

**United States House of Representatives  
Committee on Energy and Commerce  
Oversight and Investigations Subcommittee  
Hearing on Live Event Ticketing Industry  
February 26, 2020**

**Written Testimony of  
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Chair DeGette, Ranking Member Guthrie and Members of the Subcommittee, thank you for the opportunity to appear today before the House Committee on Energy and Commerce, Oversight and Investigations Subcommittee to address several important issues regarding the live event ticketing industry. Ticketmaster appreciates the opportunity to participate in this hearing and agrees these are important topics.

My name is Amy Howe, and I am the President and Chief Operating Officer of Ticketmaster North America. Ticketmaster is a leading provider of live event ticketing and is the preferred platform for thousands of venues, sports teams, event owners and artists around the world, but particularly in the United States.

Since the Subcommittee's investigation began last November, Ticketmaster, through our parent company, Live Nation Entertainment, has actively engaged with the Subcommittee to provide a fulsome response to your requests for information. We believe the information we have provided firmly establishes that Ticketmaster provides the most responsible ticket marketplace in the industry today. Our mission is to connect artists, teams and venues with *real* fans, and we are thoroughly committed to business practices that promote transparency, deter deceptive practices and provide consumers with the ability to enjoy a concert, show or game, knowing their tickets are legitimate and secure.

Ticketmaster supports legislation to stop deceptive practices and ensure consumers have fair access to tickets. To put these issues into context and reinforce the need for legislative solutions, I will provide a brief overview of the live event ticketing industry, including the rise of certain unfair and deceptive practices that continue to plague consumers. In addition, I will provide a brief overview of the substantial efforts Ticketmaster has already made to protect consumers and steps that Congress and those in the ticketing industry can take to further protect consumers and Event Organizers alike.

**I. Ticketmaster Supports Consumer – Friendly Legislation and Vigorous Enforcement**

We are committed to developing products and processes to provide transparency and create a safe and reliable ticket marketplace that gets tickets into the hands of real fans. However, we also recognize that these solutions alone are insufficient without smart legislation and enforcement to prevent deceptive practices. As such, Ticketmaster supports federal legislation to address the issues raised in the Committee's letter.

To protect consumers, federal legislation should:

- Mandate all-in pricing on all ticket marketplaces – Consumers should be able to see the total cost of their tickets, including all fees, at the beginning of the purchase process, not only at the end. Requiring all live event ticketing marketplaces to move to “all-in” pricing (that is, to include all required fees in the price from the first purchase page), and robust enforcement of that requirement, would prevent price manipulation, promote transparency and protect consumers.
- Ban speculative tickets – Speculative tickets should be prohibited, or at the very least, include mandatory disclosures to protect consumers.
- Prohibit deceptive web sites – Deceptive “white label” web sites should be prohibited, and marketplaces should include clear and conspicuous disclosure of their relationship (or lack thereof) to the Event Organizer.
- Require transparent resale disclosures – Marketplaces should include clear and conspicuous disclosures of their relationship to the event owner; whether a ticket is a primary or resale ticket; and that a resale ticket price may exceed face value. Providing consumers with a link to the primary ticketer would provide consumers with additional, beneficial and actionable transparency.
- Strengthen enforcement of the Better Online Ticket Sales (“BOTS”) Act of 2016 – Strong legislation without commensurate enforcement is a missed opportunity. We support enhanced enforcement of the BOTS Act of 2016, and we were particularly pleased to hear FTC Commissioner Slaughter testify that the FTC is “actively monitoring for enforcement opportunities.”<sup>1</sup>

## **II. Live Event Ticketing – How it Works**

Live event ticketing is a complex ecosystem made up of artists, sports teams, theatrical shows, promoters and venues, often collectively referred to as “Event Organizers.” In almost all instances, it is the Event Organizer that has funded the live event, often putting substantial capital at risk with no guarantee of generating enough revenue to cover expenses or make a profit.

