bear.

Venues and event organizers typically negotiate with ticket vendors to come to terms with how service fees are split and what amounts will be charged on top of the established price of a ticket, which may be set on a fixed or percentage basis. According to responses to the Committee’s 2020 informational request, secondary resellers frequently used dynamic pricing for fees, which could fluctuate between 0 to 30%. As included in its written testimony, Eventbrite charges fees

⁸¹ See 2016 NYSOAG Report, p.28.

that “tend to be lower than industry averages,” which typically range from 3.5% + \$1.59 per paid ticket to 2% + \$0.79 per paid ticket.⁸²

However, exactly what services to which fees are theoretically tied, as well as the degree to which there is profitability in excess of permissible operational costs, remain questionable. Fees are generally intended to allow buildings to operate and ticketing technological infrastructure to be provided. Ticketmaster stated in its testimony that fees are largely determined by “what the client venues in markets believe their consumers are willing to pay to attend their live events” instead of a true calculation of what may actually entail a “reasonable” charge.⁸³ Thus, it could fairly easily be characterized that “these companies are all basically locked into a game of chicken with each other[;] [t]he main thing that really dictates where they set their fees and how they apply them is what the other guy is doing.”⁸⁴ Moreover, issues persist when entities operate as both seller and reseller. In its oral testimony, Sports Fans Coalition quoted from a Congressional letter that read in part, “designated resale exchanges allow Ticketmaster to double-dip the fees on both their initial sale of the ticket and secondary sale.”⁸⁵

Sports Fans Coalition also testified about how resale price floors have been found to be anti-competitive by “artificially raising the price” of a resold ticket and may lead fans to believe they are buying tickets at the actual market price.⁸⁶ In 2016, the NYSOAG helped facilitate a “multi-state settlement with the National Football League resolving antitrust concerns about [its] league-wide mandatory price floor policy.”⁸⁷ The outcome was the elimination of the league-wide mandatory price floor policy and disclosure requirements for teams imposing individual price floors.

The advent of dynamic pricing and staggered sales have greatly affected the meaning of the original monetary value associated with a primary ticket. Ticketmaster’s Official Platinum Seats are marketed as “premium tickets to concerts and other events made available by artists and event organizers.”⁸⁸ They are not resale seats, but their prices are adjusted according to supply and

⁸² See Appendix: Eventbrite.

⁸³ See Joint Public Hearing Transcript, pp.37-38.

⁸⁴ See “The Ticket Trap.”

⁸⁵ See Joint Public Hearing Transcript, p.182.

⁸⁶ See *id.*, p.193.

⁸⁷ See “A.G. Schneiderman Announces Multi-State Settlement With NFL Permanently Barring League-Wide Mandatory Ticket Price Floor,” Press Release of the NYSOAG (November 15, 2016).

⁸⁸ See “What are Official Platinum Seats?” Available at https://help.ticketmaster.com/s/article/What-are-Official-Platinum-Seats?language=en_US

demand, in order to “allow the event organizer to extract the value that would otherwise be extracted by resellers.”⁸⁹ Quite frequently, a customer can view similar seats in the same section – or even row – at markedly different prices. Here, the benefit to the consumer is unclear.

The Committee believes that more must be done to rein in excessive fees charged by both primary sellers and secondary resellers. Therefore, the Committee supports extending the “reasonableness” requirement to secondary markets, as well. The Committee acknowledges costs associated with running a ticket selling business and the revenue that is needed. However, the Committee stresses that fees should be for services actually rendered or otherwise in connection to customer support, technological and software infrastructure, and actual operational costs for sales away from the box office. Further, to prevent double dipping, the Committee advocates for elimination of duplicative fees for primary sellers that double as resale marketplaces and require a surcharge to repost tickets originally purchased through them. The Committee agrees that a reasonable delivery charge may be levied, but no fee should be charged for tickets that can be electronically transferred or printed at home. Also, the Committee proposes to prohibit minimum pricing set by primary ticket sellers for the resale of any tickets. Finally, the staggered release of ticket inventory should be regulated to the degree that tickets subsequently sold to the public after the general on-sale are not priced higher than similarly situated seats that were originally sold.

g. Reselling Free Tickets

Pope Francis’ September 2015 visit to New York City was among the most notable examples of individuals desperately trying to attend a free, public event only to be fleeced by unethical ticket resellers.⁹⁰ Approximately “80,000 tickets were dispersed through a city-sponsored lottery system for the pope’s procession through Central Park [and] were free for a reason – to give as many people as possible the chance to participate in the pope’s visit, including those with ‘modest means.’”⁹¹ However, as no good deed goes unpunished, “numerous tickets [...] quickly popped up on popular want-ad and auction sites like Craigslist and eBay, starting around

⁸⁹ See Joint Public Hearing Transcript, p.39.

⁹⁰ See “New York Officials Condemn Selling of Pope Francis Tickets,” by Rick Hampson (September 17, 2015). USA Today. Available at <https://www.usatoday.com/story/news/nation-now/2015/09/14/new-york-officials-condemn-selling-pope-francis-tickets/72248676/>

⁹¹ See id.

\$100 but climbing toward \$250 or more as the clock ticked down [and eventually rising to] \$700 for a pair.”⁹² This unprincipled activity inspired swift condemnation by Mayor Bill de Blasio, Cardinal Timothy Dolan, and state lawmakers at the time, leading several websites to remove resale advertisements.

During the Committee’s public hearing, Ticketmaster acknowledged that such activity should not be permitted, and the company had just taken action to alert secondary marketplaces about disallowing postings for the recent Global Citizen Event in Los Angeles that offered free tickets to vaccinated health care workers.⁹³ StubHub stated its policy against listing tickets to free events, and Vivid Seats agreed “philosophically” to the idea of prohibiting the resale of such tickets.⁹⁴ Although opinions differed on exactly how to regulate the resale of tickets to certain charitable events, there was general consensus that reselling “free” tickets provides essentially zero consumer value.

Accordingly, the Committee recommends making it an unlawful practice for any person or business to resell or offer to resell any ticket to any place of entertainment if such ticket was initially offered to the public at no charge. Although an individual should maintain the right to freely transfer such a ticket to another party, the individual should be prevented from making any type of profit. Therefore, the Committee supports Senate Bill 356 (Hoylman) of 2021 that would ban the practice, but with the aforementioned caveat to allow for transferability without profitability.

h. Ticket Holdbacks

Though currently permitted throughout most of the country, casual fans may be baffled at the notion that substantial sums of tickets to top events never even make it to a general sale and may also be instantly diverted to inflated secondary markets. “Holdbacks” are an industry practice that allow event organizers to reserve tickets from public on-sale. Promoters, performers (artists and teams), and venues may decide whether to withhold tickets for friends and family, press,

⁹² See “Scalpers Ignore Outcry, Sell Their ‘Free’ Tickets to See the Pope,” by Nicole Spector (September 25, 2015). NBC News. Available at <https://www.nbcnews.com/storyline/pope-francis-visits-america/scalpers-ignore-outcry-sell-their-free-tickets-see-pope-n433676>

⁹³ See Joint Public Hearing Transcript, p.32.

⁹⁴ See *id.*, pp.140, 142.

sponsors and VIPs, production issues like seating and speaker configurations, and specialized on-sales related to credit cards and fan clubs. It is not by any means a uniform practice, as holdbacks widely vary from show to show and venue to venue. However, as the NYSOAG reported, some of the most popular shows between 2012-2015 released less than 25% of tickets to the public during an initial on-sale, including 12% for a 2014 Katy Perry concert at Barclays Center and 15% for two nights of Justin Bieber at Madison Square Garden in 2012.⁹⁵ Some venues, like the Times Union Center, make the business decision not to withhold hundreds of tickets for VIPs of the building.⁹⁶

In its verbal testimony, Ticketmaster disputed the prevalence of this practice, saying that holdbacks typically do not exceed 5% of the tickets they sell but may slightly rise depending on the market and event.⁹⁷ Representatives from Broadway mostly echoed this assessment, stating that the number of holds among the theater community is “somewhat de minimis” and likely between 5-7%.⁹⁸ Additionally, Ticketmaster argued that disclosures may be a “smoke screen for the broker community [by] help[ing] them figure out what the supply-and-demand profile looks like.”⁹⁹ The Shubert Organization conceptually agreed, doubting that disclosures would meaningfully “inform or change in any way a customer-purchasing habit.”¹⁰⁰

However, representatives from the secondary market were chief proponents of disclosures for holdbacks, at a minimum. Leaving aside the potential resale pipeline by connected insiders, there also remains the opportunity for some tickets that were originally held back to be re-released to the public at inflated costs through the primary vendor due to dynamic pricing (or adjusting prices to meet market demand).¹⁰¹ As TicketNetwork shared, “massive holdbacks of tickets create a scarcity effect, which allows primary ticketers to artificially raise the price that consumers pay.”¹⁰² Vivid Seats and StubHub seemed to agree that transparency and disclosure are “key piece[s] of the supply and demand.”¹⁰³

⁹⁵ See 2016 NYSOAG Report, p.15.

⁹⁶ See Joint Public Hearing Transcript, p.90.

⁹⁷ See *id.*, pp.27, 47.

⁹⁸ See *id.*, pp.88-89.

⁹⁹ See *id.*, p.28.

¹⁰⁰ See *id.*, p.89.

¹⁰¹ See *id.*, p.114.

¹⁰² See *id.*, p.131.

¹⁰³ See *gen id.*, p.164.

Consumer groups were also advocates for greater transparency. In its written testimony, NetChoice stated that “New York should help ‘shine the light’ and require venues to disclose how many tickets are withheld from public purchase and to whom they are going.”¹⁰⁴ NetChoice also reflected on how “some artists have been known to engage in holdbacks to intentionally drive up ticket prices on the secondary market, just so the artist can dump these tickets at the artificially inflated prices.”¹⁰⁵ National Consumers League referred to these types of allocations as “one of the dirty little secrets of the live event industry” and how “it is an unfair and deceptive practice to advertise an event, lead customers to believe they have a reasonable chance of getting a seat at face value, trumpet the artificially engineered quick sellouts, and then point the finger and blame at the secondary market, or even fans themselves, when tickets are scarce.”¹⁰⁶

The Committee acknowledges the sentiment shared by Ticketmaster that holdbacks are a legitimate business choice for event organizers, as well as a real-time changing number.¹⁰⁷ Additionally, the Committee recognizes the potentially onerous responsibility that would be placed on Broadway theaters to disclose the extent of holdbacks for so many shows per week and per year.¹⁰⁸ However, the Committee was unpersuaded by arguments that only brokers stand to gain valuable knowledge from disclosure, with little consumer benefit. The Committee agrees with the arguments of National Consumer League and others for “legislation requiring primary ticket sellers to disclose on their websites, and at the box office, the total number of tickets to be made available to the general public no less than seven days prior to the date on which tickets go on sale.”¹⁰⁹ The Committee further suggests a periodic update by the primary seller when additional seats are released to the general public. Being mindful of the administrative concerns of smaller theaters, the Committee proposes to exclude venues with seating capacities under 6,500 from this disclosure requirement. Finally, in recognition of the investments made by event organizers, as well as the consumer groups that did not support an outright ban on holdbacks, the Committee proposes a compromise: a modest cap of 10% of tickets that can be withheld from public on-sale based on testimony that explicitly stated holdbacks generally do not exceed single digit percentages. In order to accommodate gestures of goodwill or event production issues on behalf

¹⁰⁴ See Appendix: NetChoice, p.4.

¹⁰⁵ See *id.*, p.5.

¹⁰⁶ See Joint Public Hearing Transcript., pp.170-171.

¹⁰⁷ See *gen id.*, p.29.

¹⁰⁸ See *gen id.*, pp.88-89.

¹⁰⁹ See *id.*, p.172.

of performers and venues, tickets distributed to bona fide charitable groups or initially reserved for pending seating, lighting, or stage configurations would be excluded from such cap.

i. Membership Passes for Professional Sports

As part of the 2018 NYS ACAL reform, professional sports organizations in venues larger than 30,000 seats were allowed to sell nontransferable paperless tickets at a discounted price, which allowed variable seating to a specified number of events within a specific timeframe.¹¹⁰ In practice, this permission was only extended to four eligible New York sports franchises that played in big enough venues: the New York Yankees, New York Mets, Buffalo Bills, and New York City Football Club. For example, the New York Yankees stated in their 2020 information response to the Committee that they offered the “Ballpark Pass” as an additional option for fans to affordably attend games.

In practice, several professional teams, such as the New York Knicks, Brooklyn Nets, New York Rangers, and New York Islanders did not qualify due to the size of their home arenas. This capacity difference created inequities among New York’s iconic franchises. Although anti-consumer arguments can be made related to the transferability restrictions, the Committee feels as though the de minimis number of tickets (not to exceed 5% of the maximum amount of all seats made available at a venue for a particular event) offered as membership passes do not pose widespread risks to the purchaser. Interviews by the Committee with some of the excluded teams revealed potential interest in offering such a product for sale. Moreover, in light of economic devastation wrought by COVID-19, fans may turn to such tickets as cheaper alternatives, as opposed to higher valued seats. Therefore, the Committee proposes to lower the seating threshold to 13,500, which would effectively capture every venue in New York State that hosts a professional sports organization.

j. Exclusivity Clauses in Primary Ticket Vendor Contracts

Ticketmaster described its contractual relationship with its venue clients as “act[ing] as [their] exclusive ticketing agent” through typically “a multi-year agreement to provide software,

¹¹⁰ See NYS ACAL Sec. 25.12.

service, customer service, a ticketing marketplace, and access to all of our technology platforms.”¹¹¹ Expressing its satisfaction with the provider, Times Union Center confirmed it has “an exclusive contract with Ticketmaster.”¹¹² Brokers spoke of competition among each other because they “all have multiple platforms [they] market [their] tickets from, whereas Ticketmaster only sells exclusively.”¹¹³ Coalition for Ticket Fairness testified that “a performer, a team, or an artist would have a great benefit to selling their tickets through our exchanges as well [and], potentially, have lower fees” and gain greater visibility.¹¹⁴ Thus, it is no surprise that “teams and performers go out to consolidators and people in the secondary market because it gives them an alternat[ive], rather than dealing exclusively with Ticketmaster and exclusively with their terms.”¹¹⁵

The Committee is interested in facilitating an open primary market by allowing venues to form business relationships with multiple parties, as they see fit based on their operational models. Therefore, the Committee proposes that a contract between an operator of a place of entertainment and a primary ticket vendor shall not allow the vendor to be the venue’s exclusive and sole provider.

VI. CONCLUSION

Buying tickets these days is a markedly different process than how it was 20 years or even a decade ago. If we want to purchase seats to an event, we now queue in online waiting rooms rather than standing in line at the mall or going to the box office – if one even still exists. NYS ACAL was not drafted with the large-scale monopolization of the primary market and its consolidation with promotional, managerial, and marketing entities in mind. The state’s ticketing law did not fully anticipate the rise of national resale marketplaces that helped legitimize the secondary market and change our opinion of what constitutes “scalping” or acceptable salesmanship.

¹¹¹ See Joint Public Hearing Transcript, pp.18-19.

¹¹² See id., p.77.

¹¹³ See id., p.139.

¹¹⁴ See id.

¹¹⁵ See id., pp.139-140.

The Committee recognizes New York's complicated history with the many players connected to the industry that are all trying to make a buck – and just sell tickets. As the Legislature once again contemplates the future of ACAL, it must keep the future of ticketing practices firmly in perspective. Nearly 200 years after the first scalpers on Broadway, we are still wrestling with the best ways to balance consumer protections with a free market system. With that type of equilibrium as our guide, the Committee urges the Legislature to fully consider and ultimately adopt the reform proposals found within this report.

**VII. APPENDIX:
SENATE HEARING WRITTEN TESTIMONY**

APRIL 22, 2021



Jeffrey B. Gewirtz
Chief Operating Officer & General Counsel
Brooklyn Nets & Barclays Center
jgewirtz@bseglobal.net

BY UPS & ELECTRONIC MAIL

April 18, 2021

The Honorable Anna Kaplan (kaplan@nysenate.gov)
Chair, Committee on Commerce, Economic Development, and Small Business
New York State Senate
1 Old Country Rd., Suite 270
Carle Place, NY 11514

The Honorable James Skoufis (skoufis@nysenate.gov)
Chair, Committee on Investigations and Government Operations
New York State Senate
Legislative Office Building – Room 815
Albany, NY 12247

Re: Joint Public Hearing on New York State's Live Event Ticket Industry

Dear Senator Kaplan and Senator Skoufis:

In response to your letter of March 31, 2021 regarding the April 22, 2021 Joint Public Hearing on New York's Live Event Ticket Industry, please consider this the written testimony of Brooklyn Events Center, LLC, the operator of the Barclays Center sports and entertainment venue in Brooklyn, NY.

As presently drafted, Section 25.30(a)-(b) of New York's Arts and Cultural Affairs Law ("ACAL") imposes certain limitations on the ability of an operator¹ to restrict the resale of tickets that are part of a subscription or season ticket package. Specifically, operators may not restrict the resale of subscription or season tickets: (i) as a condition of purchasing such tickets; (ii) as a condition of retaining those tickets for the duration of the subscription or season ticket agreement; or (iii) as a condition of retaining any contractually agreed upon right to purchase future subscription or season ticket packages conferred in the agreement. *See* N.Y. Arts & Cult.

¹ An operator is defined as "any person who owns, operates, or controls a place of entertainment or who promotes or produces an entertainment." N.Y. Arts & Cult. Aff. Law § 25.03(5).



Aff. Law § 25.30(a). In addition, an operator may not deny access to a ticket holder of a resold subscription or season ticket solely on the ground that such ticket has been resold. *See id.* § 25.30(b).

Notably, the foregoing provisions of Section 25.30 do not apply to single-event tickets, such as tickets for concerts. There are, of course, sound policy reasons for this distinction. As the New York Attorney General noted in 2016,² when tickets for high demand concerts and events go on sale, a majority of tickets are *not* able to be purchased by the general public; instead they are “snapped up” by ticket brokers who then resell those tickets at a substantial markup. Thus, New York consumers are often blocked by brokers from purchasing single-event tickets from the operator, and then forced to purchase the tickets from those same brokers at a price well above the face value price established by the operator.

As the Attorney General also recognized, permitting resale restrictions on single-event tickets helps prevent New York consumers from losing out to the brokers, and instead puts more face-value tickets in the hands of consumers.³ Thus, Barclays Center and the Brooklyn Nets continues to support the current distinction that ACAL makes between subscription and season tickets on the one hand, and single-event tickets on the other.

