



Testimony of

John Breyault

Vice President, Public Policy, Telecommunications, and Fraud

National Consumers League

on

H.R. 5104, the Better On-line Ticket Sales Act of 2016 (“BOTS Act”)

and

**H.R. 5245, the Better Oversight of Secondary Sales and
Accountability in Concert Ticketing Act of 2016 (“BOSS ACT”)**

Before the

United States House of Representatives

Energy and Commerce Committee

Subcommittee on Commerce, Manufacturing, and Trade

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Summary

The modern ticket-buying experience is almost always an exercise in frustration for millions of fans that simply want to see their favorite artists or sports teams at a fair price. Unfortunately, the system is dysfunctional. Due to an abundance of private sales and secret ticket diversions, rampant use of ticket-buying “bot” software, and other unscrupulous broker practices, the average music and sports fan is increasingly caught up in a sucker’s game. To address the broken ticket marketplace for popular concert tours and many sporting events nationwide, Congressional action is sorely needed.

Both H.R. 5245 (the “BOSS ACT”) and H.R. 5104 (the “BOTS Act”) crack down on robotic ticket-buying software, which is a significant cause of fans’ inability to get face-value tickets for popular events. However, only the BOSS ACT offers comprehensive solutions that, collectively, will significantly improve fans’ ticket buying experiences. 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 lead to beneficial reforms in the ticketing marketplace.

Introduction

The National Consumers League appreciates the opportunity to testify before the subcommittee in support of legislation that promotes greater access and fairness for consumers buying tickets to live events.

Founded in 1899, the National Consumers League (NCL) is the nation's pioneering consumer organization. Our non-profit mission is to advocate on behalf of consumers and workers in the United States and abroad.¹ NCL has worked to level the playing field for consumers who buy tickets to live events by opposing the Ticketmaster-Live Nation merger, standing up for an open, competitive secondary ticket resale market, and supporting anti-bot and ticket transparency laws in several states. Today we are pleased to call for more robust national consumer protections in the primary and secondary ticket markets.

Consumers are Confused, Angered, and Harmed by the Lack of Transparency in Primary Ticketing and Unscrupulous Brokers Who Cheat the System

Consumers trying to buy tickets at general on-sale to popular events are almost always competing – without knowing it – against secret insider sales and scalpers who use special software to electronically cut in line. This leads to considerable frustration when consumers are shut out at the box office and anger when resale markets immediately have hundreds of tickets available at extortion-level prices.

¹ For more information, visit www.nclnet.org.

While it is understandable that venues with limited capacity may not be able to accommodate all the fans who want to see live events, factors exacerbating this natural ticket scarcity include a lack of transparency regarding ticket allocations and ticket-buying “bot” software.

Consumers Are Competing for a Small Percentage of Tickets

Artists, promoters, and venues often make only a small percentage of tickets available to the general public. According to the New York Attorney General, less than half (46%) of tickets to the most popular events are ever made available to the general public. Most tickets – 54% on average – are diverted to fan club and premium credit card pre-sales and “holds” for industry insiders, such as artists, agents, venues, promoters, marketing departments, record labels, and sponsors. These diverted tickets often make their way to the secondary market where they typically fetch a price far above face value.

In many cases, the number of tickets available to the public is stunningly low. For example:

- Of the 750,000 tickets for Adele’s 2016 North American tour, fewer than 300,000 were made available to the general public.²
- For Justin Bieber’s January 18, 2013 show in Nashville, Tennessee, 90% of the tickets were set aside for presale and insiders. Many of the tickets

² Waddell, Ray. “Adele Ticket Blowout Frustrates Fans, With Ticketmaster Taking the Heat,” Billboard. December 18, 2015. Online: <http://www.billboard.com/articles/news/6813725/adele-tour-sold-out-angry-fans-ticketmaster>

allocated to Bieber's management company were later listed on ticket resale websites at hugely inflated prices.³

- At an April 12, 2013 Taylor Swift show in Orlando only 14% of the tickets (1,740 of 12,118 total tickets) were made available for general public sale.⁴
- 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.⁵
- For a 2010 Keith Urban show in Nashville, only 4,500 of 14,900 seats were available to the general public.⁶
- Only 30% of tickets for the Barclays Center 2012 New Year's Eve show starring Jay-Z and Coldplay were sold to the public.⁷
- 64% of the tickets to two Steely Dan concerts in September and October 2013 at the Beacon Theatre in New York were held back.⁸