In the “primary market,” tickets are sold for the first time by an Event Organizer. Event Organizers typically choose a ticketing provider to help them manage, market and sell tickets for their events. The ticketing provider supplies the software and services to help Event Organizers price, merchandise and sell their tickets; the hardware, equipment and support for venues’ box offices; as well as customer service support to event consumers. Ticketmaster is the largest of the ticketing providers in the U.S. primary market,<sup>2</sup> and Ticketmaster does not charge its clients

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<sup>1</sup> Remarks by Commissioner Rebecca Kelly Slaughter, Senate Commerce, Science and Transportation Committee, Consumer Protection, Product Safety, Insurance and Data Security Subcommittee, Hearing on Oversight of the Federal Trade Commission (Nov. 27, 2018).

<sup>2</sup> United States Government Accountability Office, Event Ticket Sales: Market Characteristics and Consumer Protection Issues (2018) (“GAO Report”) at 4, *available at* <https://www.gao.gov/assets/700/691247.pdf>.

for these products and services. Other well-known primary ticketing providers include AXS, Paciolan, Tessitura, Tickets.com, Eventbrite, eTix, Audience View, Telecharge and SeatGeek. All decisions effecting tickets, such as the number of tickets to make available to the public, the prices for the tickets and any limitations on resale or transferability of tickets, are made by the Event Organizer, not the ticketing provider.

The “secondary market” or “resale market” refers to any subsequent resale of a ticket after the initial sale. This resale activity has, over time, moved to a predominantly online e-commerce transaction, and the leading players are StubHub and Vivid Seats. Other secondary marketplaces include Ticket Network, Gametime and SeatGeek. Ticketmaster participates in the secondary market through our integrated secondary marketplace as well as through the operation of several ticket exchanges we manage on behalf of certain sports teams or leagues, such as the NFL, NBA and NHL. Similarly, StubHub is the official secondary marketplace for MLB, WWE and dozens of NCAA teams.

In both the primary and secondary ticket markets, Ticketmaster is committed to making sure consumers experience a safe, simple and transparent ticket purchase process, particularly for high demand events. To that end, over the past several years, we have substantially increased our focus on, and investment in, new technology to create a fair and reliable marketplace for consumers.

### **III. The Imbalance Between Supply and Demand for High Demand Tickets Provides Bad Actors the Opportunity To Engage in Deceptive Practices that Harm Consumers**

Most problems in live event ticketing are directly attributable to two basic economic concepts.

First, for the most popular live events, demand far exceeds supply, which means more fans want to attend than there are seats in the venue. While, on average, only 2.4% of events on our primary ticket marketplace sell out within 24 hours of the on-sale date, the demand for these events is often so high that it generates a significant amount of fan frustration. Unfortunately, unlike markets for other types of products where supply can be increased to meet demand, Event Organizers cannot simply increase the number of seats in a given venue and are often limited in the number of shows they can perform. As an example, in 2015, an estimated four million fans logged on to try to buy approximately 100,000 available tickets for Adele’s six shows to be held in New York’s Madison Square Garden, leading to millions of disappointed fans.

Second, primary tickets are often priced below actual market value. Where markets for other types of products may regularly increase prices in response to growing demand, that is often not the case for live events. Why would Event Organizers want to price tickets below market value? There are several reasons, but most often, it is so artists can build or maintain

goodwill by allowing fans of all income levels to access tickets, thus building a loyal, life-long fan base, especially among younger fans.<sup>3</sup>

These dynamics have contributed to the growth of a secondary ticket market estimated at \$10 billion annually, with concerts representing \$3.6 billion. In the words of the New York Attorney General, this allows some players in the ticketing ecosystem to “take the benefits intended for the consumer” by buying below-market price tickets and then selling them at an enormous profit.<sup>4</sup>

The amount of potential profit to be made by capitalizing on the imbalance between the prices Event Organizers set and the amount certain consumers are willing to pay has given rise to a number of deeply deceptive and unethical practices by some resellers and some marketplaces. Today, the majority of these practices are employed online, leveraging advanced technology like sophisticated computer automation (often called “bots”), to provide an unfair advantage in ticket purchasing and thus constraining a consumer’s access to tickets. Other practices include the use of deceptive resale web sites that are intentionally made to look like official marketplaces, and listing speculative tickets the seller does not yet possess, deceiving fans through unfair pricing practices and a lack of clear and conspicuous disclosures.