Nevertheless, we believe that legislative reform is needed. As currently drafted, ACAL leaves open the possibility that an operator such as an event promoter or organizer could impose select restrictions on resale that would favor a preferred ticket resale partner or punish a disfavored ticket resale platform. For example, ostensibly without running afoul of ACAL, an event promoter could seek to impose a condition that tickets to a highly desirable concert may be resold only through a single resale platform of its choosing. Or the promoter ostensibly could dictate that tickets not be resold through a specific platform. Such “selective” resale restrictions fail to serve the purpose of enabling fans to obtain more seats at face value.

Accordingly, Barclays Center urges the legislature to clarify that operators may not selectively restrict the resale market in a manner that favors or disfavors any single ticket reseller or resale platform. Specifically, we ask that the legislature adopt the following addition to ACAL Section 25.30, making it unlawful for an operator to:

- *(d) Restrict by any means the resale of single-event tickets in a manner that [unreasonably] favors or disfavors any specific ticket reseller or ticket resale platform.*

² ERIC T. SCHNEIDERMAN, N.Y. STATE ATTORNEY GENERAL, OBSTRUCTED VIEW: WHAT’S BLOCKING NEW YORKERS FROM GETTING TICKETS 3 (2016)

³ *Id.* at 35-37.



To be clear, Barclays Center fully understands and supports the decision of artists to restrict resale to their concerts as an effort to help ensure fans have a better and more fair opportunity to obtain tickets at face value during the initial on-sale period. However, that choice by an artist – or an operator – should be a binary one, in which the single-event tickets either are sold with a uniform resale limitation, or purchasers have the unfettered opportunity to resell single-event tickets through any legal means available – transacting on any platform they wish – without limitation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey B. Gewirtz', written over a horizontal line.

Jeffrey B. Gewirtz
Chief Operating Officer & General Counsel

cc: John Abbamondi
Chief Executive Officer, Brooklyn Nets & Barclays Center

Evan R. Gallo, Esq. (egallo@nysenate.gov)
Chief of Investigations & Counsel
Office of New York State Senator James Skoufis

Good morning. My name is Tom Kirdahy. I am an independent theatrical producer with credits including the Tony Award winning *Hadestown*, *Tina*, *Anastasia*, *Ragtime*, *The Inheritance* and *Frankie & Johnny in the Claire de Lune*, among many other shows I have produced in the past 14 years. I am the former chairman of The Broadway League's Government Relations Committee and actively participated in many of the state-sponsored roundtables and discussions that lead to Senate Bill 8501-B, which was signed into law on July 1, 2018 (Ch. 110 of 2018). I want to thank Chairs Skoufis and Kaplan, as well as the distinguished members of the Committees on Investigations & Government Operations and of Commerce, Economic Development and Small Business for this opportunity to discuss the current state of the ticket sale and resale markets.

I would like to preface my comments with some important background: In 2019, Touring Broadway shows performed in over 240 cities across North America and welcomed 17.5 million audience members. More than half of the venues that host Touring Broadway report that most of their annual income is derived from their Broadway Series. In New York City, commercial theatre welcomed 14.8 million admissions and provided almost 100,000 full-time equivalent jobs. Combined, Broadway Theatre had an economic impact of approximately \$20 billion on the United States in 2019.

Due to the COVID-19 mandatory closures, the industry has come to a halt, resulting in an unparalleled financial hardship. Based on our 2020 forecasts, the nation loses an estimated \$1.4 billion of economic activity every month that Broadway and Touring Broadway remain closed. Further, sixteen new productions were scheduled to debut in New York in 2020 and the future of these productions, as well as numerous shows across the country, remain uncertain. The pandemic has resulted in hundreds of millions in lost capital, thousands abruptly unemployed and leaves dry the pipeline critical to filling venues across the country for the foreseeable future.

As we all know, Broadway, and specifically Broadway's most successful productions, have long-been targets of unauthorized ticket resellers. Over the past several decades, New York and other states with robust live entertainment industries, have examined, discussed and implemented various pieces of legislation intended to provide ticket buyers with more transparency and to discourage some of the more egregious tactics taken by unaffiliated ticket distributors.

In 2018, when Assemblyman Daniel O'Donnell, Senator Terrence Murphy and Governor Andrew Cuomo made it clear that they wished to revisit the state's ticketing law, our members felt very strongly that it was important to address the issues that our venues had found to be the most challenging. Patrons would frequently arrive at our theatres having been deceived about the location of their seats and the face value of their tickets—leaving the venues to handle the mess created by deceptive resale practices. We are extremely satisfied overall with S. 8501-B as it includes disclosures for platforms and resellers relating to their pricing structures, as well as disclosures relating to speculative ticketing, refund policies, any business relationship with the production, fees and surcharges. It also includes strict prohibitions against deceptive URLs and carries meaningful penalties. We believe these recent changes went a long way towards ensuring

our patrons are knowledgeable of the terms of their purchases and give consumers information they need to make informed decisions. In other words, these measures went a long way towards protecting consumers and artists as well as our venues.

Given that the current law has only been in full effect since 2019, and that our industry has remained completely shuttered since March 2020, we do not believe our productions, venues or buyers have lived with the new law long enough for us to speak to its success. Without a period of effectiveness where we can more fully examine the impact, if any, the new legislation may have on the industry, it would be difficult to meaningfully discuss amending the law at this time.

Further, as I discussed earlier, we are in a crisis. When our shows can restart, we cannot simply turn on the lights and open the doors. We will need to fund rehearsal periods for casts who have not performed in over a year, recast roles for performers who have left New York or found other work, refurbish and re-install our highly technical physical sets, and prepare venues for the safe return of audiences. In addition, we will need to invest in substantial marketing campaigns and rehire thousands of crew members. We anticipate a lengthy period of audience-rebuilding as fear of public spaces will lead to lightly filled houses and depressed revenues even when social distancing measures are lifted. Our industry is working diligently with investors, lawmakers and health experts to find safe and efficient ways to raise our curtains, put our casts and crews back to work and to help revitalize the state's economy. We are simply ill-equipped to address, let alone implement, new regulations governing the way we distribute tickets at this time.

The Broadway League suggests that producers of live entertainment and our customers would be better served by extending the existing law for two years. We are optimistic that, by that time, our productions will have mostly resumed at full capacity, we will have had a robust history of selling tickets under current law and will be in a far better position to discuss what amendments, if any, may be in the best interests of our customers.

Thank you for the opportunity to testify today.

INFORMATION AND DOCUMENT REQUEST

1. Does your company have a contract(s) and/or agreement with a primary ticket platform to provide ticket services for your company's live events?

Yes, the Buffalo Bills is party to an agreement with a primary ticket platform, Ticketmaster, L.L.C., for ticketing services (the "Ticketing Agreement").

1.1. If yes, what are the parameters of the contract, including but not limited to restrictions on transferability, fees, and resale guidelines.

The provisions of the Ticketing Agreement are subject to confidentiality requirements. However, as it relates to the nature of this question, the Buffalo Bills do not restrict the transfer or resale of tickets and do not charge fees for the same. If a consumer wishes to resell its tickets outside of the digital ticketing platform environment, we provide a paper ticket to the consumer upon their request at no additional charge.

2. Does your company have a contract(s) with a secondary market ticket exchange to provide ticket resale services for your live events?

The Buffalo Bills participate in the NFL Ticket Exchange as an authorized secondary marketplace, pursuant to a contract between the NFL and Ticketmaster.

2.1. If yes, what are the parameters of the contract, including but not limited to restrictions on transferability, fees, and resale guidelines.

As noted above, the Buffalo Bills participate in the NFL Ticket Exchange as an authorized secondary marketplace pursuant to a contract between the NFL and Ticketmaster. The Buffalo Bills are not in a position to be able to disclose the specifics of the agreement because of confidentiality obligations; however, there are no prohibitions on the transferability of Bills tickets either within or outside the NFL Ticket Network and the Network provides several consumer friendly benefits, including authenticated tickets, instant delivery of tickets, and other protections against fraud.

3. Does your organization use a team-sponsored market place for ticket exchanges or resale tickets?

No.

4. What fees does your organization charge per ticket sale, and how are those fees calculated?

The fees charged per ticket sale in addition to the ticket face value vary depending on (1) the type of event, and (2) whether the ticket is purchased through the Buffalo Bills or the ticketing service provider. The fees include a service charge and, if applicable, a credit card fee.

4.1. Please provide a copy of any policies related to how your company sets and calculates fees.

The Buffalo Bills do not have a policy relating to setting fees. The fees are established pursuant to a negotiated Ticketing Agreement with the ticket service provider, the specific terms of which are subject to confidentiality obligations.

4.2. Does your company charge a facility fee?

The Buffalo Bills charges a facility fee for certain non-football game events.

4.3. Does your company charge a delivery fee for mobile or print at home tickets?

No.

5. What expenditures, if any, are associated with each fee charged per ticket sale?

Expenditures associated with each fee charged per ticket sale includes software and licensing fees.

6. For live events held in New York State in 2018 and 2019, please provide the average mark up of resold tickets above face value for:

6.1. All events; and

The Buffalo Bills are aware of the following figures responsive to your request. Please note, these figures are derived by a third party and do not reflect any firsthand information on the Buffalo Bills' part.

2019 142,081 tickets resold: 6% above face value
2018 144,423 tickets resold: -27% below face value

6.2. Sold out events.

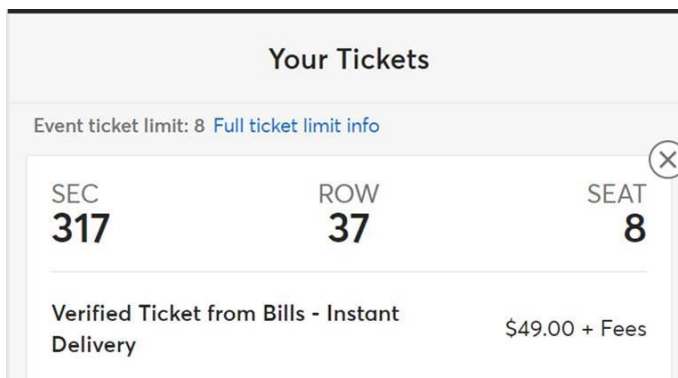
No sold out events during this timeframe.

7. At what point during the process does your company make the consumer aware of the type and amount of ancillary fees charged?

The consumer is informed of the types and amounts of ancillary fees after they have selected their seats as they begin the checkout process, but before the purchase is completed.

7.1. Where and how is this information communicated to consumers?

While ticket shopping on the website, the consumer would first see this:



When the consumer selects their seats and moves forward toward purchase, they are shown the following:

Order Details		^
		Cancel Order
1 Verified Ticket from Bills - Instant	\$49.00	
Delivery ▾	(\$49.00 x 1)	
Fees		
\$7.70 (Service Fee) x 1	\$7.70	
Order Processing Fee	\$3.25	
Delivery ▾	FREE	
Total		\$59.95
By continuing past this page, you agree to our Terms of Use .		
Next		

8. Does your company use all-in pricing for events in New York State?

No.

9. Does your company charge a fee for the transfer of a live event ticket in New York State?

No.

9.1. If yes, please provide all policies related to fees on ticket transfers.

Not applicable.

10. Does your company work with, own, or operate any platform and/or website that make any representations of affiliation or endorsement to your organization when in fact no formal affiliation or representation exists (also known as white-label websites)? If yes, please provide a list of these websites and explain:

No.

10.1. How your company coordinates with any such websites, including the sharing of technology and/or sales inventory.

Not applicable.

10.2. If and how your company notifies consumers that the website and/or platform is not endorsed or affiliated with the venue, team, or artist represented on your company's properties.

Not applicable.

11. Does your company sell tickets with limits on the transferability or resale limitations of tickets, including limits on the mechanisms or platforms by which a ticket may be transferred? If yes, please describe such limitations in detail and the reasons for such limitations, including the following:

The Buffalo Bills do not limit the transfer or resale of tickets. If a consumer wishes to resell its tickets outside of the digital ticketing platform environment, we provide a paper ticket to the consumer upon their request at no additional charge.

11.1. What party is responsible for deciding whether tickets to live events in New York State will include non-transferrable tickets?

Not applicable.

12. Does your company permit ticket vendors to promote resale tickets for live events when primary sale tickets are available?

Yes.

12.1. Does your organization receive any monetary benefit for promoting secondary sales/resale tickets over primary ticket sales?

The Buffalo Bills does not receive monetary incentives to prioritize secondary ticket sales over primary ticket sales. The Buffalo Bills prefers consumers purchase primary tickets directly from the Buffalo Bills and engages in significant promotional efforts to encourage consumers to purchase directly from the Buffalo Bills.

13. For each of the 5 highest grossing sporting events held in New York State in 2018 and 2019, please provide the percentage a resale ticket was sold when a comparable primary ticket was available (ex: same section).

The Buffalo Bills is not in possession of this information.

14. Does your company “mark down” resale ticket prices, also known as “drip pricing?”

No.

14.1. This practice may include but is not limited to reducing the up-front price of a ticket, but adding the amount of the reduction (or more) into the fees charged later in the transaction.

No.

15. Does your company set price floors for resale tickets to live events in New York State?

On the NFL Ticket Exchange marketplace, the official ticket resale marketplace for Buffalo Bills football games, the Buffalo Bills sets price floors for resale tickets to Buffalo Bills football games, which floors are well below the face value of the ticket. The price floors ranged from \$5 to \$40 for regular seats (depending upon the game) to \$100 for club seats. However, consumers are free to resell tickets outside of the NFL Ticket Exchange marketplace where the Buffalo Bills do not and cannot set a price floor.

15.1. If yes, please provide the total number of live events that had a price floor set for resale tickets for the calendar years 2018, 2019.

In total, the Buffalo Bills set a price floor for resale tickets on NFL Ticket Exchange for 20 games total during the 2018 and 2019 calendar years.

16. Does your organization permit the sale of speculative tickets for your organization's live events?

The Buffalo Bills does not authorize the sale of speculative tickets for its live events. Because the Buffalo Bills does not control the secondary market or ticket resellers, it cannot confirm whether ticket resellers attempt to sell speculative tickets. As noted above, the Buffalo Bills participate in the NFL Ticketing Network, where one of the benefits offered to users is the ability to purchase authenticated resale tickets.

16.1. What disclosure does your company make to alert consumers of the speculative nature of the ticket and how and when in the purchase process is this disclosure made?

The Buffalo Bills does not authorize the sale of speculative tickets for its live events.

16.2. What actions has your company taken to address speculative tickets sold on your company's platform, including legal or other actions taken to enforce your company's speculative tickets policy?

On NFL Ticket Exchange, a genuine ticket barcode is required in order for a reseller to post tickets for resale.

16.3. In the past year, have any speculative tickets for live events in New York State been sold to an event held by your organization?

Because the Buffalo Bills does not control the secondary market or ticket resellers, it cannot confirm whether ticket resellers attempt to sell speculative tickets.

17. Does your organization disclose the total number of tickets available to the general public? If yes, when and how is this information conveyed to consumers?

No.

18. Does your organization sell a percentage of tickets directly to brokers and/or broker organizations?

The Buffalo Bills do not allocate a percentage of tickets for sale to ticket broker or ticket broker organizations. Consistent with applicable law, ticket brokers or ticket broker organizations can purchase tickets pursuant to the same policies that apply to all other consumers.

19. What market-based approaches does your company use or offer clients the option to use to address concerns regarding secondary market activity? Examples of approaches include, but are not limited to, delivery delays, dynamic pricing, verified fan programs, and face-value resale exchanges.

The Buffalo Bills uses a dynamic pricing approach to more closely align pricing for tickets based on the demand in the market for particular events.

20. Does your company have protocols in place to ensure that tickets sold for your organization's events are not purchased using bots or fictitious accounts?

The Buffalo Bills' ticketing provider uses a verification mechanism when processing ticket sales.

20.1. What analysis has your organization completed to determine the effectiveness of these protocols?

The verification mechanism is operated by a third party who is obligated to establish verification mechanisms to combat bots and fictitious accounts. The Bills have not independently conducted an analysis to measure the effectiveness.

21. Does your company have protocols in place to ensure that consumers are afforded a reasonable opportunity to obtain face-value tickets?

The Buffalo Bills sets ticket limits and facilitates a number of presales and group ticket promotions in an effort to create opportunities for consumers to obtain face-value tickets. As noted above, the Buffalo Bills also engages in significant promotional efforts to encourage consumers to purchase face-value tickets directly from the Buffalo Bills.

However, under NYS law, the Buffalo Bills are not able to legally control whether a purchaser obtains tickets for him or her own personal use, or if the purchaser is a ticket broker who intends to resell on the secondary market for profit.

21.1. What analysis has your company completed to determine the effectiveness of these protocols?

Not applicable, as these are not formal protocols but instead represent ongoing best efforts.

22. Does your company have protocols in place to ensure ticket purchase limits are enforced?

The Buffalo Bills make reasonable efforts to enforce ticket purchase limits but cannot control if "strawmen" purchase tickets for a broker beyond the ticket limit.

22.1. What analysis has your company completed to determine the effectiveness of these protocols?

Not applicable.

23. Does your organization take any proactive measures to restrict ticket sales in the secondary market?

No, in accordance with NYS law, the Buffalo Bills do not restrict ticket sales in the secondary market.

24. Does your organization disclose the use of dynamic pricing to consumers?

Yes.

24.1. Who determines whether dynamic pricing will be used?

The Buffalo Bills determine for football games and the promoters determine for their respective events.

25. Does your organization have a ticket exchange program wherein a season ticket holder could submit a ticket for resale upon certain conditions?

No.

26. Does your company contract with credit card companies to permit cardholders or card members exclusive access to tickets, seats, presales or packages through your company's primary ticket platform or secondary ticket exchange (if applicable)?

No.

26.1. If yes, please provide the parameters of the contract.

Not applicable.



Good afternoon Senators, Committee staff and industry stakeholders. My name is Jason Berger. I am representing The Coalition for Ticket Fairness (known as CTF), which is a New York based association of NY industry professionals, licensed ticket brokers, and fans dedicated to transparency in the primary and secondary markets for entertainment tickets.

I have spent the last 30 years in the ticketing industry - I have worked at Ticketmaster, I founded Allshows.com and I have been an advisor to various ticketing companies. I have served as the President and a board member for industry associations including The National Association for Ticket Brokers (NATB) and the New York State Ticket Brokers Association (NYSTBA) as well as others. It's an honor to be invited to participate today as CTF has an invested interest in the longevity of the live event industry – thank you.

The world of entertainment provides a gateway for New York's tourism and other ancillary businesses that rely on an industry to operate efficiently. Broadway, sports arenas and all other live entertainment have been completely shut down by COVID-19 and, mostly, still remain either closed or only partially reopened.

At the onset of the pandemic, many large ticketing companies were under fire for slow refunds and lack of customer service. This was generally not the case for independent small ticket resellers who base their business on their stellar customer service. CTF has heard many stories of small ticket businesses taking loans to repay cancelled shows that were unavailable to them for months. This separated the smaller independent ticket resellers from the box offices and promoters who represented artists directly. It is because of our customer service that the resale business in New York receives an EXTREMELY low amount of complaints year after year as documented by the New York State Division of Consumer Affairs.