³ Williams, Phil. "Documents Show 'Bieber is Scalping His Own Tickets,'" Newschannel 5 WVTF-TV (Nashville, TN). September 24, 2012. Online: <https://web.archive.org/web/20121229222721/http://www.newschannel5.com/story/19616981/is-justin-bieber-scalping-his-own-tickets>

⁴ Maxwell, Scott. "For Taylor Swift, Public Had Slim Shot At Tickets," Orlando Sentinel. January 6, 2013. Online: http://articles.orlandosentinel.com/2013-01-06/news/os-scott-maxwell-orlando-arena-ticket-scam-20130106_1_general-public-sale-cheap-tickets-ticket-scalpers

⁵ "Drivers Beware: Don't Stare at Katy Perry," The Smoking Gun. May 19, 2011. Online: <http://www.thesmokinggun.com/documents/celebrity/katy-perry-concert-rider-138490>

⁶ Branch, Alfred. "Ticketmaster, Taylor Swift and Keith Urban Ticket Holdbacks Exposed," Ticket News. November 12, 2009. Online: <http://www.ticketnews.com/Ticketmaster-Taylor-Swift-and-Keith-Urban-ticket-holdbacks-exposed/>

⁷ State of New York. "Obstructed View: What's Blocking New Yorkers from Getting Tickets," Office of the New York State Attorney General. Pg. 14. January 28, 2016. ("Schneiderman report") Online: <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-findings-investigation-consumer-abuses-live-entertainment>

⁸ *Ibid.*

These examples are just the tip of the iceberg. Artists of every type – from rap to rock, country to comedy – hold back tickets. We think the system is rigged against average consumers. We don't believe artists should have the right to hide how many tickets are to be made available to the general public so they can trumpet quick sellouts that hype their events. That they then often take advantage of their fans by anonymously reselling tickets for several multiples of face value – while often blaming scalpers for their fans' inability to get tickets – is the height of *chutzpah*.

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.⁹

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.

And the dishonesty hurts fans a third time by distorting perceived demand, which drives fans to the secondary market at the most inopportune time. When consumers can't buy the ticket they want, they often go quickly to ticket resale

⁹ *Ibid.*

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.

Ticket-buying “Bots” Exacerbate Ticket Scarcity

Undisclosed ticket allocations are not the only way that consumers find themselves at a disadvantage at the box office. Fans must also compete against ticket brokers employing sophisticated ticket-buying software known as “bots.” Bots allow brokers to purchase tickets at lightning-fast speeds, helping them acquire hundreds or thousands of tickets in minutes or even seconds. These are then listed on resale websites at significant mark ups.

The use of ticket bots is widespread and insidious. Examples abound of bots preventing fans from obtaining tickets to popular shows, including the following:

- One bot purchased 1,012 tickets in one minute to U2’s July 19, 2015 show at Madison Square Gardens. That same day, two bots purchased more than 15,000 tickets in 24 hours for several performances on the same tour.¹⁰

¹⁰ *Ibid.* Pg. 18.

- Bots were used to buy 520 tickets in three minutes to an August 5, 2013 Beyoncé show at the Barclays Center in New York City.¹¹
- One bot bought 522 tickets in five minutes to One Direction's April 14, 2012 show in Wantagh, New York.¹²
- Between 2002-2009, one bot operator, Wiseguys Tickets, Inc. bought more than 1.5 million tickets and netted more than \$25 million in profit when it resold tickets to brokers, who then resold them to fans. Wiseguys bought at least 11,700 tickets to Bruce Springsteen shows between September and December 2007.¹³
- One unnamed ticket broker earned \$16 million in annual profits in 2013 by using multiple custom bots, more than 10,000 IP addresses, more than 500 credit cards and dozens of post office boxes.¹⁴

Ticketmaster has stated that ticket bots can account for as much as 90% of the traffic to its website.¹⁵ Given this level of activity, it should come as no surprise

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Ryan, Joe and McGlone, Peggy. "Feds say 'Wiseguy Tickets' illegally got millions of concert tickets for resale," *The Star-Ledger*. March 1, 2010. Online:

http://www.nj.com/news/index.ssf/2010/03/feds_say_wiseguy_ticket_illega.html

¹⁴ Scheiderman Report. Pg. 16.