#### **IV. Deceptive and Unfair Practices that Hurt Consumers – and What Ticketmaster is Doing About Them**

As we have discussed with the Subcommittee, Live Nation Entertainment and Ticketmaster share the Subcommittee’s concerns about the proliferation of unfair and deceptive ticketing practices. We are committed to being part of the solution and have already invested heavily in trying to prevent deceptive practices and create the safest, most reliable and transparent ticket marketplace for consumers and the Event Organizers who bring them live events.

##### **A. Consumers Want to Know the Total Price Up Front – Mandating All-In Pricing Will Provide Transparency**

While consumers expect to pay fees on top of the face value ticket price, some may prefer to see the specific amount of the fees earlier in the purchase process. Some marketplaces also take advantage of the industry practice of disclosing the fees later in the purchase process to manipulate the list price of a ticket, making the ticket price appear less expensive upfront. These marketplaces charge consumers high fees, often through the deceptive “mark-downs” of resale tickets. This practice involves reducing the up-front list price of a ticket, only to add the amount of the reduction (or more) into the fees charged later in a transaction. According to the United States Government Accountability Office (the “GAO”), in its 2018 report *Event Ticket Sales: Market Characteristics and Consumer Protection Issues* (the “GAO Report”), these deceptive practices are often worse on the secondary market, where average fees are 10% higher than fees on the primary market.<sup>5</sup> Ticketmaster provided multiple examples of this deceptive practice to

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<sup>3</sup> See New York State Office of the Attorney General, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets* (2016) (“NY AG Report”) at 27, available at [https://ag.ny.gov/pdfs/Ticket\\_Sales\\_Report.pdf](https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> GAO Report at 6.

the Committee in our written submission on December 23, 2019. In one such instance, a resale ticket was offered by a seller for \$75. Ticketmaster advertised the ticket to consumers for \$75, and after 17% in fees charged a total price of \$87.75. A competitor “marked down” the exact same ticket by 10%, advertising the ticket to consumers for \$68, but then added 36% in fees, for a total ticket price of \$92.77. Thus, on the competitor’s web site the ticket was initially presented as less expensive than what was offered on Ticketmaster, when in fact the ticket ended up being more expensive after the addition of fees. Examples of this type of deceptive practice meant to trick consumers into paying a higher all-in price are attached as Exhibit 1.

Ticketmaster discloses the full amount to be paid by a consumer – including all fees – *before* the consumer makes the final purchasing decision. We do not engage in the above-referenced mark-down practice employed by some secondary marketplaces.

Some ticket marketplaces claim to provide consumers the choice to see prices that include “estimated fees” by clicking on a filter to “show prices with estimated fees.” Examples attached as Exhibit 2 demonstrate the inaccuracy of those estimates, which are likely to cause further consumer confusion that can be fixed by legally mandating up-front, accurate all-in pricing. To properly address these legitimate pricing concerns, we support moving to an all-in “up-front” fee display. However, we believe that for up-front pricing to effectively enable consumers to accurately compare prices, *all members* of the live event ticketing industry must be legally required to list all prices and fees up-front so that consumers can make meaningful comparisons between marketplaces.<sup>6</sup> Such up-front fee display is required in almost every other major market we operate in, including Canada, Australia, New Zealand, the European Union and others, and Ticketmaster complies with these laws.

Further, Ticketmaster publicly describes the fees a consumer may pay on our web site. For a full description, see <https://help.ticketmaster.com/s/article/How-are-ticket-prices-and-fees-determined>.

## **B. Consumers Should Have Fair Access to Tickets – Bots and Unfair Purchasing Behavior Unfairly Limit Access and Should be Stopped**

The biggest threat to consumer access to tickets is unethical professional resellers who, among other things, use automation and violate rules to buy tickets. Ticketmaster is not opposed to resale when it is done right. Resale is a healthy part of the ticketing ecosystem when it serves as a marketplace for those who can no longer attend an event, for a season ticket holder who wishes to sell tickets to some games to help them finance their investment and for Event Organizers/rights holders, particularly in sports, who rely on professional resellers to broaden distribution. However, unscrupulous professional resellers want access to tickets to further their ability to manipulate the market through bots and other unfair practices, all of which prevent consumers from accessing tickets on the primary market.