CTF is proud to show our continued support for Article 25 of the Arts and Cultural Affairs Law. We believe this law provides fans consumer protection as well as a free and open marketplace. Over 45 percent of tickets on the secondary resale market are sold for less than the box-office cost. This is what happens in a free and open marketplace rather than a market that is artificially set by one company, team or artist.

Simply put, the free market for tickets continues to work for consumers in New York. We ask that the pillar of our New York law - ticket transferability - be observed, maintained and enforced. Consumers want the right to choose where they buy, sell and transfer their tickets.

Further, we ask that operators make a good faith reading of Article 25 and recognize that it was never the intention of the law to allow any operator to take away season tickets simply based on the subscriber reselling them. In fact, we argue that Article 25 intended to stop that kind of activity. This is a free market and tickets are expected to be sold in a very active secondary market. Many fans of teams have invested years of capital purchasing season tickets and the licenses that go with them, just to be told by a team that those tickets are being taken away, and the only basis for taking them away is that they are being resold in the secondary market. This kind of activity places a chilling effect on the market and, therefore, is bad for the consumer. In conclusion, after a year of such incredible upheaval of COVID-19, affecting everyone, especially our industry, the CTF believes it is unwise to make changes to the existing law. It is the best law in the nation that has been replicated in many states and simply needs to be followed and enforced. Consequently, we support passage in both Houses of a multi-year extension of Article 25.

Thank you for your time and I am happy to answer any questions you may have.

Written Testimony of Jason Berger, President of The Coalition for Ticket Fairness



**Senate Standing Committee on Investigations and Government Operations & Senate
Standing Committee on Commerce, Economic Development, and Small Business
Joint Public Hearing on Ticket Sales for Live Events in New York State
April 22, 2021**

**Written Statement of Anna Laitin
Director, Financial Fairness and Legislative Strategy
Consumer Reports**

Thank you for inviting Consumer Reports to testify on consumer protections in New York State's primary and secondary ticket marketplaces. This hearing is taking place at a unique time. Live events have been put at a standstill for more than a year, and it is still not clear when they will fully restart. As the worst of the pandemic appears to be behind us, artists, venues, and fans are eager to get back to plays, concerts, and sporting events. We are all hopeful that our favorite venues will open up and that we will once again be able to gather together and share experiences.

This hearing is important however, because these two committees have the opportunity to examine the ticketing marketplaces that exist in New York, and to address the potentially unfair and deceptive practices occurring in New York State's primary and secondary ticket marketplace. Consumer Reports¹ urges your committees to use this discussion to augment your understanding of the scope of consumer harm in the ticketing marketplace, and to consider appropriate legislation to establish transparency, and promote better and more informed choices, for consumers.

¹ Consumer Reports is an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Based in Yonkers, NY, Consumers Reports works for pro-consumer policies in the areas of financial services and marketplace practices, antitrust and competition policy, privacy and data security, food and product safety, telecommunications and technology, travel, and other consumer issues, in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 6 million members and publishes its magazine, website, and other publications.

As you well know, Americans have long expressed frustration with the online ticketing marketplace. In 2018, in advance of a workshop on event ticketing at the Federal Trade Commission, Consumer Reports reached out to our members asking them to share their stories about ticketing and ticket fees, and more than 6,600 wrote back sharing their experiences with both Consumer Reports and the Federal Trade Commission. These consumers, representing all 50 states, the District of Columbia, and Puerto Rico - and more than 500 New Yorkers - shared a general frustration with the purchase process. Many gave concrete examples of frustrations with hidden fees raising the price of a ticket well beyond what the individual had understood to be the price; with bait-and-switch tactics that left them uncertain about what they had bought, and whether the tickets were legitimate; and with the opaque operations of the secondary ticket market.

It became clear from these stories that the online event ticketing marketplace is not transparent, and does not operate in a manner that enables consumers to make informed purchase choices and reliably secure rights of ownership in the tickets.

These findings came as no great surprise given existing examinations of the ticket marketplace, including a 2016 investigation by New York Attorney General Eric Schneiderman that looked into market manipulation and pricing abuses related to ticket sales in New York. That report highlighted the fact that a majority of ticket sales for popular concerts and other events were not being reserved for the general public; instead brokers and bots were buying tickets in bulk, crowding out fans from purchasing tickets when first offered for sale, and then reselling the tickets back to the public at substantial markups. Further, the Attorney General found that ticket sellers and venues routinely charged high add-on fees for service or "convenience" charges for unclear purposes, that appeared to bear little relationship to the value of any ancillary services actually provided. Finally, the Attorney General noted that ticket sellers were imposing restraints of trade such as resale price floors, which limited the ability of consumers to benefit from lower prices.

Hidden Prices Have Real Impact on Consumers

The hidden fees charged by ticket sellers are frustrating to consumers, and they distort the marketplace and cause consumer harm. In December 2016, the National Economic Council issued a report, *The Competition Initiative and Hidden Fees*, that provided an overview of research into the impact of hidden fees in the marketplace. The report notes that these fees, which are generally structured as they are "in order to drive down the

perceived price and lure consumers to make purchasing decisions based on misinformation,” are at worst, “fraudulent or deceptive; at a minimum they make prices unclear, hinder effective consumer decision making, and dull the competitive process.”²

And these fees quickly add up: the Government Accountability Office (GAO) estimated that “the average event ticket fee on a primary sale is 27 percent of face value,” while fees on resale sites average 31 percent of the (often inflated) price.³ And financial disclosures⁴ indicate that nearly half the revenue of Live Nation, the largest ticket seller in the country,⁵ comes from those fees.

In fact, economic and psychological research has found that this kind of pricing produces real welfare losses for consumers. A study by the Office of Fair Trading in the United Kingdom into the impact of price frames on consumer behavior found that drip pricing—a practice in which additional fees are added to a low base price only as the consumer is completing the purchase—was the price structure that both caused the biggest welfare losses and the most consumer errors of all the tested structures. The authors explain:

If a consumer sees a low base price and they make the decision to buy the good, they shift their reference point because they imagine already possessing the good. Later, when they realise that there are additional costs and charges, it is thus more difficult for them to give up the good which they already have ‘in their basket.’ Therefore, they purchase the good despite the increase in price... Subjects reported that they still bought the good after they found out the additional charges, but felt cheated and annoyed because their pay-off was reduced.⁶

Recent research has found that the movement of sales from in-person to online may further contribute to industry obfuscation of prices, in two ways, with internet sales containing more hidden charges than brick and mortar sales. Ellison and Ellison argue

² National Economic Council, *The Competition Initiative and Hidden Fees* (Dec. 2016), at: https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf.

³ Government Accountability Office, “Event Ticket Sales: Market Characteristics and Consumer Protection Issues,” April 2018 (GAO-18-347), at: <https://www.gao.gov/products/GAO-18-347>.

⁴ Live Nation, *Live Nation Entertainment Reports Fourth Quarter And Full Year 2017 Results* (Feb. 27, 2018), at: <https://finance.yahoo.com/news/live-nation-entertainment-reports-fourth-212300600.html>.

⁵ David Dayen, *The Ticket Monopoly Is Worse Than Ever (Thanks, Obama)*, *The New Republic* (May 15, 2018), at: <https://newrepublic.com/article/148419/ticket-monopoly-worse-ever-thanks-obama>.

⁶ Office of Fair Trading, *The Impact of Price Frames on Consumer Decision-Making* (May 2010), at: https://webarchive.nationalarchives.gov.uk/20140402165040/http://oft.gov.uk/shared_oft/economic_research/OFT1226.pdf.

that technology enables consumers to more easily price search, leading to intense price competition, which can have a side effect of increasing incentives for sellers to hide some of the price. And online sales can also make it easier for sellers to hide portions of a price, or add on costs later in the purchasing process.⁷

Another researcher who compiled a review of partitioned pricing (PP) research—another form of drip pricing in which the full costs are broken out into multiple parts—noted that in “recent years, the use of PP in the marketplace has increased and firms’ PP strategies have become more complex and sophisticated, often making it more difficult for consumers to accurately process.” This researcher notes that for most online shopping, partitioned pricing has become the norm, rather than all-in pricing.⁸ These studies are finding that, as consumers move online to conduct more shopping, they are better able to comparison shop and seek out deals, but they simultaneously face a greater risk of encountering hidden fees, unnecessary add-ons, and other actions that obfuscate the final price of the product or service.

More Can be Done to Protect Consumers

New York has taken steps to protect consumers in this marketplace through the enactment of laws requiring transparency and disclosures, as well as by prohibiting the most egregious “white label” websites that fool consumers into thinking that they are buying from the venue itself. These protections have made a significant difference, and set a standard for other states and the federal government to follow.

Consumer Reports, along with the more than 500 New Yorkers who shared their views with us and with the FTC, urges you to renew these expiring protections, and to look for ways to further strengthen them.

Consumers shopping online for event tickets deserve to be told, at the start of the shopping process, the full price they will be expected to pay, to know whether they are buying tickets on the primary or secondary market, and to have accountability from the seller that the ticket they are purchasing is valid.

⁷ Glenn Ellison and Sara Fisher Ellison, “Search and Obfuscation in a Technologically Changing Retail Environment: Some Thoughts on Implications and Policy,” *NBER Innovation Policy and The Economy*, 6, forthcoming, at: <https://economics.mit.edu/files/13457>.

⁸ Greenleaf, Eric et.al., “The Price Does Not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing”, *Journal of Consumer Psychology* (Volume 26, Issue 1, January 2016), at: <https://www.sciencedirect.com/science/article/abs/pii/S105774081500042X>.



**Department
of State**

New York State Senate Hearing:

**To examine potentially unfair and deceptive
practices occurring in New York State's primary
and secondary ticket marketplaces for live
events**

Testimony for Submission to:

Senate Standing Committee on Investigations and Government
Operations, and
Senate Standing Committee on Commerce, Economic Development and
Small Business

April 22, 2021

Andrew M. Cuomo
Governor

Rossana Rosado
Secretary of State

INTRODUCTION

Thank you for the opportunity to provide testimony to the Senate Standing Committee on Investigations and Government Operations and the Senate Standing Committee on Commerce, Economic Development and Small Business concerning the examination of potentially unfair and deceptive practices occurring in the primary and secondary ticket marketplace for live events.

The Department of State, Division of Licensing Services (the “DLS”) is charged with regulating ticket resellers pursuant to Article 25 of the Arts and Cultural Affairs Law. (“Licensing Statute”). A Ticket Reseller license is required for any person, firm or corporation who resells or engages in the business of reselling any tickets to a place of entertainment or who operates an internet website or any other electronic service that provides a mechanism for two or more parties to participate in a resale transaction or that facilitates resale transactions by the means of an auction, or who owns, conducts or maintains any office, branch office, bureau, agency or sub-agency for such business. Licenses are renewed annually and run from the first day of January to the end of the calendar year. Operators and managers of websites that serve as a platform to facilitate resale, or resale by way of a competitive bidding process, solely between third parties and do not in any other manner engage in resales of tickets to places of entertainment are exempt from the licensing requirements of this section.

Statewide, the DLS currently issues occupational licenses to close to a million businesses and individuals. Currently, the DLS has 36 ticket reseller licensees who have renewed their license in 2021. Executive Order 202.11, as continued, extends until May 19, 2021 the expiration date of the 120 licensees who held a ticket reseller license in 2020 but did not file applications to renew their licenses in January 2021. Accordingly, these licensees may continue to practice until May 19, 2021, or any later date established by another extension of Executive Order 202.11.

The Department of State’s Division of Consumer Protection (the “DCP”) is broadly charged with protecting the State’s consumers from economic harm. This includes providing direct assistance and

voluntary mediation services to resolve consumer marketplace complaints.

Upon receipt of a ticket sales complaint, DCP reviews the complaint to determine if it is an allegation of fraud or a marketplace dispute between the ticket seller and the consumer. Any complaints alleging deceptive acts and practices, or fraud are forwarded to the New York State Office of Attorney General for consideration and action. DCP then initiates mediation efforts for all other ticket sales consumer complaints. DCP also refers complaints against licensed ticket resellers to DLS.

CONSUMER COMPLAINTS

The Department of State receives ticket sale complaints to DLS and DCP. Since 2017, DLS has received six (6) complaints about ticket resellers directly from consumers. All six of the complaints were closed with no disciplinary action as the Department of State lacked jurisdiction over the company or issue. One was a complaint against an in-state primary ticket seller, one was for a company and event out of state and four were for unlicensed ticket resellers. The four consumers who complained about unlicensed resellers were referred to the Attorney General's office, which has jurisdiction to investigate unlicensed activity.

In addition, in 2021, nine complaints were referred to DLS from DCP for additional review. These nine complaints are currently being investigated. Seven of the complaints were filed against the same DLS licensed ticket reseller. The two remaining complaints were filed against different ticket resellers. The complaints referred from DCP to DLS concern refund requests for entertainment events that were postponed or cancelled due to the COVID pandemic.

In addition to investigating consumer complaints, DLS conducts state-initiated investigations. Presently, there is one pending DLS initiated inquiry. The inquiry, involves, among other things, the appropriateness of fees charged by one particular licensed ticket reseller.

In the past three years, DCP received 293 complaints regarding ticket sales. Notably, 2020 saw a surge with 221 ticket sales complaints, compared to the 39 total complaints logged in 2019. The nature

of the live ticket sales complaints received are varied due in large part to the COVID pandemic health and safety precautions effect upon live events. Thus, DCP has bifurcated the pre-pandemic complaints from the COVID pandemic response complaints, as each period tells vastly different stories. Please note, DLS only regulates ticket resellers, not the primary market. Third party platforms, which make up the bulk of complaints received by DCP, are exempt from the licensing requirement.

Pre-Pandemic Period

Prior to the onset of the pandemic, DCP received over 50 consumer complaints which collectively portray both the primary and secondary online live event ticket purchasing experience as complicated and tricky.

Consumers purchasing tickets from primary ticket sellers, which are not licensed by DLS, reported difficulties and limitations with the technology utilized for their online ticketing purchases. This included an inability to avail themselves of promotion packages or enter promo codes under the strict time constraint involved in executing an online ticket purchase. Some struggled with receiving clear notice that tickets had been purchased and inadvertently purchased two sets of tickets. Likewise, consumers purchasing tickets from ticket resellers also reported difficulties navigating the technology required for their online ticketing purchases.

For example, a Kings County consumer purchased tickets online from a third-party platform and received an email advising, "This is not your tickets. The tickets are almost yours. Click accept tickets to seal the deal. Decline the tickets if you don't want them." After having reservations about the price, and thinking it was his option to do so, he clicked "decline the tickets." Believing he had canceled the tickets, he bought other tickets for the same event. Thereafter, noticing he was charged for both purchases, he called to complain and obtain a refund for the declined tickets. The seller advised that he agreed to their terms and conditions and refused a refund. After the DCP was engaged, the seller provided a full refund.

Consumers also experienced the great misfortune of purchasing online tickets from primary and

secondary ticket sellers and never receiving the tickets. For example, a New York County consumer purchased two tickets from a primary seller for a Broadway show online, and when they arrived at the venue, it had no tickets to match the order number and could not honor the receipt produced. The consumer contacted the seller while at the venue to obtain access to the show, but the seller advised they needed 14 days to investigate the matter. The consumer's evening was ruined, she was not allowed to see the show. DCP was engaged and she received her refund over a month after she was turned away from the show.

Some consumers contacted DCP with complaints asserting deceptive acts and practices within both the primary and secondary ticket marketplace. The claims were rooted in hidden fees, unclear terms and conditions agreements, and deceptive websites. For example, a Saratoga County consumer used a search engine to find tickets to a Saratoga Performing Arts Center (SPAC) event. She purchased two tickets for \$559 from the first website that was listed and shortly thereafter realized she had been misled. The site was not the official seller and there were plenty of face value seats available. The reseller denied her request for a return and refund. DCP was engaged and a full refund was issued.

Pandemic Period

Since March 7, 2020, DCP has received 238 consumer live event ticketing complaints. Starting early in the pandemic, DCP began receiving complaints from consumers who had tickets to events that were cancelled or postponed. When the Division attempted to mediate these complaints, there was a considerable difference in the ticket resellers responses, and DCP's ability to resolve the consumer concerns depended on whether the event was cancelled, rescheduled, or postponed.

Many consumers purchased their tickets through ticket resellers or third-party platforms such as Stubhub, Vividseats, or Seat Geek. From March 2020 through March 2021, the Division received 124 complaints about Stubhub, who claims to be the world's largest ticket marketplace. In the wake of the pandemic, Stubhub changed their refund policy from a "Fan Protect Guarantee" that promised full

refunds for cancelled events to a policy that offered a 120% credit only. For each Stubhub consumer complaint, DCP informed Stubhub that New York State (NYS) law requires ticket sellers to provide refunds for cancelled events. Stubhub then agreed to provide refunds - with a processing time of about 120 days - to the New York consumers DCP identified. DCP received similar complaints about both primary ticket sellers and other resellers who also changed their refund policies during the pandemic.

Consumers who contacted the DCP about events that were postponed do not have the same protections under NYS law. Many consumers were left holding tickets for events rescheduled for a future date when they would no longer be able to attend, including events that were rescheduled as much as two years into the future. Worse, some events were classified as rescheduled, but there was no future date announced. Consumers had hundreds of dollars tied up in tickets they couldn't use, at a time when many of them needed the money the most.

Many ticket resellers advised their aggrieved consumers to resell their tickets on the reseller's site, but in reality, the consumers would never be able to recoup their costs. The price of tickets on reseller sites is determined by demand, and public interest in attending events and large gatherings has dropped significantly since the pandemic began which would likely result in lower prices. Further, these consumers would need to pay the sales commissions to the company reselling the tickets, which would cost them even more. (This is aside from the fact that it is more challenging to sell tickets and recoup face value for an event that lacks a specific, set rescheduled date.) Finally, most ticket resellers and third-party platforms may not pay the seller for the tickets until after the event has passed, so ticketholders of rescheduled events still may not be able to recoup their spent money for up to two more years. Ultimately, many consumers were left with no convenient, sure, or timely way to recoup the money tied up in their rescheduled event tickets.

Consequently, both the pre-pandemic and pandemic ticket complaints received by DCP depict very real struggles New York consumers are challenged to navigate, endure, and overcome if they

choose to utilize the complex primary and secondary electronic ticketing sales sites.

INDUSTRY REQUESTS

During 2020 and 2021, DOS received requests from ticket resellers to waive or refund a portion of the application fee for license applications that had been received, processed and issued. As application fees are non-refundable, and the relevant statute does not authorize DOS to waive any portion of a fee, these requests could not be granted. The application fee is \$5,000 for an initial application and \$5,000 for each annual renewal of a registration. See generally, Arts and Cultural Affairs Law § 25.13.