¹⁵ Ticketmaster L.L.C. v. RMG Technologies, Inc., 07-Civ.-2534 (C.D. Cal.) (Application for Entry of Default Judgment); Ben Sisario & Emily B. Hager et al., "Fair Ticketing: Fans Before Scalpers," N.Y. Times Video (May 27, 2013), available at <http://nyti.ms/13V6sdO>

that bots are being used to buy 60% of the most desirable seats to some shows, according to Ticketmaster.¹⁶

Congressional Action is Necessary to Crack Down on Bots, Promote Transparency, and Address Ticket Market Abuses

The modern event ticket market is national in scope. While many states have enacted laws to address unscrupulous broker practices, including outlawing computerized bots, only Congress has the authority to address industry abuses nationally and comprehensively. H.R. 5104, the Better On-line Ticket Sales (BOTS) Act of 2016 and H.R. 5245, the Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act (BOSS ACT) of 2016 would both address the problem of ticket bots. However, prohibiting bot usage alone – as the BOTS Act proposes – only fixes part of the problem. To put more tickets in the hands of everyday fans at a fair price, the live event ticket market would benefit from more sunshine and stronger consumer protections.

NCL supports the more comprehensive approach found in Congressman Pascrell’s BOSS ACT. The bill would require sellers to disclose how many tickets will be made available to the general public, allowing consumers to make educated decisions on how to go about purchasing tickets. An informed consumer is an empowered consumer.

¹⁶Sisario, Ben. “Concert Industry Struggles With ‘Bots’ That Siphon Off Tickets,” New York Times. May 26, 2013. Online: http://www.nytimes.com/2013/05/27/business/media/bots-that-siphon-off-tickets-frustrate-concert-promoters.html?_r=0

The BOSS ACT would also address persistent abuses by unscrupulous ticket brokers. First, by requiring disclosure when a broker does not actually have tickets in hand, the BOSS ACT will help consumers avoid the nightmare that hundreds of football fans experienced when they thought they'd purchased tickets to Super Bowl XLIX in 2015. Those fans – many of whom had already bought plane tickets and hotel rooms -- were crestfallen to learn that tickets they thought they had purchased would not be available because brokers were speculatively reselling tickets they did not have.¹⁷

Second, by prohibiting artists, teams, venue owners, or primary ticket sellers from secretly and anonymously selling or reselling tickets for more than face value, the bill would address some of the rampant abuses of ticket allocations by industry insiders. It is common practice for artists, venue owners, promoters, and primary ticket sellers themselves to divert tickets to the secondary market in the hope of making significant profits over the face value of a ticket.

Third, by prohibiting ticket resale marketplaces from suggesting an affiliation with a particular team, venue, or artist, the bill will address deception such as those that the FTC uncovered in 2014. In that case, Connecticut-based resale marketplace TicketNetwork bought Google AdWords in order to direct consumers to resale websites that deceptively looked like the official box office websites. Consumers

¹⁷ Anglen, Robert. "Super Bowl fans caught in ticket-selling nightmare," *The Arizona Republic*. February 3, 2015. Online: <http://www.azcentral.com/story/money/business/super-bowl/2015/02/03/super-bowl-fans-caught-ticket-selling-nightmare/22784379/>

thought they were purchasing face-value tickets from the box office but were instead purchasing resold tickets – often at significant markups.¹⁸

Fourth, by requiring primary ticket sellers to honor cancellation requests on non-transferrable tickets within one week of an event, the bill allows consumers whose plans change at the last minute to resell their own tickets.

Fifth, the bill prohibits primary ticket sellers from using the terms of a ticket license to limit where a ticket buyer can resell a ticket. This addresses a growing abuse of ticket licensing terms by event venues and sports teams that are requiring ticket buyers to only use resale marketplaces that the venues and teams control. This practice is often characterized as being aimed at reducing fraud, but it harms consumers by unfairly limiting beneficial competition in the secondary market and results in double dipping on fees ticket sellers collect.

Finally, the bill requires that primary ticket sellers include all ancillary charges in any listing of the price of a ticket. Almost every ticket buyer has experienced the agonizing drip of facility fees, convenience fees, and the dreaded print-at-home fees being loaded onto the price of a ticket. This common-sense reform is long overdue.

¹⁸ Federal Trade Commission. “TicketNetwork and Marketing Partners Ryadd and Secure Box Office Settle Charges of Deceptively Marketing Resale Tickets,” Press Release. July 24, 2014. Online: <https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle>

Conclusion

The modern ticket-buying experience is rigged against consumers. All too often it is an exercise in frustration for fans that simply want to see their favorite artists or sports teams at a fair price in a fair marketplace. Unfortunately, due to undisclosed ticket holds, rampant bots, and a litany of unscrupulous broker practices, the average fan falls victim to a rigged system. To address a broken ticket marketplace, the National Consumers League believes Congress should act.

Although both the BOSS ACT and the BOTS Act are good measures, only the BOSS ACT offers a comprehensive solution to protect consumers' ticket buying experiences. We urge the subcommittee to act in consumers' best interests. Thank you for the opportunity to share our views.