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<sup>6</sup> See Francisco Rendon, “Bots! Transparency! ‘Drip Pricing!’ Online Ticketing Takes Center Stage At FTC Workshop” (Pollstar, June 24, 2019), *available at* <https://www.pollstar.com/News/bots-transparency-drip-pricing-online-ticketing-takes-center-stage-at-ftc-workshop-138241>.

Despite passage of the BOTS Act, which made the use of bots to purchase large quantities of tickets illegal, unscrupulous actors continue to use bots, depriving real fans of the opportunity to purchase tickets at the prices set by Event Organizers. Bots can purchase hundreds of regular and below market priced tickets simultaneously, before consumers have a chance to do so.<sup>7</sup> A report issued by the New York Attorney General (the “NY AG Report”) identified a bot that in 2014 purchased over one thousand tickets for a U2 tour in *one minute*.<sup>8</sup> According to a 2019 report by Distil, a leading bot-mitigation software provider, 40% of activity on ticketing sites is computer automated, and up to 67% of bad bot traffic occurs in the United States.<sup>9</sup> When bots are used to purchase large quantities of tickets, fans who didn’t have fair access to those tickets are left with the choice of either missing their favorite artist, team or theatrical performance, or paying drastically inflated prices.

Ticketmaster has invested tens of millions of dollars and considerable resources developing technologies that help real fans get fair access to tickets. Over the past several years, Ticketmaster has launched Verified Fan®, Smart Queue® and ticket limit products designed specifically to block bots and ensure real fans are getting access to events. Through these new technologies, we are now blocking almost three billion bot purchase attempts per month and anticipate blocking approximately 30 billion attempts in 2020.

Verified Fan technology uses algorithms and behavior analysis to increase consumer access to tickets during a pre-sale. Verified Fan identifies and prioritizes a registrant who is an actual fan likely to attend the show versus parties that are only buying to resell the ticket at inflated prices. Registrants identified as Verified Fans are subsequently provided a unique code that gives them a chance to purchase presale tickets on a first-come, first-serve basis. Verified Fan has been deployed by nearly 200 artists since its launch in 2017, and it has proven highly effective; the average volume of resale postings for these shows is 90% less than similar tours that have not used it, demonstrating that more primary tickets are reaching consumers who want to attend the event, rather than those who are looking to resell for their own economic gain.

Smart Queue technology places all prospective buyers in a waiting room where we manage the flow of traffic into the Ticketmaster shopping experience, while simultaneously detecting and blocking bots from accessing inventory. Instead of a rush to the on-sale that favors the bots, Smart Queue drops fans into a virtual line, requiring each user to sign in and provide a unique phone number for validation in order to increase consumer access to tickets. By monitoring traffic and layering advanced security measures, Smart Queue enables fans to view the entire venue and select the exact seats they want to buy, without fighting bots who historically had an overwhelming advantage.

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<sup>7</sup> See GAO Report at 19; Federal Trade Commission Workshop, Keynote Address, Professor Eric Budish, *That’s the Ticket* (June 11, 2019) at 12, available at <https://www.ftc.gov/news-events/events-calendar/2019/03/online-event-tickets-workshop>.

<sup>8</sup> See NY AG Report at 18.

<sup>9</sup> See Daniel Sanchez, “Nearly 40% of Ticketing Traffic Comes from Bad Bots, Study Finds” (Digital Music News, Feb. 28, 2019), available at <https://www.digitalmusicnews.com/2019/02/28/bots-ticketing-traffic/>.

Ticket Limit Products: Further, when a ticket buyer exceeds ticket limits for a show, which are set by an Event Organizer to ensure broader consumer access to tickets, Ticketmaster has a fully-automated process that flags those orders in order to help enforce the ticket limits. This “over the ticket limit” (“OTL”) product seeks to identify purchases in real time—in many instances attempted by bots—that exceed the posted ticket limits, and to put a stop to them.

Ticketmaster continues to be in an arms-race with bot users. In addition to the millions of dollars spent fighting bots, we have also supported legislation at the state and federal levels to ban bots and pursued private legal action against bot users.