CONCLUSION

We appreciate the opportunity to provide testimony to the Senate Standing Committee on Investigations and Government Operations and the Senate Standing Committee on Commerce, Economic Development and Small Business as you explore and examine potentially unfair and deceptive practices occurring in the primary and secondary ticket marketplace for live events. Thank you for your time and consideration in regard to these important matters.



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eventbrite.com

Testimony of Eventbrite before the

SENATE STANDING COMMITTEE ON INVESTIGATIONS AND GOVERNMENT
OPERATIONS

SENATE STANDING COMMITTEE ON COMMERCE, ECONOMIC DEVELOPMENT,
AND SMALL BUSINESS

Regarding

Ticket Sales for Live Events in New York State

April 22, 2021

Thank you for the opportunity to submit testimony for your committees' joint public hearing on ticket sales for live events in New York State as you examine policy measures to assist with recovery from the COVID-19 pandemic and other legislative reforms.

Eventbrite

Eventbrite is a self-service live experience platform that provides event creators with online tools and resources to plan, promote, and manage events ranging from workshops, classes, and conferences, to festivals, concerts, celebrations, and gatherings of all kinds. Founded in San Francisco in 2006, Eventbrite is a publicly traded corporation with a global workforce of over 600 employees. Our mission is to bring the world together through live experiences.

In 2020, even as the COVID-19 pandemic altered the landscape for live events across the globe, more than 650,000 event creators used Eventbrite to transact over 230 million free and paid tickets to more than 4.6 million events in nearly 180 countries. As live events moved to virtual formats during the pandemic, our integrations with video streaming applications like Zoom and Vimeo helped our creators provide 1.4 million online experiences and reach new attendees and fans from around the world. Our platform has also supported more than 1.3 million COVID-19 vaccine appointment registrations since vaccines first became available in December of last year.

Eventbrite creators are predominantly small businesses and sole proprietors who use our platform to get events up and running quickly and confidently and drive more attendees to their events. Our role as a ticketing platform is to help connect creators and attendees through self-service online tools; we do not own, operate, or manage any venues or performance spaces, nor are we owned by or affiliated with an entity that does. The events on our platform tend to be smaller than those of the largest ticketing platforms; in the U.S., in-person events average fewer than 75 attendees, with the majority under 50 attendees.



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Our business model is simple: we charge event creators on a per-ticket basis when an attendee uses our platform to purchase a paid ticket for an event, and the event creator may absorb the fee or pass it onto their ticket purchasers at their discretion. Our fees tend to be lower than industry averages; our most popular services package, “professionals,” has fees of 3.5% + \$1.59 per paid ticket, while our “essentials” package has fees of 2% + \$0.79 per paid ticket. Free events, which make up a majority of the events on our platform, have no fees.

Emerging stronger from the COVID-19 pandemic

We appreciate the Committees’ attention to measures that could be implemented to assist live events stakeholders in recovering from the COVID-19 pandemic. We have heard from many of our small business event creators that direct financial relief in the form of grants or flexible and forgivable loans can help ensure they are able to reopen their doors and bring live events back to their communities. To this end, over the last nine months, Eventbrite has partnered with the National Independent Venue Association (NIVA) to mobilize support for the Shuttered Venue Operator Grant program (SVOG) (formerly known as Save Our Stages). The SVOG, which passed in late 2020, will provide thousands of venues, promoters, and other organizations with a critical lifeline over the next several months. We are likewise supportive of similar flexible grant and loan programs aimed at small business event creators, including those that do not own or operate their own physical event spaces, which can help provide targeted support to thousands more small businesses hosting festivals (e.g., arts, culture, food, or music) or small and frequent live events (e.g., tours, classes, and workshops) as well as support compliance efforts with COVID-19 safety mandates and best practices to accelerate the return of live events in 2021.

Conclusion

Our vision for Eventbrite is to harness technology to help event creators seamlessly plan, promote and produce live events, reach a wider audience, and drive attendees to amazing live experiences. Event creators – be they organizers, teachers, makers, or promoters – bring people together to share their passions, artistry, and causes through live experiences, and we have drawn inspiration from their resilience over the last thirteen months. We welcome your Committees’ focus on strengthening the live events marketplace.

Sincerely,

Linsey S. Morrison
Vice President, Policy and Platform Operations



**TREASURERS & TICKET SELLERS UNION
LOCAL 751, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES**

**TO THE SENATE STANDING COMMITTEE ON
INVESTIGATIONS AND GOVERNMENT OPERATIONS
AND THE SENATE STANDING COMMITTEE ON
COMMERCE, ECONOMIC DEVELOPMENT, AND SMALL BUSINESS
APRIL 22, 2021**

Senate Chairs Skoufis and Kaplan, and distinguished members of the Senate Committees, I am Lawrence Paone, President of the Treasurers and Ticket Sellers Union, Local 751 International Alliance Theatrical Stage Employees (I.A.T.S.E.). I am here today to provide testimony on behalf of the 500 Box Office workers in venues throughout New York City.

Local 751, chartered in 1941, represents workers in over 60 venues, including The Metropolitan Opera, Broadway Theatres, and arenas such as Madison Square Garden and Barclays. Our industry has been devastated due to the COVID-19 pandemic, with the majority of our members unable to work due to closure of theaters and other venues, large and small. Thus, many of our members have suffered financially during the pandemic, struggling to make ends meet, and for the support of Albany we are grateful. In particular, we would like to applaud your work on the COBRA subsidy funding, facilitating many of the federal assistance programs rapidly through state agencies, as well as rent assistance and moratoriums on evictions and foreclosures, and the grants and incentives the recently passed budget establishes for struggling venues.

I am here today to testify in regards to the current state of the secondary market for tickets. In an average year, millions of dollars in tickets are sold for live events through the secondary market. Local 751 is not opposed to the existence of this secondary market. The goal of every Local 751 represented employee is to provide world class customer service to theatregoers while maximizing sales for our employers. Part of the job responsibilities of our members -- and what we pride ourselves on -- is to provide personalized customer service, to solve ticketing problems, and to

ensure that everyone has a good experience and enjoys the show regardless of where a customer purchased their tickets. Based on Local 751's experiences, we see both the positive and negative aspects of the secondary market at the Box Office window.

Many customers have a good experience with the secondary market and are happy when they can get to see a hit show, even when they know they paid an above-market price to secure a ticket. On the other hand, other customers are extremely upset to discover at the venue that they overpaid for their tickets (for example, if they paid \$300 in the secondary market for a \$150 ticket). To that end it is important that there is full transparency in the secondary market so that all customers understand beforehand both the base cost of a ticket and the additional costs added by the reseller and can thus make an informed purchase decision.

In addition, customers sometimes unwittingly purchase fraudulent tickets from bad sources, because it is difficult to tell which online sources are legitimate versus illegitimate -- and there are so many. Illegitimate resellers sometimes resell the same ticket over and over again, making it very difficult for the Box Office to determine ownership so that customers may enter the theatre. These issues are often exacerbated by other circumstances, such as: 1) when they occur at a sold-out performance; 2) when they occur on a special day for the customer (a birthday, anniversary, etc.); 3) or when the customer bought a specific seat for a specific reason (e.g., to have their right leg out, to see the show from the left side of the theatre, etc.).

The Box Office staff does everything in its power to assist the customers in these situations, such as attempting to verify ownership through a search of accounts, seat history, and other methods in our ticketing systems, selling the customer new seats that accommodate their wishes (when possible), and in the cases of fraud, pointing the customer in the direction of law enforcement and informing theatre management of the issue. However, our workers can only mitigate the fallout; we alone cannot prevent the fraud from occurring. When reforming the secondary market statutes, we recommend you strengthen protections against deceptive and fraudulent practices to push these bad actors out of the secondary market.

It has been, and remains, Local 751's policy to work with Employers to determine the Union's role in the latest technological advancements in ticketing and to guarantee their success. I am certain that Local 751's open mindedness, flexibility, and interest in innovation with regards to the

secondary market and other issues will help our industry emerge from the COVID-19 pandemic stronger than ever.

Thank you for the opportunity to appear on behalf of the members of the Treasurers and Ticket Sellers Union, Local 751 I.A.T.S.E. We hope to be a resource as you delve into reforming the secondary market, and I look forward to answering any questions you may have.

Testimony of

John Breyault

Vice President of Public Policy, Telecommunications and Fraud

National Consumers League

before the

Joint Standing Committee on Investigations and Government Operations

and the

Standing Committee on Commerce, Economic Development. and Small Business

of the

New York Senate

April 22, 2021

Good afternoon, Chairman Skoufis, Chairwoman Kaplan and members of the committee. My name is John Breyault and I am the Vice President of Public Policy, Telecommunications and Fraud for the National Consumers League (NCL). I appreciate this opportunity to appear before the committee and provide testimony in support of your investigation of the live event ticketing industry.

Founded in 1899, NCL is the nation's pioneering consumer organization. Our non-profit mission is to advocate for social and economic justice on behalf of consumers and workers in the United States and abroad. Since 2009, we have testified before Congress and more than a dozen state and municipal legislatures in support of bills that protect consumers from the abuses of a live event industry that is too often rigged against fans.

The modern ticket-buying experience is too often an exercise in frustration for fans who want only to see their favorite artists or sports teams or take in a Broadway show at a fair price. Unfortunately, fans far too often find themselves out of luck due in no small part to an opaque system of private sales, secret ticket diversions, rampant use of ticket-buying 'bots,' and unscrupulous broker practices.

As we emerge from the COVID-19 pandemic and live events begin to return, we believe that the time is ripe to address many of the predatory ticketing industry practices that have bedeviled fans for far too long. We commend the New York legislature for your past work on this issue and urge you to extend the consumer protections set to expire, as well as adopt additional language to bring greater transparency to the ticketing marketplace.

My testimony today focuses on two of the areas where the New York legislature has an opportunity to address a glaring hole in state consumer protection law: ticket holdbacks and ticket-buying "bots."

First, holdbacks, also known as allocations, are one of the dirty little secrets of the live event industry. As a 2016 report by the New York Attorney General's office found, only 46% of tickets to popular events, on average, are ever made available to the general

public.¹ The New York Attorney General’s findings were recently corroborated by a 2020 audit by the Honolulu, Hawaii City Council that found that promoter and venue holdbacks are the primary reasons that consumers could not access tickets to events there. Indeed, one Mariah Carey concert reviewed by the Honolulu auditors found that 93% of tickets had been held back from public on-sale.²

Instead of tickets being made available to the general public, they are diverted to connected insider groups like fan clubs, premium credit card holder rewards programs, artists, venues, and promoters who often work directly with brokers to direct tickets to the secondary market. Giant live event conglomerates waste no opportunity to point the finger at ticket brokers and the secondary market as scapegoats when consumers cannot access tickets at a fair price. The evidence is clear, however, that opaque insider holdback arrangements are at least, if not more, responsible for fans’ inability to access tickets as unscrupulous broker practices.

Ticketing companies, artists’, promoters’, and venues’ dishonesty about ticket allocations harms fans in many ways. First, as the New York Attorney General’s report notes, when tickets are set aside for premium cardholder and fan club pre-sales, it puts less wealthy fans that don’t have access to those cards and fan clubs at a disadvantage. As a result, these pre-sales give more well-heeled fans a better chance of getting tickets at face value, while decreasing the supply of face-value tickets available to everyone else.

Ticket allocation dishonesty hurts consumers again when they spend time trying to buy a small number of tickets under the erroneous assumption that they have a chance to buy most of the seats in a venue.

¹ Office of New York State Attorney General Eric Schneiderman. *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*. (January 28, 2016). Pg. 11. Online: https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

² Clark, Dave. “Arena Audit Shows Holdbacks, Not ‘Bots’ or Brokers to Blame for Ticket Issues,” Ticket News. (November 11, 2020) Online: <https://www.ticketnews.com/2020/11/arena-audit-shows-holdbacks-not-bots-or-brokers-to-blame-for-ticket-issues/>

And the dishonesty hurts fans a third time by distorting perceived ticket supply. When consumers can't buy the ticket they want, they often go quickly to ticket resale websites and pay inflated prices due to the hype created by an artificially-engineered sellout.

All too often, a consumer who does pay a premium for a ticket on the secondary market is harmed a fourth time when tickets to the allegedly "sold out" show are later made available if promoters realize that they have held back too many tickets.

To be clear, we do not oppose holdbacks in principle. Primary ticketers, venues, artists, and concert promoters should be free to distribute their tickets as they see fit. However, we believe it is an unfair and deceptive practice to advertise an event, lead customers to believe that have a foreseeable chance at getting a seat at a reasonable price, trumpet the inevitable quick sellouts, and then point the finger of blame at the secondary market or event fans themselves.

The best antidote to opaque, deceptive ticket holdback practices is more transparency. We urge the New York Legislature to follow the lead of U.S. Congressman Bill Pascrell's BOSS Act, which would require primary ticket sellers to disclose and display on their websites and at the box office the total number of tickets to be made available to the general public no less than seven days prior to the date on which tickets go on sale.³ Such a requirement would provide consumers with valuable information they can use to decide whether to attempt to purchase tickets via public on-sale or obtain them via other means, such as via the secondary market or directly from the box office closer to the date of the event. It would also provide consumers with additional information to help they evaluate whether prices they are seeing on the secondary market reflect actual ticket supply, or artificially-engineered ticket scarcity.

The second issue my testimony will address is the use of ticket "bots" by unscrupulous ticket brokers. Of the minority of tickets that ever make it to public sale for in-demand

³ Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act of 2019, H.R. 3248, 116th Cong. (2019). <https://www.congress.gov/116/bills/hr3248/BILLS-116hr3248ih.pdf>

events, many are acquired illegally by ticket brokers using sophisticated ticket bots that can electronically jump the line to buy hundreds or thousands of tickets in a matter of seconds. Those tickets are then resold on the secondary market, typically at greatly inflated prices. While the use of ticket bots to circumvent ticket purchase limits is illegal under both federal and New York law, bots remain a pernicious problem in the live event marketplace.

New York can and should take steps to strengthen enforcement of its anti-bot law. Until the Federal Trade Commission took action earlier this year to bring cases against brokers using ticket bots in violation of the federal BOTS Act,⁴ we were unaware of any enforcement actions at the state or federal level against users of ticket bots. New York can address the continued use of illegal ticket bots by increasing penalties for violation of New York's existing anti-bot statute and by requiring entities such as primary tickets, venues, promoters or other actors in the live event ecosystem who have knowledge of illegal bot use to report such activity to the Attorney General's office.

Finally, in addition to our recommendations regarding ticket holdbacks and ticket bots, we support many of the other comprehensive solutions mentioned here today by our colleague organizations such as prohibiting egregious broker practices like undisclosed speculative ticketing, reigning in drip pricing, prohibiting white label ticket sites that defraud fans, requiring refunds for canceled or rescheduled events, and requiring ticket sellers to provide toll-free phone numbers for customer support.

Chairman Skoufis and Chairwoman Kaplan, thank you for giving the National Consumers League this opportunity to provide testimony on this important issue. We look forward to answering any questions you or other members of the committee may have.

⁴ Federal Trade Commission. "FTC's first BOTS Act cases: Just the ticket to help protect consumers from ticket bots," Press release. (January 22, 2021) Online: <https://www.ftc.gov/news-events/blogs/business-blog/2021/01/ftcs-first-bots-act-cases-just-ticket-help-protect-consumers>

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**NetChoice Response
to New York Joint Public Hearing
on Ticket Sales for Live Events in New York State**

April 20, 2021

NetChoice is a trade association whose mission is to make the internet safe for free expression and free enterprise. We work to promote the integrity and availability of the global internet and are significantly engaged in privacy issues in the states, in Washington, and in international internet governance organizations.

Overview

The ecosystem surrounding the sale and use of event tickets is more complex than most know. With most tickets held-back from public sale for many events, and one company controlling most primary tickets, the event ticket world is an area that New York state can and should engage to ensure transparency, choice, and competition.

The advent of online secondary ticket sales has made ticket purchases safer and more reliable. Consumers can now see and compare prices and availability with the click of a button. And the leading secondary ticket sellers have buyer protection programs to protect against fraud.

We want to acknowledge and thank New York for its aggressive enforcement against software 'bots' used by unscrupulous brokers to grab hundreds of tickets in first minutes they go on sale. And New York is a model for the entire country when it comes to pursuing fraudulent web domains designed to mislead consumers into paying more for tickets to their favorite events.

Now is the time for the New York legislature to reapprove Article 25 of the NYS Arts and Cultural Affairs Law to keep protections in place for New York fans, and for the New York AG to continue using its investigative and Section 5 authority to protect consumers buying event tickets.

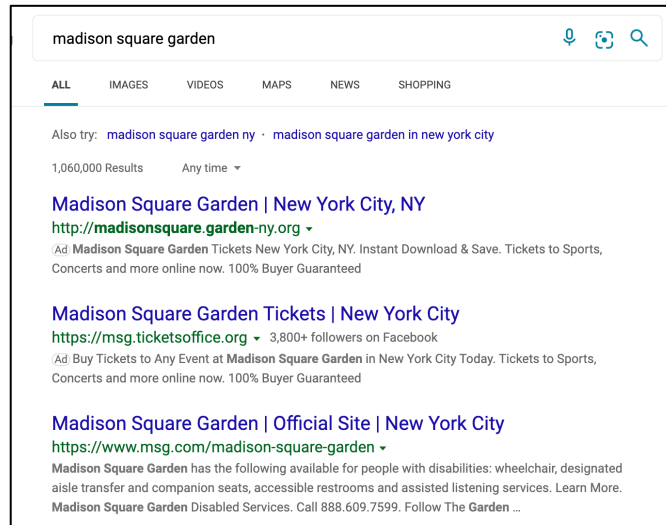
Transparency

New York should continue addressing issues of transparency in connection with deceptive website domains selling concert and sports tickets. This falls within the AG's Section 5 authority since such transparency issues constitute unfair and deceptive trade practices.

Misleading Consumers to Fake Sites

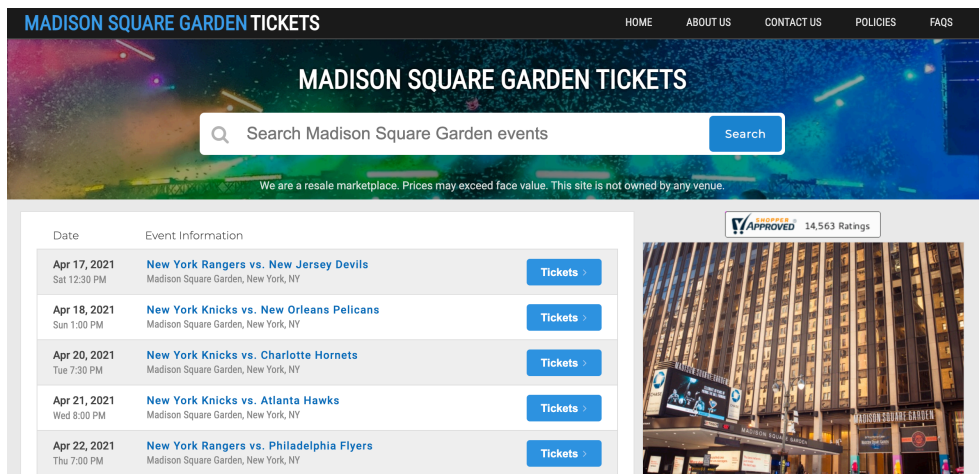
Fans across the country regularly search for tickets to their favorite concerts and shows. Unfortunately, many fans are misled by deceptive domain names in search results, which are designed to trick fans into thinking they are seeing unsold seats offered by the venue.

