



**Answers to Questions for the Record
Following a Hearing Entitled “Legislative Hearing on 17 FTC Bills,”
Conducted by the House Energy and Commerce Committee,
Subcommittee on Commerce, Manufacturing, and Trade on May 24, 2016**

The Honorable Paul Tonko

Question: In your opinion, do you believe federal legislation like the BOTS Act would help to bolster state efforts like those in New York or Maryland? And, if so, why?

Answer: Yes, legislation like the BOTS Act would bolster state efforts to combat the use of ticket-buying “bot” software by ticket brokers. However, the BOTS Act addresses only one aspect of the ticket marketplace that contributes to consumer frustration with their inability to get affordable tickets to in-demand events.

To elaborate, thirteen states including, California, Oregon, Minnesota, Indiana, Tennessee, Pennsylvania, New York, Vermont, New Jersey, Maryland, Virginia, North Carolina, and Florida currently have anti-bot laws on the books. However, to our knowledge only New York and New Jersey have brought enforcement actions under their anti-bot laws.

We believe that this relative small number of enforcement actions of state anti-bot laws is due in part to the inherently interstate nature of the secondary ticket market. Because of this, law enforcement agencies may be unwilling to go to the time and expense of investigating and prosecuting ticket brokers who are not located within the state where an event is being held and where ticket bot usage is illegal.

There are also significant variations in state anti-bot laws. For example, anti-bot legislation expected to take effect in New York this year will carry a maximum sentence of 1 year in prison.¹ Contrast this with California, where violations of its state anti-bot statute carry a maximum sentence of 6 months in prison. Likewise, the California law carries a maximum fine of \$2,500, while the New York law will carry a maximum fine of \$1,500 per offense.²

¹ New York State Assembly A.10713/S.08123. “An Act to amend the arts and cultural affairs law, in relation to auto-mated ticket purchasing software” Online:

<https://www.nysenate.gov/legislation/bills/2015/a10713/amendment/original>

² CA Bus & Prof Code § 22505.5 through (2015) Leg Sess

The BOTS Act addresses these problems by creating a single, strong national anti-bot standard. It also empowers the FTC and state attorneys general to enforce it. The Federal Trade Commission has considerable expertise in identifying problematic activity in the secondary ticket market to the problem of ticket bots,³ so this statute creates another “cop on the beat” to police anti-consumer bot activity.

The BOTS Act goes further than any other bill to stop the use of ticket-buying bots, which have caused significant consumer frustration in the live event marketplace. However, while ticket bots are one of the more pernicious reasons that consumers have difficulty obtaining affordable tickets to in-demand events, they are not the only contributor to consumer frustration in the ticket market. For example, a common industry practice known as ticket “holdbacks,” results in more than half of the available tickets to in-demand events being reserved for connected insiders instead of being made available to the general public.⁴

It is for this reason that NCL support Congressman Pascrell’s BOSS Act, which proposes a comprehensive approach to consumer protection in the live event marketplace.⁵ In addition to prohibiting the usage of ticket bots, the BOSS Act would:

- Require ticket sellers to disclose the number of tickets made available for general sale;
- Provide pre-sale disclosures of all fees that will be assessed on the sale of a ticket;
- Prohibit primary ticket sellers from using licensing terms to restrict the ability of consumers to resell their tickets;
- Prohibit secondary ticket marketplaces from engaging in speculative ticket selling; and
- Require resale marketplaces to prominently state that they are engaged in ticket resale and prohibit them from representing an affiliation with a team, venue or artist without express written consent.

³ See, e.g. Federal Trade Commission. “Ticketmaster and TicketsNow Settle FTC Charges of Deceptive Sales Tactics, Refunds for Springsteen Concertgoers Provided; FTC Warns Other Ticket Resellers,” Press Release. February 18, 2010. Online: <https://www.ftc.gov/news-events/press-releases/2010/02/ticketmaster-ticketsnow-settle-ftc-charges-deceptive-sales>

⁴ New York State Attorney General. “A.G. Schneiderman Announces Findings Of Investigation Into Consumer Abuses In Live Entertainment Ticket Industry,” Press release. January 28, 2016. Online: <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-findings-investigation-consumer-abuses-live-entertainment>

⁵ Office of Congressman Bill Pascrell. “Pascrell’s BOSS ACT Heard by House Committee,” Press Release. May 24, 2016. Online: <https://pascrell.house.gov/media-center/press-releases/pascrells-boss-act-heard-by-house-committee>

By requiring greater transparency in the primary ticketing market, prohibiting egregious broker practices like undisclosed speculative ticketing, and limiting the ability of connected insiders to surreptitiously divert tickets to the secondary market, the BOSS ACT would go significantly further than the BOTS Act in helping get affordable tickets in the hands of average fans.

Thank you for giving NCL the opportunity to further discuss this important consumer protection issue. Should the Committee have additional questions that are not addressed in this response, please do not hesitate to reach out to John Breyault, Vice President of Public Policy, Telecommunications and Fraud, National Consumers League, by phone at (202) 835-3323 or email at johnb@nclnet.org.