Ticketmaster was proud to support the federal BOTS Act to ban the use of bots on ticketing platforms. Ticketmaster is actively working with state legislatures across the country to develop and enact anti-bot legislation, and in 2018 we supported successful efforts to pass laws in New York and New Jersey to crack down on ticketing bots. In addition, Ticketmaster continues to work with state Attorneys General and the Federal Trade Commission (“FTC”) in an effort to enforce the provisions of the BOTS Act.

Ticketmaster has also pursued private lawsuits against bot users. Most recently, Ticketmaster invested substantial resources to litigate a case in federal court in the Central District of California, which resulted in a sweeping injunction against the defendant’s use of bots and similar tools.<sup>10</sup>

### **C. Mandatory Inventory Disclosure Will Not Solve the Problem**

Some in the industry have argued that the biggest threat to consumer access to tickets is not knowing how many tickets are available for sale and that artists, teams and other content owners should have to disclose the details on the number of tickets that will be made available for sale for their event. We disagree. In fact, as the recent GAO Report noted, it is “[u]nclear how useful [inventory disclosure] information is for consumers.” *Id.* at 11, 36. We know of no other industry in which the owners are required to disclose their inventory levels.

Importantly, we believe that not only would mandatory inventory disclosure *not* help fans get fair access to tickets, but it would likely create more challenges for fans. Here’s why. Disclosing this information would make it even easier for unethical brokers and bot users to determine the supply/demand profile for the most in-demand events, making it easier for them to target supply and manipulate the market. For instance, products such as Ticket Flipping (subscription-based services for professional resellers) actively scrape primary and secondary ticketing marketplaces and notify sellers how many tickets are still available for an event, what types of tickets are available and at what prices (see Exhibit 3). The very fact that professional resellers are willing to pay for this information suggests this information is extremely valuable to these professional resellers. Forcing Event Organizers to list available inventory by price tier would only give professional resellers an even more granular blueprint,

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<sup>10</sup> See Final Judgment, *Ticketmaster LLC v. Prestige Entm’t West Inc.*, No. 2:17-cv-07232-ODW (C.D. Cal., July 8, 2019).

resulting in more tickets on the secondary market at inflated prices, further reducing the odds of fair access for the average fan.

In addition, we do not believe that inventory disclosure will solve the underlying problem of getting real fans fair access to tickets for two reasons. *First*, for select high demand events, demand far outstrips supply—by a factor of 10 or more. Previously, I referenced that in 2015, an estimated four million fans logged on to try to buy approximately 100,000 available tickets for Adele’s six shows at New York’s Madison Square Garden. Knowing that 100,000 tickets were available when there were four million requests for those tickets (demand being 40x actual supply) would not have helped the average Adele fan get tickets to her show. *Second*, inventory disclosure would not level the playing field for a consumer competing in real-time against automated computer bots, which make tens of thousands of requests to purchase tickets during a high demand on-sale for every single attempt made by an actual consumer.

In summary, we believe that there are far more effective measures, including stronger enforcement of the 2016 BOTS Act, that will make more progress towards our shared goal of getting real fans fair access to tickets, a goal to which we are 100% committed.

#### **D. Fake Tickets Prey on Consumers’ Desire to Attend Popular Events – Fans Deserve to Know their Ticket will Work**

Annually, almost five million unsuspecting fans buy fake tickets for live events.<sup>11</sup> A quick Google search will surface thousands of articles and other references to devastated fans who arrived at a sporting event or concert, only to discover their tickets were not real. In 2019, the Department of Justice indicted thirteen individuals on charges related to counterfeit tickets for some of the most popular live events, including several Super Bowls.<sup>12</sup> For decades, tickets with an anonymous, static bar code were the industry-standard. However, this technology created the opportunity for bad actors to easily duplicate tickets, taking screen shots or printing multiple copies, only to sell them to unsuspecting fans at highly inflated prices on the secondary market.

Ticketmaster has been at the forefront of developing innovative technologies that ensure consumers receive valid tickets, reducing fraud and providing consumers with better experiences when they go to see their favorite artists and sports teams.