Consider, for example, search results for recent ticketed events in New York. A fan looking to see the Rangers at the Madison Square Garden “**Madison Square Garden**” in her search engine would have seen:



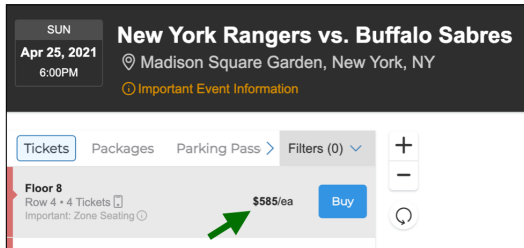
Despite the domain names, **madisonSquare.Garden-ny.org** and **MSG.ticketoffice.org**, these sites have *no affiliation* with Madison Square Garden or the Rangers. In fact, these websites are run by ticket resale outfits that show only tickets offered by brokers – at significant markups over regular seats still available at MSG.

The website madisonSquare.Garden-ny.org makes it appear they are the official site for the Rangers, and displays four Floor seats for the Apr-25 game against the Sabers show at over \$585 (see image below). But



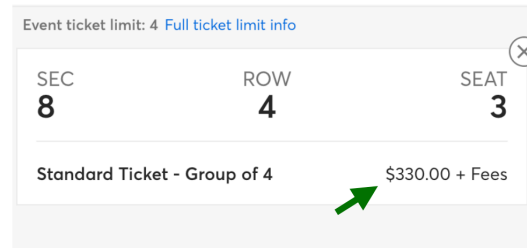
over at MSG's official ticket website, **there were still many of unsold seats in Section 8, including 4 for \$330.**

MadisonSquare.Garden-ny.org



VS

Official Box Office



These deceptive domains add no value for consumers when unsold seats are still available at the venue/promoter website. And when a show is actually sold-out, fans can turn to trusted secondary market websites where they can see a larger selection of resale seats.

As you can see, there is little to alert New York fans that this site has no affiliation with a team, artist, tour, or venue. These deceptive sites may have fine-print disclosures about their lack of affiliation with the artist or venue, but such disclosures are rarely noticeable to fans.

New York might consider legislation passed in Maryland¹ and New Jersey² that expressly makes these “unfair or deceptive trade practices” and subjects deceptive domain owners to enforcement and penalty provisions.

Deceptive domains like **madisonSquare.Garden-ny.org** and **MSG.ticketoffice.org** are luring fans into over-paying for a small selection of resale seats offered by professional ticket brokers. Those fans are not aware that unsold tickets are actually available at the venue website. The Better Business Bureau has logged hundreds of complaints against these tactics.

A good way to stop this deception is to prohibit artist or venue names from being used in domain names. Other states have taken action to stop these deceptive domains. Nevada recently enacted a law criminalizing these deceptive domain names.³ The Connecticut Attorney General and the FTC settled with two notorious deceptive domain operators, resulting in a permanent injunction and \$1.4 million in fines.⁴

These types of deceptive domain names fall directly within the purview of the AG's Section 5 enforcement authority which is enforceable to the New York State Attorney General. Consumers are harmed when they are unwittingly duped into spending their

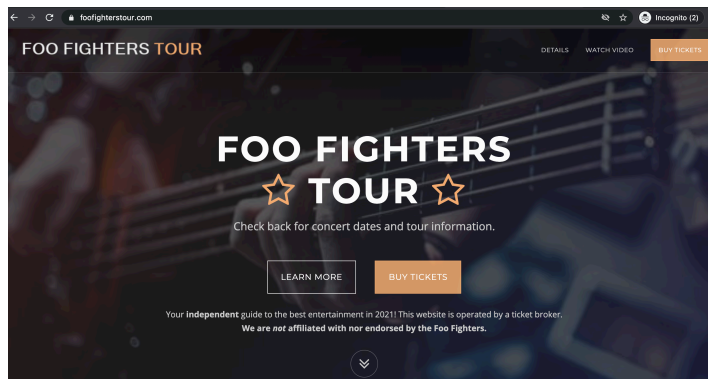
¹ MD. CODE ANN., COM. LAW § 14-4003 to -4004 (West 2018).

² [Cite]

³ Nev. Rev. Stat. § 598.3978 (2017).

⁴ Federal Trade Commission, *TicketNetwork and Marketing Partners Ryadd and Secure Box Office Settle Charges of Deceptively Marketing Resale Tickets* (July 24, 2014).

money with companies who are (1) unaffiliated with the actual venue or event and (2) taking advantage of consumers by offering these tickets at significant markup. If New York is to protect consumers from these types of blatantly unfair and deceptive trade practices, it should focus efforts on exercising its power to enforce against deceptive ticket sale domain names.



A deceptive websites with no affiliation to the band

Another example of deceptive domain names that should be prohibited is **FooFightersTour.com** – which has no affiliation with the Foo Fighters, a website offering only resale tickets for the Foo Fighters concert.

Require disclosure of ticket holdbacks

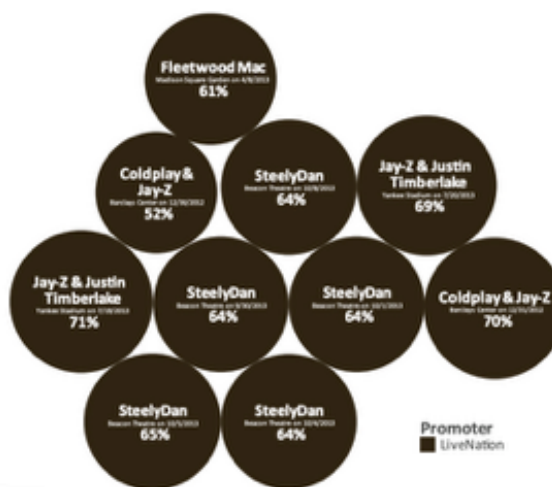
New York should help “shine the light” and require venues to disclose how many tickets are withheld from public purchase and to whom they are going.

A report by the New York Attorney General⁵ showed that nearly half of all tickets are never made available for public purchase. The report shows that around 54% of tickets are withheld from public purchase—with most going to VIPs and fan club insiders.

“For example, just over 1,600 tickets (12% of all tickets) were released to the public during the initial public on-sale for a July 24, 2014 Katy Perry concert at Barclays Center. Similarly, for two Justin Bieber concerts at Madison Square Garden, on November 28, 2012 and November 29, 2012, fewer than 2,000 tickets (15% of all tickets) to each show were released to the public during the initial public on-sale.”⁶

The result is fans are forced to fight over a very small pool of tickets. This drives up the costs of tickets on the

Figure 3. Ten Popular Shows Reserved Over 50% of Tickets Through Pre-Sales Events, None Explicitly Earmarked for Fan Clubs.
Source: Live Nation/Ticketmaster (2012 – 2013)²⁴



⁵ New York State Attorney General Eric T. Schneiderman, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*, http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf.

⁶ *Id.* at 15.

secondary market, and the more limited supply results in higher prices.

This reality is often hidden from the public. The NY AG said, “the industry must provide greater transparency into the allocation of tickets, to increase accountability and enable the public to make informed choices.”⁷ We suggest New York embrace and require transparency in number of tickets available for public purchase.

The fundamental problem leading to New York fans to paying higher prices is due to activities like these holdbacks. As the price of tickets is contingent on supply and demand, these holdbacks create artificially inflated prices by limiting supply. Some artists have been known to engage in holdbacks to intentionally drive up ticket prices on the secondary market – just so the artist can dump these tickets at the artificially inflated prices.

Barriers to Competition

Another area that merits attention from the New York AG is the limiting of ticket transferability by legitimate ticket sellers like Ticketmaster. This practice creates a barrier to competition that restricts consumers’ choice in what to do with the tickets they purchase. This can push costs higher for consumer as they are forced into a locked market where transactions are controlled by one entity—the entity that controls ticket sales. This can result in yet another convenience fee for consumers and reduced competition in the market for secondary tickets.

Today consumers enjoy robust competition in reselling their tickets. They can choose from multiple of platforms that compete on price, convenience, and reliability. However, under restricted tickets, consumers are forced into one marketplace and competition is eliminated.

New York should reapprove Article 25 of the NYS Arts and Cultural Affairs Law to keep these protections in place for New York fans.

⁷ *Id. at 5.*

Recently, Utah,⁸ and Virginia⁹ enacted laws similar to those in New York,¹⁰ Connecticut,¹¹ and Colorado.¹² These legislators protected their state's fans' ability to freely transfer, resell, and give away their tickets. New York should reapprove Article 25 of the NYS Arts and Cultural Affairs Law to keep these protections in place for New York fans.

It is important to note that Ticketmaster's presence in the ticket sales market represents both horizontal and vertical integration. Ticketmaster operates ticket sales for music events at most of the major concert venues across the country.¹³ Live Nation, the leading concert promoter, owns Ticketmaster.¹⁴ This means that a single entity controls a vast proportion of the ticket sales market—leaving eventgoers with no choice but to yield to any policies the company chooses to attach to its ticket sales.

While Ticketmaster sometimes gives the option to transfer a ticket, it requires a complex interaction with Ticketmaster and may require payment of yet another “convenience fee.”

This approach is not only anti-competition, it is anti-consumer. Take for example polling of Utah citizens¹⁵ that found:

- 79% support legislation that guaranteed their right to give away, resell, or donate their tickets however they choose.

⁸ UT Code §§ 13-54-102 (2019). “(1) Except as provided in Subsection (2), each ticket issued for an event shall be a transferrable ticket.”

⁹ VA Stat. §§ 59.1-466.5-7. “No person that issues tickets for admission to an event shall issue any such ticket solely through a delivery method that substantially prevents the purchaser of the ticket from lawfully reselling the ticket on the Internet ticketing platform of the ticket purchaser's choice... No person shall be discriminated against or denied admission to an event solely on the basis that the person resold a ticket, or purchased a resold ticket, on a specific Internet ticketing platform.”

¹⁰ NY Arts & Cult Aff L § 25.30 “[I]t shall be *prohibited* for any operator of a place of entertainment, or operator's agent, to: (a) restrict by any means the resale of any tickets...(b) deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold...(c) employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator's agent.” (emphasis added).

¹¹ CT Pub Act. 17-28 (2017). “No person shall employ an entertainment event ticketing sales system that fails to give the purchaser an option to purchase tickets that the purchaser may transfer to any party, at any price and at any time, without additional fees and without the consent of the person employing such ticketing system.”

¹² Colorado Rev. Stat. § 6-1-718(3) “It is void as against public policy to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale... A person or entity, including an operator, that regulates admission to an event shall not deny access to the event to a person in possession of a valid ticket to the event...based solely on the ground that such ticket was resold through a reseller that was not approved by the operator.” (emphasis added).

¹³ See, e.g., Ben Sisario & Graham Bowley, *Live Nation Rules Music Ticketing, Some Say With Threats*, N.Y. TIMES (Apr. 1, 2018), <https://www.nytimes.com/2018/04/01/arts/music/live-nation-ticketmaster.html>.

¹⁴ See *id.*

¹⁵ Frequencies available at NetChoice.org/UtahPoll.

- 88% say the ticket purchaser should choose what to do with their tickets (resell them, give them away, donate them) rather than allowing the event organizer to prevent sharing or reselling tickets.
- 71% said that when they buy their ticket, it is their personal property and they have full control over what they can do with their ticket.

These consumer preferences run counter to the notion of restricted tickets.

When a company dominates the landscape as comprehensively as Live Nation and Ticketmaster, such restrictions are a problem. According to the New York Times:

“Live Nation empire, still tickets 80 of the top 100 arenas in the country. No other company has more than a handful. No competitor has risen to challenge its pre-eminence. Now Department of Justice officials are looking into serious accusations about Live Nation’s behavior in the marketplace.”¹⁶

We’re already seeing restricted tickets. Garth Brooks used restricted tickets for his several of his 2016 performances. Fans who gave their tickets to family or friends still had to escort them to the venue doors. And a ticketholder who couldn’t attend could not easily sell or even give away his tickets.

However, fans don’t suffer these restrictions when Garth Brooks performs in states like New York or Colorado. These states have laws with the same protections that maintain consumer choice, convenience, and market competition, so New York¹⁷ and Colorado¹⁸ fans can freely transfer, resell, and give away their tickets. Big-name acts like Garth Brooks regularly perform in states with laws ensuring these protections, so enforcing against this competition-limiting practice will not impede concerts and other ticketed events from continuing to take place.

The Rationale for Restricted Tickets Doesn’t Match Reality

Ticketmaster’s own website explains why it requires restrictions—to stop software ‘bots’ used by unscrupulous brokers to grab hundreds of tickets in first minutes they go on sale:

¹⁶ Sisario & Bowley, *supra* note 13, <https://www.nytimes.com/2018/04/01/arts/music/live-nation-ticketmaster.html>.

¹⁷ NY Arts & Cult Aff L § 25.30. “[I]t shall be *prohibited* for any operator of a place of entertainment, or operator’s agent, to: (a) *restrict by any means the resale of any tickets...*(b) deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold...(c) employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator’s agent.” *Id.* (emphasis added).

¹⁸ Colorado Rev. Stat. § 6-1-718(3). “It is *void as against public policy to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale...* A person or entity, including an operator, that regulates admission to an event shall not deny access to the event to a person in possession of a valid ticket to the event...based solely on the ground that such ticket was resold through a reseller that was not approved by the operator.” *Id.* (emphasis added).

Why is Credit Card Entry the only option for some events, or some sections?

When Credit Card Entry is the only option it's probably because the tickets are in high demand, and the artist, team, or venue wants true fans like you to get the seats you want at face value by eliminating unfair competition from professional scalpers. Without the ability to resell tickets at steep prices, scalpers have no reason to snatch them up when they go on sale using automated software, or "bots".

Fortunately, Congress recently passed the Better Online Ticket Sales, or BOTS Act, making it illegal for brokers to circumvent ticket purchase limits on sites like Ticketmaster.¹⁹ The bill empowers the AG and state Attorneys General to stop ticket scalpers from buying-up tickets by bypassing online controls that limit the number of tickets a person can buy. Even Ticketmaster supported the BOTS Act, saying "Ticketmaster worked closely with legislators to develop the BOTS Act and we believe its passage is a critical step in raising awareness and regulating the unauthorized use of Bots."²⁰

With BOTS now a federal crime, there's no justification for Ticketmaster to offer only restricted tickets.

Moreover, as reported: "Ticketmaster is profiting off of scalpers *who they allegedly work with to help game the system over consumers hoping to purchase tickets at face value.*"²¹



Abuse of market power by Ticketmaster and its parent, Live Nation

While private contracts are a private matter, governments step in when contracts threaten property rights, constrain consumer choice, or force unfair agreements on consumers. Event tickets are another area vulnerable to anti-competitive practices that harm consumers and competitive businesses.

Today's antitrust law looks for three things:

1. Market power – often defined as market share above 75%
2. Abuse of market power – through things like tying or activity to exclude competitors
3. Consumer harm resulting from such abuse – often in the form of increased prices

Live Nation and Ticketmaster represent a prime opportunity for antitrust scrutiny – either for its restricted tickets practice or its efforts to exclude competitors from the primary ticket sale market.

¹⁹ BOTS Act of 2016, 15 U.S.C. § 45c (2012).

²⁰ *Obama signs law to combat ticket bots*, ENTERTAINMENT WEEKLY (Dec. 16, 2018) <http://ew.com/article/2016/12/16/obama-law-ticket-bots/>.

²¹ Justin Boggs, *Report: Ticketmaster recruits scalpers to sell marked-up tickets*, Arizona abc15 (Sep 20, 2018)

Ticketmaster has market power

When reviewing the Ticketmaster-Live Nation transaction in 2010, President Obama's Department of Justice raised concerns that "This loss of competition likely would result in higher prices for and less innovation in primary ticketing services."²² The DOJ was prescient: in the decade since that merger, Ticketmaster continues to maintain a market share of 70-80% in primary ticket sales.²³

Since 2010, Ticketmaster-Live Nation have continued to grow their size and scale, indicating they poses market power.

Ticketmaster is abusing its market power to exclude competition

Restricted Tickets

Ticketmaster's *primary* ticket sales platform has previously required customers to resell only through Ticketmaster's own secondary market service. Failing to stick with Ticketmaster has resulted in voided tickets and threats to cancel patrons' season tickets.²⁴

Ticketmaster is aggressively expanding its restricted tickets ticket program -- at the same time Ticketmaster is expanding its resale network. Remember that these restrictions are not about stopping resale; they are more about ensuring that such transactions occur *only* through the Ticketmaster system.

Using market power to prevent other primary ticket sellers

In addition to using terms and conditions, technology, and business conditions with their partners to restrict transferability of tickets amongst consumers,²⁵ Ticketmaster-Live Nation also uses threats of retaliation to dominate the ticket market and impede competition.²⁶

As Live Nation is one of the leading promoters for artists and also owner of venues, it may be using its size and power to ensure that artists only sell tickets through its child-corporation Ticketmaster. This is a clear violation of Section 2 of the Sherman Act.

²² *Id.*

²³ *Id.*

²⁴ See *Stubhub, Inc. v. Golden State Warriors, LLC*, No. C 15-1436 MMC, 2015 WL 6755594 (N.D. Cal. Nov. 5, 2015), *appeal dismissed* (July 22, 2016).

²⁵ See Ticketmaster Credit Card Entry, *available at* <https://www.ticketmaster.com/h/credit-card-entry.html> ("Can I sell Credit Card Entry tickets? That's up to the artist, team, or venue! If they give the green light you'll see a Sell button when you click the order number under Order History in My Account.").

²⁶ See, e.g., Jem Aswad, *Department of Justice 'Looking Into Accusations' Against Live Nation, Report Claims*, VARIETY (Apr. 1, 2018) ("They have been reviewing complaints that Live Nation, which manages 500 artists, including U2 and Miley Cyrus, has used its control over concert tours to pressure venues into contracting with").

Ticketmaster's abuse of market power in tickets is harming New York consumers

Restricted Tickets

These new limits of fan choice and control over their tickets make it harder to transfer tickets and have included a new battery of "convenience fees" just to give a ticket to a friend. This is clearly a harm to consumers. Moreover, by shutting out third-party platforms from resale this ensure an elimination of competition and increasing prices for consumers.

Using market power to prevent other primary ticket sellers

Despite their increasing efficiency and size, fans should be seeing a decrease in service fees. However, we are not seeing this and there are stories that fans in the US pay a lower service fee than those in other parts of the world where there is more competition.

There is a strong case for a robust antitrust investigation into Ticketmaster – Live Nation. Now is the time for the New York AG to crack down on this barrier to competition and help consumers enjoy the choice and convenience of an open tickets marketplace.

This is especially important since the Trump Department of Justice reapproved the Ticketmaster – Live Nation consent decree, despite acknowledging several violations.²⁷ This approved vertical merger allowed the dominant ticketing platform to merge with the largest promoter of concerts.

An objective review of Ticketmaster-Live Nation would conclude that the consent decree *is not working*. This is a prime example of where oversight agencies should use their merger review powers to maintain a competitive marketplace that serves consumer interests and institute remedies that will ensure competition in the ticket industry.

Again, we thank you for your efforts to maintain a safe and competitive market for tickets in New York.

Sincerely,

Carl M. Szabo
Vice-President & General Counsel, NetChoice

NetChoice is a trade association promoting free expression and free enterprise on the net.
www.netchoice.org

²⁷ *United States v. Ticketmaster Entertainment, Inc.*, Case: 1:10-cv-00139 (U.S.D.C. 2010).

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JOINT PUBLIC HEARING ON TICKET SALES FOR LIVE EVENTS IN NEW YORK STATE

Statement by New York Yankees

We appreciate the opportunity to present testimony in this Joint Public Hearing on Ticket Sales for Live Events in New York State.

While there are myriad of issues surrounding the ticketing laws in New York State, specifically in relation to Article 25 of the Arts and Cultural Affairs law, today we seek to address issues surrounding unlicensed brokers who resell tickets to live events.

Specifically, Sec. 25.13(1) expressly prohibits anyone from reselling tickets to live events without first being registered with the Secretary of State. In part, the current law reads:

“No person, firm or corporation shall resell or engage in the business of reselling any tickets to a place of entertainment or operate an internet website or any other electronic service that provides a mechanism for two or more parties to participate in a resale transaction or that facilitates resale transactions by the means of an auction, or own, conduct or maintain any office, branch office, bureau, agency or sub-agency for such business without having first procured a license or certificate for each location at which business will be conducted from the secretary of state.”

While there are many good actors who do what is required under the law, as well as resale platforms, such as StubHub and Ticketmaster’s resale sites, which enable brokers to provide their license numbers received from the NYSDOS, all too often there are those who do not comply with the law and act in bad faith when reselling tickets to events. Currently on Ticketmaster’s website, there are 60 brokers’ license numbers listed and on StubHub’s there are 24. More importantly, as of April 19, 2021, there are only 48 licensed ticket resellers identified on the NYSDOS, Division of Licensing Services website and no ticket reseller branch offices. We know with certainty that there are far more unlicensed ticket resellers clandestinely doing business in New York State directly or through strawmen.

The problem is that these unlicensed ticket resellers operate outside the scrutiny, supervision and regulation of the Secretary of State under Sec. 25.17 simply because they are unlicensed. Moreover, being unlicensed, these resellers avoid the \$5,000 application fee required under Sec. 25.13(1), resulting in revenue loss for New York State. Unlicensed resellers also avoid Sec. 25.15’s bonding requirements, thus leaving consumers without recourse against them. Furthermore, these resellers are under no obligation to provide price lists which show the established price and the resale price required under Sec. 25.23(1), maintain any records relating to resold tickets required under Sec. 25.25(1) or provide any required reports under Sec. 25.25(2). The bottom line is that these unlicensed resellers are able to engage in predatory practices with impunity while leaving disheartened consumers with no recourse other than complaining to and wrongly blaming the venue operators who are forced to rectify the situation.

Thus, while the current law certainly contains significant regulations for those resellers who comply, there does not appear be any enforcement or mechanism by which a venue operator can deter and prevent

unlicensed brokers from purchasing tickets, who can be easily identified based on the sheer volume of the tickets they purchase and resell.

So if the lack of registration is the problem, then what is the solution? The issue becomes one of enforcement. Currently, pursuant to Sec. 25.10(4), the Attorney General has jurisdiction to enforce the provisions of this law. While we understand the constraints of the Attorney General's office and the fact that enforcement in these situations may be challenging, the reality is the impact of this type of rampant unlicensed behavior is far reaching and the lack of enforcement creates a Wild West situation that hurts well-intentioned fans who end up losing money while leaving venue operators being the subject of scorn. Additionally, the State is regularly losing money in the unpaid application/registration fees that could be realized. None of these are desirable outcomes.

In conclusion, we appreciate the opportunity to point out some of the challenges which exist with the current law that governs the sale of tickets to live events. We realize not all of the issues presented herein require a legislative solution, but rather enforcement of the existing law. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alan Chang', with a stylized, cursive script.

Alan Chang



**Sports Fans Coalition to the New York Senate Standing Committee on
Investigations and Government Operations and the New York Senate
Standing Committee on Commerce, Economic Development, and Small
Business**

Joint Public Hearing on Ticket Sales for Live Events in New York State

April 22, 2021

Executive Summary

New York's ticket resale laws are strong, promote competition, and are good for the consumer. If New York State Senate were to do anything, it should extend the sunset provisions, preferably, indefinitely. I will focus on a few areas of public policy that impact ticket-buying consumers. I intend to demonstrate that protecting ticket transferability must be a cornerstone of any pro-consumer ticketing law, that price controls harm fans, that white label websites need to be prohibited, and that requiring affordability of primary tickets for tax-funded venues is good for consumers.

Background on Sports Fans Coalition

The Sports Fans Coalition, founded in 2009, is a national non-profit advocacy organization devoted to representing fans wherever public policy impacts the games we love. We are best known for leading the campaign to end the Federal Communications Commission's sports blackout rule, which we accomplished in 2014 despite massive opposition from the NFL and broadcast industry. We are the creators of the Sports Bettors' Bill of Rights, a set of five principles we believe should accompany sports betting legislation to protect consumers while maximizing state revenues, which now governs three jurisdictions: Virginia, Maryland, and Washington, DC.

We've also been on the front lines fighting massive media consolidations, the NFL's concussion cover-up, corruption within the United States Soccer Federation, and their inequitable treatment of women and youth. Empowering consumers in the ticket industry has been a priority of SFC's for many years. We advocate on behalf of sports fans in all of these areas and more in Washington, DC and state capitals around the country.

Transferability

Transferability must be the cornerstone of any pro-consumer ticketing law. Live Nation-Ticketmaster controls 80% of a \$9 billion market.¹ As the industry's dominant primary ticketer, Ticketmaster's embrace of non-transferable ticketing practices does nothing more than to create burdens for consumers, limiting the ability for fans to transfer, give-away, or resell the tickets they have rightfully purchased.

While Ticketmaster claims these barriers prevent ticket scalping, they are often designed to control resale and ensure it occurs on platforms aligned with the primary ticketing company. Designated resale exchanges, commonly used by professional sports leagues, are resale platforms that a league or team and a ticket sales platform have agreed to support.² Such arrangements are especially attractive to ticket issuers. It allows them to "double-dip" the

¹ Bill Pascrell Jr, *Everyone's worst fears about the Live Nation-Ticketmaster merger have come true*, LA Times, May 17, 2018, <https://www.latimes.com/opinion/op-ed/la-oe-pascrell-live-nation-concert-ticketing-20180517-story.html>

² U.S. Gov't Accountability Office, GAO-18-347, Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues (April 2018) (34).

fees on both the initial sale of the ticket and the secondary sale on an affiliated ticket exchange. For example, Ticketmaster's Ticket Exchange platform is the official resale exchange for the National Basketball Association, National Hockey League, Women's NBA, many Major League Soccer teams, and numerous other sports and events. While designated exchanges are not inherently anti-competitive or harmful for consumers, they should not come at the cost of allowing a fan to transfer his or her ticket elsewhere.

Despite claims that these restrictions protect consumers, they do the exact opposite. Restrictions prevent fans who purchased a ticket and can no longer attend the event from easily giving that ticket away to a friend, family member, or charity and possibly recouping their cost. They also eliminate consumer choice, preventing fans from easily utilizing platforms that are not connected to the primary ticket seller.

New York recognized the consumer harm associated with non-transferable ticketing in 2010 when it initially adopted its "paperless" ticketing provision. This provision is paramount to ensure consumers are empowered in the ticket buying process, protecting their right to purchase a freely transferable ticket independent of the primary ticketer or venue. Sports Fans Coalition strongly encourages the renewal of this critical provision.

Price floors and caps limit fans from investing in their fandom.

Buying a ticket is an investment in fandom. Whether that ticket is to a single game or entire season, a fair and open ticket market spurs investment among the fan base. To restrict the cost of secondary tickets serves to stifle this investment.

A few years ago, the New York Attorney General's (NYAG) office investigated the NFL for antitrust violations with its NFL Ticket Exchange, a restrictive marketplace. They found that the NFL's price floor policy (rules that forbid tickets from being sold below a particular value) artificially inflated prices. The NYAG asserted that these price floors led fans to believe they are buying a ticket at the market price, when in actuality, they may be purchasing the ticket for a higher price. In a settlement, the NFL agreed to refrain from this practice.³ While this is a good start, the NFL can still create price floors on events that they are the ticket distributor for, such as the Super Bowl and Pro Bowl. Such price floors prohibit the cost of the ticket from matching demand, especially as tickets for teams with losing records go on sale.⁴

Similarly, price caps harm fans. If I'm a season ticket holder to the Yankees and want to sell my ticket to the Red Sox game, I should be able to sell that for whatever the market will

³ Attorney General of the State of New York Antitrust Division, *In the Matter of NFL Ticketing Investigation* (2016). https://ag.ny.gov/sites/default/files/11.15.2016_-_nfl_tix_investigation_final.pdf

⁴ Eric T. Schneiderman, "Obstructed View: What's Blocking New Yorkers from Getting Tickets" Office of New York (State Attorney General) https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

bear. It could be that I am just trying to recoup a bit of my season ticket cost or trying to pay a surprise medical bill. Whatever the reason, a price cap on fan resale limits my ability to reap the benefits of my investment but does little to stop bad actors, who will always find a way to skirt the law.

Sports Fans Coalition advocates against legislation and regulations that attempt to control ticket prices artificially.

White label ticket sites defraud fans.

"White label" ticket resale websites use the ticket inventory, website technology, back-end functionality, customer service, and order processing systems of other, larger ticket resale sites. They are permitted to set prices for tickets and impose fees and surcharges at their discretion, profiting from any markup.

White label ticket sites commonly use deceptive practices to fool fans. By using misleading URLs, link titles, imagery, and logos, these sites led the fan to believe he or she is purchasing a ticket from the primary market or official box office at a ticket's face value. In reality, fans are buying from a third party pretending to be an official site. Because of this deception, white label ticket sites profit from inflating ticket prices and charging significant additional fees — often significantly higher than their affiliated site.

The following example showcases the pricing differentials between white label sites and the ticket resale websites that supported their operations during the 2017 baseball season. Please note this example was pulled before New York's statute on white labels was adopted in 2018. In these instances, for a Yankees ticket with a face value of \$178.60, fans were deceived into spending more than \$300.⁵



⁵ Results pulled July 28, 2017.

New York has led the nation in prohibiting white label ticket fraud. State regulations and Google's Ad Word policy have significantly reduced the prevalence of this practice. White label sites still exist, though the deceptive nature of the URL has been addressed by New York statute. Sports Fans Coalition strongly recommends extending these provisions to continue protecting fans and encouraging the Attorney General to enforce against this kind of deceptive business practice when it is detected.

The "Public Benefits for Professional Facilities Act" is pro-fan and good for the community.

If passed, the "Public Benefits for Professional Facilities Act" would grant local and state taxpayers ticket affordability for publicly funded venues. Sports Fans Coalition has long supported such benefits being tied to public funds. It has been documented repeatedly that publicly financed sports stadiums – especially football stadiums – rarely yield a positive benefit for the community. Requiring discounts or affordable pricing is one way to ensure that a community benefit is achieved. I would urge the Senate to include these provisions in the new ticketing laws you are considering today.

Conclusion

Today, the laws which govern one of the United States' largest live-event marketplaces are robust and consumer-friendly. While these laws are sunseting soon, I urge the members of this committee to extend those laws indefinitely. I would also support incorporating new provisions, such as those found in the "Public Benefits for Professional Facilities Act."



April 22, 2021

The Honorable Anna Kaplan
Chair, Commerce, Economic Development &
Business Committee
New York State Senate
Legislative Office Building, Room 805
Albany, NY 12247

The Honorable James Skoufis
Chair, Investigations and Government Small
Operations Committee
New York State Senate
Legislative Office Building, Room 815
Albany, NY 12247

RE: Joint Public Hearing on New York State's Live Event Ticketing Industry

Dear Chairs Kaplan and Skoufis:

Thank you for the opportunity to participate in today's joint hearing of the Investigations and Government Operations and Commerce, Economic Development, and Small Business Committees on New York State's live events ticketing industry. StubHub shares the Committee's commitment to the consumer interest and applauds the effort to look at the industry holistically on behalf of fans.

Founded in 2000, StubHub revolutionized secondary ticket sales by providing fans a safe, transparent, and trusted marketplace to buy and sell tickets. Today, StubHub is the world's most trusted ticket marketplace, operating in more than 40 countries and giving our customers access to the highest standards of consumer protection in the industry.

StubHub has been active over the last several years in engaging with policymakers and regulators to better understand the live event ticketing industry and identify areas where enforcement of existing laws, or regulatory or legislative efforts could benefit consumers.

New York has consistently led the nation by instituting public policies that empower consumers in the live event ticketing industry. StubHub is proud to have supported the state's most recent legislative initiatives in 2018, which included critical consumer protections such as prohibiting the use of bots to unfairly procure tickets, regulating the sale of speculative tickets, prohibiting deceptive websites, enhancing disclosures, and renewing the state's critical transferability requirements.

StubHub believes that a fair, secure, and competitive ticket marketplace unequivocally supports the interests of fans. It drives industry players to compete on user experience, fees, consumer protections, and service. It also provides fans greater access to the events they want to experience and the ability to purchase tickets at a market-driven price.

As the instance of anticompetitive and anti-consumer practices in the ticket industry increases, it is critical that New York renew and strongly enforce its existing statute. Restrictive and anti-consumer practices witnessed in today's marketplace include obscurity around ticket allocations, particularly the lack of transparency around the

number of tickets available for sale to the general public, as well as restrictions on the transfer or resale of tickets that limit fans' ability to transfer, give away, or resell the tickets they have rightfully purchased.

Transparency & Accessibility

Bots are often singularly blamed as the reason fans have difficulty accessing tickets. However, it is important to note that another major contributor is that large percentages of tickets are actually never put on sale to the general public. Ticket issuers, artists, promoters, venues, and others involved in primary ticket sales frequently hold back large percentages of tickets for industry insiders and various pre-sales.

According to a 2016 report by the New York Attorney General's office, an average of 46% of tickets go on sale to the general public during the general on-sale. The remaining 54% are held back for industry insiders, artists, fan clubs, credit card pre-sales, and other sources. The number of tickets made available to the public frequently falls to 25% for top concerts and was noted to be as low as 12% for one concert in New York City.¹

In some instances, tickets that have been held back from the general on-sale are gradually released over time leading up to the event. These tickets are often priced higher than those originally sold and often reflect the market rates established on secondary marketplaces.² Ticketmaster categorizes this ticket-sale model as "Official Platinum Tickets," and it utilizes market-based dynamic pricing.

StubHub respects the rights of artists and teams to price and sell their tickets as they deem appropriate. We also respect the rights of fans who have purchased those tickets to resell them at a mutually agreed upon price to a subsequent buyer.

It should be noted that the need for transparency increases exponentially as ticket issuers embrace the use of dynamic pricing. The controlled distribution of supply can have a profound effect on pricing, and consumers should be aware of how many tickets have been released versus held back in order to gauge those dynamics and make informed purchasing decisions.

Providing fans information on the number of tickets available for sale, when these tickets will be offered, and at what price will create a clearer picture of event accessibility and help to inform fans' decisions on if, and when, to buy tickets.

Consumer Choice & Restrictions on Transferability

A competitive ticket marketplace provides fans greater access to the events they want to experience and the ability to purchase tickets at a fair and market-driven price.

Unfortunately, as a condition of initial sale, ticket issuers, sports teams, artists, theatres, and venues are increasingly using terms and conditions, technology, and ticket delivery techniques to place restrictions on the tickets that fans have rightfully purchased.

¹ Office of the New York State Attorney General, "Obstructed View: What's Blocking New Yorkers from Getting Tickets," (January 2016), available at: https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

² Marco Chown Oved & Robert Cribb, "Got tickets to Saturday's Bruno Mars show? The guy sitting beside you may have paid hundreds of dollars less," *Toronto Star* (September 18, 2018), available at: <https://www.thestar.com/news/investigations/2018/09/18/got-tickets-to-this-weekends-bruno-mars-show-heres-why-the-guy-sitting-beside-you-may-have-paid-hundreds-of-dollars-less.html>

In some instances, these restrictions may prevent fans from transferring, giving away, or reselling their tickets altogether. In other instances, these restrictions dictate that any transfer or resale must occur on a secondary ticket platform that is owned, operated, or officially partnered with the primary ticket seller. This type of behavior unfairly limits choice and forecloses competition in the market.

As the dominant player in primary ticket sales, Ticketmaster is uniquely positioned to control secondary ticket sales and eliminate consumer choice and competition through ticket restrictions. As a major player in secondary ticket sales through products such as TM+, NFL Ticket Exchange, NBATickets.com, etc. – Ticketmaster’s use of restrictive ticketing is on the rise.

For example, Ticketmaster’s SafeTix technology (at times referred to as “rolling barcodes”), enables them to completely control and dictate if, and how, ticket purchasers may transfer or resell their tickets to subsequent users. Through this technology, tickets can be made completely non-transferable, or a more likely outcome, transferability can be limited solely to Ticketmaster’s platforms. This is particularly concerning in a world where Ticketmaster tickets 79 of 93 NFL, NHL, and NBA teams and controls approximately 70-80% of every ticket initially sold. Further, it has been reported that Ticketmaster intends to move all tickets to the SafeTix platform by 2021.³

With ticket restrictions, Ticketmaster can single-handedly eliminate consumer choice and foreclose competition. This situation occurred last year at a concert for The Black Keys in California where hundreds of ticket-holding fans were denied entry when Ticketmaster employed its SafeTix technology and removed the ability for customers to transfer their tickets.⁴

Short of completely eliminating a consumers’ ability to transfer a ticket, Ticketmaster is increasingly requiring consumers who purchase resale tickets on non-Ticketmaster sites (such as StubHub) to complete this transaction on Ticketmaster’s own website or app in order for the user to obtain the purchased tickets.