Ticketmaster Presence® is our digital ticket platform that allows a fan to use their phone as their ticket through easy-to-use “tap and go” technology to enter a venue, similar to modern

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<sup>11</sup> See Jennifer Schlesinger, “Making your summer concert plans? How not to get scammed” (CNBC, May 3, 2014), available at <https://www.cnbc.com/2014/05/02/making-your-summer-concert-plans-how-not-to-get-scammed.html> (citing Sid Kirchheimer, *Scam Alert* (AARP, June 27, 2013), available at <https://web.archive.org/web/20180715165121/http://blog.aarp.org/2013/06/27/how-to-avoid-summer-event-ticket-scams-scalpers-tickets-fraud/>); Jenna Cyprus, “More than 5 Million Fake Tickets are Sold Every Year. Here’s How to Protect Yourself” (Digital Music News, Dec. 8, 2017), available at <https://www.digitalmusicnews.com/2017/12/08/fake-tickets-scam-protect/>.

<sup>12</sup> See U.S. Department of Justice, “Members of Counterfeit Ticket Rings Indicted for Trafficking Counterfeit Tickets for Marquee Events, Including the Super Bowl” (Jan. 31, 2019), available at <https://www.justice.gov/usao-edpa/pr/members-counterfeit-ticket-rings-indicted-trafficking-counterfeit-tickets-marquee>.



payment methods such as Apple Pay. More than 700 venues (including those used by the NFL) have implemented Ticketmaster Presence technologies, and more than 122 million fans have entered venues using the technology as of December 31, 2019. Counterfeit tickets have plummeted at venues that have implemented Presence. The venue operator at the Orlando City Stadium in Orlando, Florida, for instance, reported that adopting exclusively paperless tickets using Ticketmaster Presence reduced instances of fraud from over 120 cases per event to zero.<sup>13</sup> In addition, fans benefit from faster entry, easy mobile ticket transfers and an improved experience, including event updates, in-venue offers and upgrades. Presence technology provides venues better insight into who is entering the facility, resulting in better security.

SafeTix<sup>TM</sup>, which was built on the Presence platform and launched in 2019, creates tickets that replace the static bar code with an encrypted rotating token sent to a fan's mobile device. The unique code refreshes automatically every few seconds, preventing an unscrupulous reseller from taking a screenshot or photocopying a ticket and fraudulently selling it to multiple unsuspecting consumers. A fan with a SafeTix ticket, including any fan to which the ticket was legitimately transferred, can be 100% certain their ticket is valid. In the 2019-20 NFL regular season, 10.2 million fans entered NFL stadiums using SafeTix, and there were no cases of reported fraud.

Not only does use of SafeTix technology ensure a consumer gets a valid ticket, but an artist can also use SafeTix to ensure their fans get access to tickets at the prices the artist sets by choosing to limit the transferability of their tickets. Limiting transferability of tickets is an important tool for Event Organizers to enforce their pricing decisions, and not allow inflated resale that hurts consumers. As reference to this point, the GAO Report noted that restricting Event Organizers from limiting the transferability of tickets reduces the "opportunity for consumers to access tickets at lower-face value price."<sup>14</sup>

On January 13, 2020, Pearl Jam announced that tickets for its Gigaton tour would be issued as mobile-only tickets and would be non-transferable.<sup>15</sup> The band made this decision to provide consumers access to their tickets at below-market prices, thereby preventing them from paying inflated prices on the resale market. The limitation on transferability of these tickets has been fully disclosed to consumers, with extensive communication to fans throughout the announcement and the sales process on Ticketmaster. For fans who are ultimately unable to attend the concert, Ticketmaster has developed a first-of-its-kind, Fan-to-Fan Face Value Ticket Exchange, where fans can sell their tickets for the amount they originally paid (including face value of \$98, a \$5 charitable amount and service charge), to other fans. The Exchange is free for both buyers and sellers to use without any additional fees. To eliminate consumer confusion, Ticketmaster also notified major secondary marketplaces and resellers that tickets for this tour are not available for resale. The GAO Report raised the concern that limiting transferability

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<sup>13</sup> See Avery Yang, "Orlando City SC: No Fraud Thus Far Thanks To Paperless Tickets" (Sport Techie, July 10, 2017) available at <https://www.sporttechie.com/orlando-city-sc-no-fraud-paperless-tickets/>.