Fortunately, New York recognized the importance of empowering ticket purchasers by requiring the option to buy a freely transferable ticket at the initial point of sale is always available. Section 25.30 of the New York State Arts & Cultural Affairs law passed in 2010 and was affirmatively renewed on an annual basis through 2018 when the General Assembly added several new consumer protection provisions to the statute and renewed it through June 2021. This provision is critical to ensure consumer choice and competition remain in the live event ticketing industry. Several states have enacted similar provisions, including Connecticut, Virginia, and Utah. Two more states – Illinois and Colorado– have laws in place that prohibit any restriction on the resale of a ticket.

StubHub believes that fans should always have the option to purchase a transferable ticket at the initial point of sale that they can use, transfer, or resell freely to preserve competition in the market. Further, consumers who have purchased legitimate tickets should not be denied entry to an event based on a ticket issuer’s attempt to control the entire ticket marketplace and shut down competition.

³ Dave Brooks, “Black Keys Ticketing Blame Game Overshadows Larger Issues Ahead for Concert Business,” *billboard* (September. 24, 2019), available at: <https://www.billboard.com/articles/business/touring/8530801/black-keys-ticketing-ticketmaster-safetix>

⁴ Chris Willman, “Black Keys’ Anti-Reseller Policy Debated as Hundreds of L.A. Ticketholders Are Barred,” *Variety* (September. 21, 2019), available at: <https://variety.com/2019/music/news/black-keys-hundreds-turned-away-wilern-ticketmaster-1203344146/>

We understand that opponents to transferability requirements will argue that restrictions on transferability are necessary to enhance security, limit fraud, and more recently, to safely re-open venues in the wake of the COVID-19 pandemic. StubHub welcomes technological advancements to improve security, decrease fraud, and promote public health, however these advancements should not result in limited consumer choice or foreclosing competition. Further, we do not believe these arguments are fully informed.

While Ticketmaster claims to use digital ticketing and transferability restrictions to enhance security and understand who is attending events, those claims fall short with the acknowledgement that Ticketmaster does not conduct background checks on ticket purchasers in advance of the event. Similarly, the primary seller is typically only aware of the purchaser, not the guests of the purchasers (i.e. someone buys four tickets and brings three guests).

With respect to fraud, StubHub's own experience shows that the incidence of fraud is incredibly low. While digital ticketing may further enhance the industry's efforts to combat certain types of fraud, it cannot eradicate fraud altogether, and we can achieve these same outcomes without limiting consumer choice or foreclosing competition. The sincerity of the fraud argument must be questioned when the capability to create freely transferable digital tickets exists today but is not being broadly utilized. For example, the National Football League's (NFL) use of Ticketmaster's SafeTix technology has been widely reported. It is an example of digital ticketing that has been coupled with interoperability across multiple ticket platforms to ensure consumer choice.

The NFL required Ticketmaster to integrate its SafeTix system with multiple ticketing platforms that entered into a partnership with the NFL to enable the free transferability of digital tickets across multiple platforms. This arrangement is unique in the live event ticketing industry and arguably the result of government intervention. The NFL moved in this direction after reaching a settlement with six Attorneys General, including New York, where they agreed not to, "promote or require that its member clubs implement ticketing technologies or practices that are designed or intended to substantially impede or preclude the ability of consumers to buy or sell tickets on secondary ticket exchanges unless permissible under applicable law."⁵ Unfortunately, we do not see the broader industry moving in this direction without additional direction from the government.

Despite Section 25.30's requirement that an operator or operator's agent may only employ a non-transferable paperless ticketing system if the customer is "offered an option at the time of initial sale to purchase the same tickets in some other form that is ***transferrable independent of the operator or operator's agent***," we've seen recent examples of New York events offering mobile-only tickets that cannot be transferred independently of the operator or operator's agent. For example, Ticketmaster partnered with Pearl Jam to offer mobile-only tickets to their now postponed 2020 show in New York City that cannot be transferred independently of Ticketmaster's TM+ resale platform. Sellers can elect to sell these tickets on StubHub, however fulfillment must occur through the Ticketmaster app.

⁵ Offices of the Attorneys General of the States and Commonwealths of New York, Ohio Massachusetts, Florida, and Pennsylvania and the District of Columbia, and the National Football League, "Settlement Agreement in the Matter of NFL Ticketing Investigation," (November 15, 2016), available at: [http://myfloridalegal.com/webfiles.nsf/WF/JMAR-AFQQEM/\\$file/NFL+Settlement+Agreement.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JMAR-AFQQEM/$file/NFL+Settlement+Agreement.pdf)

The Impact of COVID-19 on the Live Events Industry

The impact of COVID-19 on the ticketing industry has been severe. In an effort to stop the spread of the virus, protect consumers, and comply with government prohibitions on mass gatherings, StubHub has had more than 150,000 events impacted by COVID-19 in North America this past year.

StubHub believes that collaboration across our industry is critical to facilitating the safe return of fans to live events.

Again, StubHub welcomes technological advancements and processes that help achieve this goal, however, it is imperative that these technologies and processes not limit consumer choice or foreclose competition in the sector. For example, in the wake of the COVID-19 pandemic we have seen an increased use of non-transferable digital tickets that eliminate the customer's ability to transfer or resell that ticket, or eliminate the ability to transfer or resell the ticket independently of the platform through which they were purchased it – including in New York. Restricting ticket transferability is not necessary to meet established re-opening requirements, yet it is increasingly employed. Solutions to get fans back into stadiums should advance the consumer experience and create more flexibility in the marketplace, not limit consumer choice and stifle competition.

Similar concerns were recently noted by Congressional leaders including Chairman Jerry Nadler, Chairman Frank Pallone, Jr., Chairwoman Jan Schakowsky, Chairman David Cicilline, and Congressmen Bill Pascrell, Jr. in a letter to Attorney General Merrick Garland and Acting Federal Trade Commission Chair Rebecca Slaughter:

“Throughout the coronavirus disease of 2019 (COVID-19) pandemic, LNE [Live Nation Entertainment] has rebranded its anticompetitive ways under the guise of protecting the public health. As reported in *Billboard Magazine*, ‘Ticket transfer technology used to restrict fans from reselling tickets to high demand shows will now be used to make ‘entry safer’ by requiring most person[s] entering a concert venue to register an account with Ticketmaster.’⁶ While local governments should work with local venues to ensure common sense public health protections for fans, such as mask-wearing and social distancing, we cannot allow Ticketmaster to leverage the pandemic to choke off competition by eliminating ticket transfer.”

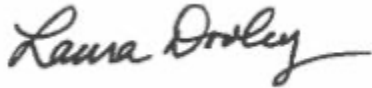
We believe COVID-19 has highlighted the importance of empowering consumers across sectors, including the live events industry. Transferability and flexibility should be key principles moving forward, allowing consumers to engage in our sector at their own comfort level and handle their ticket purchases as they see fit. The ability to transfer, give away, or resell tickets across multiple platforms will provide flexibility for consumers who no longer feel comfortable attending an event or elect to stay home when they find themselves feeling ill. This is even more important to consider when trying to get fans back into live events following COVID-19.

⁶ Dave Brooks, “Ticketmaster Tech Used to Fight Scalpers Will Now Be Deployed Against Covid19”, *Billboard* (Oct. 29, 2020), available at: <https://www.billboard.com/articles/news/9474791/ticketmaster-tech-deployed-against-covid-19/>.

Conclusion

Thank you for your consideration of StubHub's comments and the opportunity to participate in today's discussion. The New York Arts & Cultural Affairs Law provides a comprehensive set of policies that promote a safe, transparent, and competitive live event ticketing industry. StubHub encourages the renewal of this statute to ensure New York fans maintain these critical protections.

Sincerely,



Laura Dooley
Head of Global Government Relations



STATEMENT OF GILBERT HOOVER TO THE SENATE COMMITTEE ON
INVESTIGATIONS AND OPERATIONS REGARDING THE LIVE EVENT TICKET
INDUSTRY IN NEW YORK STATE

April 22, 2021

Hello, I am Gilbert Hoover, Vice President and General Counsel of The Shubert Organization (“Shubert”). I am pleased to participate in the New York State Senate Investigations and Government Operations Committee hearing on the live event ticket industry in New York State. In addition, both the Nederlander and Jujamcyn organizations join in my statement.

By way of background, Shubert operates seventeen Broadway theatres, making it the largest Broadway venue operator. In addition, Shubert operates Telecharge, a leading provider of ticketing services for Broadway and off-Broadway shows and other events across the country. The Nederlander and Jujamcyn organizations collectively own and operate fourteen Broadway venues.

We share the Committee’s interest in ensuring that live event ticket sales across New York State are fair and equitable to all parties, especially our patrons. The current State ticketing laws (ACAL Article 25) will sunset on July 1st of this year. For the reasons explained below, we believe the current law should be extended for another two-year period, without any further amendments.

Broadway is in the midst of enduring the longest closure in its history, due to the illness known as COVID-19 caused by the global Coronavirus pandemic. Broadway venues were amongst the first businesses to close and last to re-open in accordance with New York State mandates and applicable laws. Commencing March 13, 2020 – more than one year ago -- all Broadway venues were shuttered by Executive Order (See, Executive Order 202.1 as extended). While the Governor recently announced guidelines to allow Broadway venues to re-open at severely limited capacities (not more than 150 persons, with social distancing and stringent protocols), we are still waiting for the day when we will be welcoming our audiences under something approaching normal circumstances and full or close to full houses that are needed for our industry’s survival.

I cannot overstate the economic hardship caused by the Coronavirus pandemic on the Broadway industry and the live event ticket industry in New York State. Broadway and the live event ticketing industry in New York State are amongst the hardest hit industries in all the State, if not the nation. With virtually no revenue for over thirteen months and counting, our focus is on doing what is necessary to ensure our survival and re-start Broadway’s economic engine; an engine that is essential to the economic revival of New York City, including the re-population and revitalization of Time Square and the return of tourism to the City.¹

¹Broadway attendance in the 2018-2019 season reached 14.77 million; the season grossed \$1.83 billion. Broadway attendance for the 2018-2019 season topped those of the ten professional NYC Metro-area sports teams combined (Mets, Yankees, Rangers, Islanders, Knicks, Liberty, Giants, Jets, Devils and Nets). Broadway contributes \$14.7 billion to the economy of New York City on top of ticket sales and supports 96,900 local jobs. Source: Broadway’s Economic Contribution to New York City 2018–2019, published by The Broadway League. See also: <https://www.broadwayleague.com/research/statistics-broadway-nyc/>.

We must recognize that both live event venues and the live event ticket industry are in a time of great dislocation and upheaval. For example, the recently adopted New York State guidelines for re-opening of small and medium scale performing arts & entertainment venues (applicable to all Broadway venues with 1500 seats or less) are very impactful on venue operations, including ticketing procedures.² For example, the current guidelines place a premium on contactless ticketing and making sure you know each of the customers sitting in the venue for purposes of contact tracing.³ It is not clear whether any of these guidelines will become part of the new normal.

In addition, less than three years ago (July 1, 2018) the ticketing law was amended in significant respects (and most of the amendments did not take effect until December 28, 2018).⁴ While many of these changes appear to be beneficial for the industry and to have made an initial positive impact, I do not believe there has been sufficient time to evaluate the long-term effectiveness of these new measures.⁵ This is especially so given the fact that the live event ticketing industry has been largely shut-down for more than a year since the enactment of these measures. We should give ourselves more time to see the impact of these changes to the law.

In short, now is not the time to tinker with the New York State ticketing law. We need to focus on our recovery and the recovery of our City. While we appreciate the Committee's concern for the live event ticket industry and ensuring that tickets to live events in New York state are fairly and equitably distributed to consumers, we do not believe that changes to the current law are warranted at this time. Thank you.

²See <https://forward.ny.gov/phase-four-industries#small---medium-scale-performing-arts---entertainment> (the "Guidelines").

³The Guidelines include the following requirements as to patrons: (i) provide for primarily contactless check-in ticketing and touchless payment option for the advance purchase of tickets (Guidelines, page 15); (ii) implement mandatory health screening for patrons, prior to, or immediately upon, arrival at the venue (Guidelines, page 26); and (iii) each adult patron must provide contact information before or immediately upon arrival at the performance, including full name, date of birth, address and phone number or email for use in potential contact tracing efforts (Guidelines, page 30). To the extent practical, such patron information shall also include seat assignment at the venue for the event (*Id.*).

⁴See Laws of New York, Chapter 110 of 2018.

⁵The changes enacted included: (i) restrictions on the practice of what is known as "speculative ticketing"; (ii) prohibitions on the practice of using misleading or deceptive "white label" websites; (iii) additional disclosure requirements where a website resells tickets or serves as a platform for facilitating the resale of tickets; and (iv) additional penalties for using bots to obtain tickets and circumvent security controls put in place by online ticket sellers.

Senate Standing Committee On Investigations
and Government Operations &
Senate Standing Committee On
Commerce, Economic Development, and Small Business
Senator Anna Kaplan
Senator James Skoufis

Re: Joint Public Hearing on Ticket Sales for Live Events in New York State

Dear Chairman Skoufis, Chairwoman Kaplan, and distinguished Committee Members of this Joint Hearing:

My name is Don Vaccaro. I am the Chief Executive Officer of TicketNetwork.

Thank you for inviting me to share information about our company and the ticketing industry. The entire live entertainment industry has suffered great loss during the current pandemic. Our loss affects tourism, dining, and other sectors of the State's economy. It will likely take much more time to restore the ticketing industry to sound footing than it took the pandemic to erode it.

TicketNetwork stands ready to assist in the development and implementation of effective public safety measures to assist in recovering from the COVID-19 pandemic.

To restore pre-COVID industry vibrance and economic viability, we need a period of support and stability. Therefore, my primary recommendation today is that the current New York ticket sales statute that has proven effective be made permanent or at minimum, be extended for two years. Enforcement of existing State and Federal laws such as the BOTS Act is an immediate measure that can be taken without any adversity. A key part of the New York law which has likely helped consumers during the COVID era is the provision that prohibits venue operators from employing a paperless ticketing system that would restrict consumers' ability to transfer their tickets. TicketNetwork has always advocated for the rights of consumers to use tickets as they wish. Whether you want to attend an event, give tickets to a friend, or sell them to a willing buyer at an agreed-upon price, the important thing is that they are YOURS. You should be able to do what you'd like without being subject to the whims and restrictions of a venue, event organizer, league, or ticketing company. Colorado, Virginia, Illinois, and Connecticut have similar laws that address ticket transferability, with pending proposals in other states. No state with such ticket transferability laws has repealed or revised its law because it negatively affected consumers. Equally important to consumers' ownership rights to use the tickets they purchased is that if a consumer decides to give away or transfer their tickets, no person or entity should be able to discriminate against the consumer who acquired those tickets by denying them entry to an event simply because they are not the original purchaser. New York is currently in good company by having this law because laws in Colorado, Virginia and Connecticut also prohibit discrimination against consumers with resold or transferred tickets and pending legislation in Massachusetts would provide consumers with similar protection.

Any proposed policy changes or reforms should be thoroughly examined and considered, however should not be implemented immediately. Continued uncertainty about whether or how events will occur, has a devastating effect. The ticketing industry can ill afford unintended consequences resulting from changes that may not have fully considered the current and future circumstances impacting the entertainment industry and public health.

In preparation for reconsidering policy changes or reforms at the end of my suggested two year period, I urge you to examine possible legislative reforms that ensure ticket sales are conducted in a fair and equitable manner. Consumers deserve fair and equitable access to live events but face increasing difficulty in finding tickets to attend those events. With that in mind, I recommend you review the testimony provided during Congressional hearings held in February 2020 along with transcripts of an FTC workshop held in June 2019. I am providing a copy of my written Congressional testimony from 2020 with this written testimony (please see the attachment). In that testimony I outlined existing problems and proposed solutions.

Perhaps the most egregious of consumer abuses are systems that restrict ticket transferability while simultaneously and often without clear disclosures harvesting consumer data to sell to marketers and suppressing some consumers' ability to purchase tickets and enjoy events participating in the ticketing process. My proposed solutions focus on three key consumer needs: transparency, disclosure, and consumer freedom and I submit to you that the answers you seek can be found in documents from those hearings.

I also urge you to look at a potential legislative solution that already exists – the BOSS Act, introduced by Congressman Bill Pascrell. It protects competition, ultimately creating a more consumer-friendly experience. This proposed legislation is not perfect- it includes a concerning section on the use of venue and performer names in event website URLs that serves no purpose other than negatively impacting search results for websites that are not controlled by the venue controlled - but it protects competition in the ticketing marketplace and takes vital steps to a more consumer-friendly experience.

In summation, I recommend enforcing current ticketing laws and making them permanent while examining several common-sense measures that would vastly improve the consumer experience. Measures that move toward transparency, disclosure, and consumer freedom through fair access to all available tickets are the keys to improving the consumer experience, thwarting the ever-increasing concentration of market power in the hands of a few and ultimately creating a more consumer-friendly experience. And that's something we should all be striving to achieve. I welcome your questions and hope that together we can achieve solutions that benefit consumers.

Thank You.



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CONGRESSIONAL HEARING

IN THE DARK:

LACK OF TRANSPARENCY IN THE LIVE EVENT TICKETING INDUSTRY

Date: Wednesday, February 26, 2020 - 10:00am

Location: 2123 Rayburn House Office Building

Subcommittees: Oversight and Investigations (116th Congress)



Testimony of Donald J. Vaccaro
Co-Founder and Chief Executive Officer
TicketNetwork, Inc.
Before the
The Subcommittee on Oversight and Investigations of the
Committee on Energy and Commerce
February 26, 2020

INTRODUCTION

Chairwoman DeGette, Ranking Member Guthrie and Members of the Subcommittee, it is an honor and a privilege to be able to partner with this Committee to provide better transparency for consumers purchasing event tickets on primary and secondary markets.

Thank you for the opportunity to testify today on behalf of TicketNetwork, Inc. (TicketNetwork) regarding these important issues. Below are some highlights and perspectives regarding the issues being discussed today, specifically, “all-in” pricing, ticket transferability, speculative tickets, limiting ticket availability and deceptive websites harming consumers.

For those of you not familiar with TicketNetwork, allow me to briefly introduce to the members of the Subcommittee our company. I founded TicketNetwork in 2002 as a secondary marketplace with a simple idea to empower both ticket buyers and sellers to engage in free market transactions to buy and sell tickets to sporting events, shows, and concerts. With a wide selection of real-time ticket inventory, we provide a valuable service to consumers worldwide. Our mission is to provide access to tickets to live events and a safe, secure environment for transactions. As one of the industry leaders, TicketNetwork strives to provide “best in class” customer service and provide fair terms for its customers, both brokers and eventgoers.

TESTIMONY

The first issue I would like to touch on is so called “all-in” pricing as opposed to “drip” pricing. “All-in” pricing refers to displaying the full price a consumer will pay, including any and all fees, upfront. “Drip” pricing, in contrast, shows just a ticket price, adding subsequent fees (i.e. shipping charges, delivery fee, handling fees, etc.) later. In some instances, these hidden and



often high fees are not disclosed to the consumer until he or she is well into the purchasing process. Disclosing the full ticket price to consumers at the start of the shopping process, in our opinion, would be the best practice for both primary and secondary ticket sellers. This will make comparison shopping much easier, especially for inexperienced consumers. TicketNetwork currently offers an “all in” pricing option on 99% of our sites. Customers can select an option to see ticket listings including the ticket price and an estimate of all fees included at the maps or listing page. This enables consumers to shop based on the price they will pay and avoid being surprised by fees appearing at checkout. Some but not all the competitors in our industry provide “all-in” pricing options.

While TicketNetwork has increasingly embraced this model, “all-in” priced websites often operate at a disadvantage when consumers comparison shop, because drip pricing tickets will appear less expensive until the consumer sees the fees in connection with checking out. “All-in” priced tickets will look more expensive to consumers at first glance. Regardless of whether our competitors move in the direction of “all-in” pricing as a uniform pricing model, we feel such websites are much clearer for consumers, and we will continue to offer them so long as we can maintain them as a viable business model while attempting to scale up to compete with less-transparent marketplace websites.

Next I would like to address the issue of ticket transferability, which is a cornerstone of the TicketNetwork business model. Each consumer must have the ability to freely transfer any tickets purchased and cannot use for a wide array of reasons. We believe in full transferability of tickets purchased, which also goes to the core of the idea of a free market and limitations on one’s ownership rights once goods are sold. The Supreme Court affirmed this right recently in *Impression Products v. Lexmark International* (No. 15-1189, 2016)¹ deciding 7 to 1 that Lexmark’s right to control its products ended after the products were sold.

"The purchaser and all subsequent owners are free to use or resell the product just like any other item of personal property, without fear of an infringement lawsuit [...] Take a shop that restores and sells used cars," chief justice John Roberts wrote in the majority opinion. *"The business works because the shop can rest assured that, so long as those bringing in the cars own them, the shop is free to repair and resell those vehicles. That smooth flow of commerce would sputter if companies that make the thousands of parts that go into a vehicle could keep their patent rights after the first sale."*

¹ See here: https://www.supremecourt.gov/opinions/16pdf/15-1189_ebfj.pdf

The Connecticut legislature has embraced this concept for the ticketing industry as well. Public Act 17-28² was signed by the governor on June 6, 2017 and went into effect on January 1, 2018. The Act Concerning the Sale of Entertainment Event Tickets on the Secondary Market contains provisions covering the following:

(1) a prohibition on an entertainment event ticketing sales system that fails to give the purchaser an option to purchase tickets that the purchaser may transfer to any party, at any price and at any time, without additional fees and without the consent of the person employing such ticketing system, with an exception carved out for a paperless ticketing system that does not allow for independent transferability of tickets, provided the purchaser of such tickets is offered the option, at the time of initial sale, to purchase the same tickets in another form that is transferrable, independent of such a ticketing sales system, including, but not limited to, paper tickets or e-tickets and without additional fees, regardless of the form or transferability of such tickets;

(2) a prohibition on denying admission to an entertainment event to a ticket holder who possesses a resold ticket to such entertainment event based solely on the grounds that such ticket has been resold [...]

Similarly, businesses should not be able to force³ consumers to disclose their personal data for further reselling of this data to various “affiliates” just to be able to transfer the ticket to the other person by using their proprietary platform and dynamically generated admission codes.

The ability to freely transfer the ownership of tickets will promote natural free market price regulations, uninhibited by deceptive and unfair practices, such as coordinated floor pricing, artificial limits on ticket availability and gender discriminatory pricing. With your kind permission, I would like to give you a bit more information about these three issues.

In 2016 the practice of so called “floor pricing” was the subject of the multi-state settlement with the NFL, with New York Attorney General leading the charge⁴.

“No sports fan should be forced to buy, or sell, a ticket at an artificially inflated price,” said Attorney General Schneiderman. “Under the NFL’s price floor scheme, fans were forced to pay inflated prices for even the least desirable NFL games. That is a slap to both sports fans and free markets. In the meantime, I encourage

² See here: <https://www.cga.ct.gov/2017/ACT/pa/pdf/2017PA-00028-R00HB-07114-PA.pdf>

³ TICKETING APP AXS SCRAPES EVERYTHING IT CAN GET FROM YOUR PHONE. Seeing your favorite band live will probably cost you more in data than in dollars. By Paris Martineau. <https://theoutline.com/post/5628/how-a-concert-ticket-steals-your-personal-data?zd=2&zi=o6aaapk1>

⁴ See here: https://ag.ny.gov/sites/default/files/11.15.2016_-_nfl_tix_investigation_final.pdf



every NFL team—and every team in professional sports—to heed the call of all sports fans and remove price floors from every team-authorized secondary ticket market.”

We ban “floor pricing” on all our sites, a practice which the NFL has now officially abandoned, but is still common on secondary marketplaces aligned with rights-holders. Fair markets allow competitive ticket pricing for customers that can lead to prices below face value. We were shocked to hear Ticketmaster, SeatGeek and StubHub admit to the coordinated implementation of floor pricing at June’s FTC workshop. Placing such artificial marketplace constraints against downward price pressure often puts TicketNetwork at a competitive disadvantage⁵, but we are determined to do what is best for customers.

We further believe that gender neutral pricing is the best option for all our consumers, and especially LGBTQ community. We ban all gender-discriminatory pricing (when one gender is given preferential pricing for admission over another) for all tickets listed on our exchange.

Finally, I strongly believe that artificially limiting ticket availability only harms consumers and further inflates already expensive ticket prices. Allow me to elaborate further on this issue mostly affecting primary ticket sellers. Upon the general on-sale offering of tickets to an event, consumers typically believe that they have a chance to purchase tickets for all, or at least most, of the tickets in each venue. In fact, less than half of the tickets for an event, on average, are ever made available to the general public⁶. In 2016, the New York Attorney General’s office found that on average, only 46% of popular concert tickets are made available to the general public⁷. Similarly, the Government Accountability Office (GAO), found that the live event ticket industry frequently lists tickets directly with brokers to “capture a share of higher secondary market prices without the reputation risk of raising an events ticket price directly⁸.”

Let me give you several examples of concert tickets (the type of tickets that are most often held back):

⁵ NFL routinely cautions consumers not to purchase tickets from secondary sources: <https://www.packers.com/news/packers-urge-caution-when-purchasing-game-tickets-through-secondary-source-2019>

⁶ See here: https://www.ftc.gov/system/files/documents/public_comments/2018/12/06714-163065.pdf

⁷ See here: <https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle>

⁸ U.S. Gov’t Accountability Office, GAO-18-347 Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues (April 2018).

- Of the 750,000 tickets for Adele’s 2016 North American tour, it is estimated that only 300,000 were made available to the general public.⁹
- For Justin Bieber’s January 18, 2013 show in Nashville, Tennessee, 93% of the tickets were set aside for presale and insiders. Many of the tickets were allocated to Bieber’s management company and were later listed on ticket resale websites at inflated prices.¹⁰
- After tickets to Jimmy Buffet’s April 2018 show in Hattiesburg Mississippi sold out in two minutes, the executive director of the venue complained that the promoter, Live Nation, had set aside a “sizable block” of tickets before they went on sale.¹¹
- Katy Perry’s contract riders stipulated that her management company could withhold from the box office unlimited numbers of tickets expressly for the purpose of reselling them.¹²
- Only 30% of tickets for the Barclays Center 2012 New Year’s Eve show starring Jay-Z and Coldplay were sold to the public.¹³

Congress did establish a “firewall” between managers and promoters in the boxing industry by enacting the Muhammad Ali Boxing Reform Act.¹⁴ We believe this initiative should be taken further and become applicable to other live events as well.

⁹ Ray Waddell. Adele Ticket Blowout Frustrates Fans, with Ticketmaster Taking the Heat, Billboard (Dec. 15, 2015). <https://www.billboard.com/articles/news/6813725/adele-tour-sold-out-angry-fans-ticketmaster>

¹⁰ Kyle Anderson, Justin Bieber has been scalping his own tickets, says Nashville TV Station, Entertainment Weekly (Sep. 28, 2012, 8:43pm) <https://ew.com/article/2012/09/28/justin-bieber-ticket-scalping-nashville/>

¹¹ TicketNews, Sizable block of Holdbacks Precipitate Rapid Jimmy Buffett Sellout, TicketNews (April 10, 2018), <https://www.ticketnews.com/2018/04/sizable-block-jimmy-buffett-tickets-held-back/>

¹² The Smoking Gun. Drivers Beware: Don’t Stare at Katy Perry Singer’s tour rider offers 23-point wheelman policy, The Smoking Gun (May 19, 2011). <http://www.thesmokinggun.com/documents/celebrity/katy-perry-concert-rider-138490>

¹³ State of New York. “Obstructed View: What’s blocking New Yorkers from Getting Tickets,” Office of the New York Attorney General. Pg. 14. January 28, 2016 (“Schneiderman report”) Online: https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

¹⁴ Section 5. (b) FIREWALL BETWEEN PROMOTERS AND MANAGERS--
(1) IN GENERAL- It is unlawful for--
(A) a promoter to have a direct or indirect financial interest in the management of a boxer; or
(B) a manager--
(i) to have a direct or indirect financial interest in the promotion of a boxer; or
(ii) to be employed by or receive compensation or other benefits from a promoter, except for amounts received as consideration under the manager’s contract with the boxer.
“H.R. 1832 — 106th Congress: Muhammad Ali Boxing Reform Act.” www.GovTrack.us. 1999.
<https://www.govtrack.us/congress/bills/106/hr1832>



Another way to combat practices that are harmful to consumers is to require ticket sellers to disclose the actual face value of tickets to consumers. In Q3 of 2019, we beta tested a website that displayed the face value of tickets to the end consumer. We plan to continue aggressively testing this model in Q2 of 2020. However, certain venues and promoters have complained about showing face prices directly to consumers, due to the fact that it commonly shows that consumers purchase tickets for below face value on the secondary market, particularly in instances where the primary market enabled variable “dynamic” pricing to maximize prices at periods of high demand.

Additionally, TicketNetwork has installed state of the art artificial intelligence to identify and purge tickets listed on our exchange that indicate exorbitant and predatory pricing. That said, identifying speculative inventory¹⁵ is very difficult to do, as the definition is inherently vague, and an inflated price is only one indicator of a potentially speculative ticket. Ultimately, our primary concern as a marketplace is that the consumer receives the ticket purchased – and that it is the ticket he or she expected to receive. If a seller has the right to a ticket, but doesn’t yet have that ticket in hand (e.g., a season ticket holder), and offers that ticket for sale to help fund the purchase of the season ticket package, the holder should be entitled to offer that ticket prior to receiving a hard copy of the ticket from the team. Given the advancements in technology and ticket delivery systems, a requirement that a seller have a ticket “in hand” is quickly becoming antiquated.

A free market is the best regulator of prices, and the product (in this case – event tickets) can be priced only as high as the market will bear. As supply and demand shift, the price will go down if there is insufficient demand at a given price. In fact, promoters and artists alike are interested in pricing their tickets at the top of what the market will bear and brokers create the proverbial supply / demand tension testing what the market will bear. And that is why we see venues and artists holding back blocks of tickets, which has a larger impact on price increases than anything the brokers or secondary markets can do.

One way to identify brokers with intentions of not providing tickets as advertised, the ultimate concern relating to speculative tickets, is to offer consumers a mandatory 200% refund for cancelled ticket orders applicable to both primary and secondary markets.

That said, we must go further to empower consumers. We support a growing call for a complete ban on binding arbitration clauses for disputes relating to live event tickets. In 2011, Ticketmaster changed its Terms of Use to require purchasers to settle disputes in arbitration. Now, when you buy a ticket, “you agree to waive any right to a jury trial or to participate in a

¹⁵ For the purposes of this testimony, we identify “speculative” tickets as tickets offered for sale while the seller has no reasonable expectation of obtaining the tickets listed. See further here: *Obstructed View: New York State*. From the Office of Attorney General Eric T. Schneiderman: *What’s Blocking New Yorkers from Getting Tickets*. https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf



class action.” Allowing arbitration clauses demotivates consumers seeking remedy, as their recovery is likely to be very small. With class actions, there’s strength in numbers. This is a real leverage for bad actors to avoid predatory and unfair practices.

In one example, *Lee v. Ticketmaster LLC*¹⁶, a customer pursued a class action against the world’s largest ticket seller for conspiring with brokers to resell event tickets on approved Ticketmaster resale websites, enabling the company to cash in twice by collecting fees on the initial sale and upon resale. The plaintiff argued that this scheme constituted unlawful and unfair business acts and unjust enrichment at the expense of consumers. A trial court dismissed the case and compelled arbitration, siding with Ticketmaster who argued that its online terms of use policy required users to arbitrate all disputes.

There is also an example of successful Congressional actions in a similar situation. On November 2, 2002, President Bush signed into law the Motor Vehicle Franchise Contract Arbitration Fairness Act designed to address a disparity in bargaining power between motor vehicle dealers and manufacturers. This law makes pre-dispute arbitration clauses in motor vehicle franchise contracts unenforceable under the Federal Arbitration Act unless both parties consent after the dispute arises. Congress should act again to eliminate the effect of these arbitration clauses in live event ticket terms and conditions.

Finally, I would like to conclude my testimony with my thoughts on so called “white label” websites, although this term is not entirely accurate. The “white label” or “private label” concept is widely accepted in many industries. For example, one vitamin complex manufactured in the same laboratory may be sold under a dozen of different names or “private” (“white”) labels. Similarly, TicketNetwork’s powerful exchange platform is available to our clients to use under their own private label brand, which is a wide-spread practice, and allows private label websites to market to different segments of consumers, provide additional services and otherwise fairly compete with one another which only benefits consumers. It is my understanding that the respected members of this Subcommittee are mostly concerned with a different issue, namely websites posing as an actual venue or an artist attempting to “trick” consumers into thinking that they are dealing with a primary source of tickets, when in practice, this is not the case. To further avoid confusion on the issue, I will refer to these websites as “fake label” websites, to better reflect their deceptive nature.

In July of 2014, TicketNetwork entered a consent decree¹⁷ with the FTC that, among other things, outlines clear and concise rules for conduct of operation of a white label website that is not deceptive and is designed to simply refer to a venue or an artist without becoming a fake

¹⁶ No. 18-cv-05987, 2019 U.S. Dist. LEXIS 57661 (N.D. Cal. Apr. 3, 2019)

¹⁷ <https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle>



label website tricking consumers. This conduct includes avoidance use of the term “official” and clearly indicating that the site is a reseller not affiliated with the applicable venue, team, performer or other entity, among others. It is our understanding that the FTC conducted extensive research and concluded that the steps recommended in the decree will be sufficient steps to protect consumers.

It is our view that all white label sites that TicketNetwork operates conduct business well within the guidelines set out by the FTC and are NOT “fake” label websites.

Finally, the results of the FTC Workshop complaint data showed that only 70 out of the 2000 complaints we reviewed were caused by false and deceptive advertisements. Note that this number includes ALL forms of deceptive advertisement and is by far not the biggest issue consumers were complaining about in 2019.

Hidden, deceptive and exorbitant fees topped the list of complaints at 897 (45%), complaints for high or excessive fees totaled 749 (37%), which brings the total of all fee related complaints to 82% of the 2000 we reviewed. Transparency and upfront fee disclosure are also on the list of customers’ primary concerns.

CONCLUSION

TicketNetwork is committed to providing a consumer-friendly fair and open marketplace for ticket brokers and the general public. Greater transparency in ticket sales, through all-in pricing, limited holdbacks, and greater freedom of transferability and pricing will benefit consumers and bring the prices down to whatever the open market determines the prices should be.

New York State Senate

Committee on Investigations and Government Operations and
Committee on Commerce, Economic Development, and Small Business

Hearing on the Live Events Ticketing Industry

**Opening Statement of Ryan Fitts
Vivid Seats LLC**

April 22, 2021

(AS PREPARED FOR ORAL DELIVERY)

Chair Skoufis and Chair Kaplan, my name is Ryan Fitts and I am the Vice President for Legal & Government Affairs for Vivid Seats. Thank you for the opportunity to testify today.

Vivid Seats is an online ticket marketplace. We have sent millions of fans to live events since our founding twenty years ago, and we're now the official ticketing partner of ESPN. We've been successful because we put fans first. For the last two years—including during the pandemic—we have been named to Newsweek's list of America's Best Companies for Customer Service, and we've been ranked Number One in the ticketing industry.

A lot has changed in the last year. But our commitment to our customers hasn't. We have continued to be recognized as the industry-leader in customer service as one of the few—perhaps the only—resale marketplace to *always* provide customers a cash refund option when events were cancelled. When we gave customers a 100% buyer guarantee, we meant it. And we went further still, offering customers a choice to receive a 110% credit so they could get more bang for their buck when events resumed. In those cases, we also made a 10% contribution to MusiCares, which provides a safety net for artists in times of need.

And there's no doubt that the last year has been a time of need. COVID-19 was devastating for our industry. I remember last spring when event cancellations started popping up in the headlines—spring training shut down, the NCAA tournament was cancelled. The ticketing industry was among the first to feel the economic effects of the pandemic, and we'll be among the last to recover. But there's light at the end of the tunnel, and we're looking forward to getting back to what we do best—sending fans to events.

We're 100% committed to doing it safely. We are dedicating to complying with (and supporting) public health requirements before, during, and after events. As a technology company, we are well positioned to communicate entry requirements—like negative tests. Our inventory is strictly managed, so we can maintain pod integrity—that means complying with venues' requirements to ensure spacing between fans. And we stand ready to assist with contact tracing because we know our customers. In recent months as events have reopened, we've had no public health issues.

That's what *we're* doing. I know that these Committees are asking what *the legislature* should be doing in this industry—and I think the answer is clear: extend existing law for an additional two years. New York's law is among the most comprehensive in the nation, focusing appropriately on transferability—the notion that a ticket is the fan's property to sell or give away if she wants. This is the cornerstone of competition in this industry—without it, just one entity—the corporation that owns the box office—would have control over the entire ticket distribution market. I think we need more competition in this industry, not less, and New York's law has been a step in the right direction.

Vivid Seats is committed to working with these Committees to foster innovation, promote competition, and protect New York fans, and I'm happy to answer any questions you may have for me.

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