<sup>14</sup> GAO Report at 36.

<sup>15</sup> Exceptions are in Colorado and New York, which are the only states on the tour where state laws prohibit artists from placing any limits on transferability of tickets.

might restrict consumer flexibility if they cannot attend an event, but our innovative and free Fan-to-Fan Face Value Ticket Exchange, along with clear disclosures throughout the purchase process, directly address this concern.

To date, this technology has accomplished exactly what Pearl Jam was seeking to do. For the ten Pearl Jam shows in states that permit artists to restrict transfer, approximately 18,000 tickets per show were sold at face value, with fewer than 10 resale tickets per show listed for resale on secondary markets.<sup>16</sup> However, in Colorado and New York, the two states the tour will visit that prohibit any limitations on transferability of a ticket, thousands of tickets are available on secondary marketplaces for prices as high as \$7075 per ticket, more than a 7000% increase over intended face value. We are very proud to have partnered with Pearl Jam on a product that enabled them to provide fair and easy access to their very best fans, while still giving consumers flexibility in the event they cannot attend. While a decision about transfer is an individual choice that each artist will make, I note that in our experience, the vast majority of artists have historically chosen not to restrict transfer and we think that trend is likely to continue.

#### **E. Consumers are Tricked by Deceptive Web Sites and Lack of Resale Transparency – Deceptive Web Sites Should be Banned and the Type and Source of Tickets Should be Clearly Disclosed**

Deceptive Web Sites. Deceptive “white label” web sites are essentially fake online box offices that frequently feature language and images of an artist, team, theatrical show or venue to give the false appearance of being an official or licensed sales channel for an event. Some secondary marketplaces routinely use or work with these deceptive web sites, which frequently offer resale tickets at inflated prices, even while face-value tickets are still available on the official box office or other primary site. Examples of such deceptive web sites are attached as Exhibit 4.

The GAO Report found deceptive web sites charge higher ticket prices and higher fees on average than other resale sites.<sup>17</sup> In addition to being deceptive and unfair to consumers, this practice violates the intellectual property rights of venues, Event Organizers and other rights holders who invest in building live experiences for consumers to enjoy.

Ticketmaster does not operate or work with any of these affiliate or deceptive web sites. We regularly work with industry partners, including Google, to make sure deceptive marketing such as this is not rewarded in search results. In the past year alone, we notified Google and various Internet Service Providers of at least thirty-three of these deceptive web sites on behalf of Event Organizers with whom we work. Ticketmaster supports and is prepared to partner with the FTC as it continues to enforce the laws against this unfair trade practice, and in 2019 several of our executives participated in the FTC’s recent “That’s the Ticket” workshop, which explored ways to increase protections for consumers in the online ticket marketplace.<sup>18</sup> We also work

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<sup>16</sup> As of February 14, 2020.

<sup>17</sup> See GAO Report at 28.

<sup>18</sup> See Federal Trade Commission Workshop, Agenda, *That’s the Ticket* (June 11, 2019), available at <https://www.ftc.gov/news-events/events-calendar/2019/03/online-event-tickets-workshop>.

continuously with state policymakers and regulators to enact and enforce state laws that specifically prohibit deceptive URLs in ticketing.

Lack of Clear Disclosures. In addition to working with deceptive “white label” web sites, most secondary web sites fail to be transparent with consumers. Specifically, they fail to disclose to consumers whether they have any official relationship with the venue or Event Organizer; whether a ticket is a primary or resale ticket; and if the ticket is resale, that the price may exceed face value. They also fail to indicate whether primary tickets are still available. Underscoring the need to provide this information to consumers, the GAO Report indicated that in almost 30% of the cases examined, the GAO “observed instances in which tickets were listed on the secondary market even when tickets were still available from primary sellers at a lower face-value price.”<sup>19</sup>

Ticketmaster is an industry leader in this regard. Our platforms conspicuously list both primary and resale seats sold on a single integrated seat map. Ticketmaster is the *only* marketplace that clearly differentiates between primary tickets listed at face value from the initial seller (the venue or Event Organizer) and tickets listed for resale. We do this both with clear identifying language *and* by color-coding primary tickets and resale tickets distinctly, making it easy and straightforward for consumers to compare ticket prices for different ticket types.

Beginning in 2018, Ticketmaster started including links on our site to third party primary ticketing sites for many concerts and theater events where Ticketmaster is not the official ticket marketplace. A fan browsing Ticketmaster’s concert and theatre ticket inventory will be able to compare prices for secondary tickets listed for sale on Ticketmaster’s resale platform with primary tickets listed for sale *even by competitors*. Ticketmaster encourages other resale ticketing platforms to implement similar procedures to offer fans links to official box offices alongside their resale inventory.

## **F. Consumers are Harmed by Speculative Tickets, Which Should be Banned**

Speculative ticketing is a mass arbitrage scheme employed by some ticket resellers to sell tickets they do not possess, and as such do not have a legal right to sell. Speculative tickets are frequently offered on secondary marketplaces without disclosure of their speculative nature, often before tickets have even been placed on sale by the Event Organizer. Once an unwitting consumer purchases the tickets, the reseller will then try to buy actual tickets for a lower price to provide to the purchaser.<sup>20</sup> The NY AG Report describes a 2016 Bruce Springsteen concert where tickets were being sold for as much as \$5,800 each—*before* tickets had even gone on sale.<sup>21</sup>

Fans who buy speculative tickets often do not realize they have only purchased the *right* to buy tickets *if* the seller is able to acquire them and may have their “tickets” cancelled if the seller cannot deliver. Or, they may end up with different seats than those that the fans believed

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<sup>19</sup> GAO Report at 14.

<sup>20</sup> See NY AG Report at 26.

<sup>21</sup> See *id.* at 26.

they had secured.<sup>22</sup> After generating headlines like “Heartbroken Seahawks fan cries on live TV because he can’t get into the Super Bowl after broker sells him tickets ‘it never had,’” one secondary marketplace’s solution was simply to refund 200% of what the fan had paid,<sup>23</sup> leaving the fans without the tickets they bought for a once-in-a-lifetime event. Examples of deceptive speculative ticket practices in the industry are attached as Exhibit 5.

Ticketmaster strictly prohibits resellers from listing speculative tickets on its resale platform and conducts a thorough process to police the site and remove suspect listings. Specifically, for concerts and theatrical shows, Ticketmaster denies sellers the ability to list tickets for sale prior to an event’s on-sale date and also prohibits season ticket holders for sports teams from listing tickets prior to the season ticket holder activation date determined by the team.

Although we believe a ban on speculative tickets would best protect consumers, if speculative ticketing continues to be permitted, federal legislation should include requirements for clear and conspicuous disclosure at the beginning of the ticket purchase process. The minimal disclosures used by secondary marketplaces today, when disclosures exist at all, are insufficient. Required disclosures should include that the seller does not yet have the tickets in hand and will attempt to purchase the tickets for the consumer and that there is a risk the tickets may be replaced with another ticket or may not be delivered at all. These disclosures should be coupled with a mandatory refund if tickets are not fulfilled, and an option for the consumer to choose a refund if replacement tickets are not to the consumer’s liking. If speculative ticketing is to be allowed, robust, consistent disclosure requirements across all marketplaces are the only way to ensure consumers are protected.

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Some of my best memories growing up involved seeing my favorite bands and watching the Sabres and Bills play in Buffalo. We all know the amazing feeling that comes from a smooth and seamless entertainment experience. Unfortunately, we are also aware of the result when deceptive practices in the ticketing experience are left unchecked. These negative experiences cast a shadow on the industry as a whole, and we stand committed to helping change that. We applaud you for shining a light on these important issues. Thank you also for this opportunity for Ticketmaster to advocate for the interests of live event fans and Event Organizers. On behalf of Ticketmaster and Live Nation Entertainment, we look forward to working with the Subcommittee and Congress to address these critical issues.

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<sup>22</sup> See GAO Report at 32.

<sup>23</sup> See Damien Gayle, “At least he didn’t see his team lose! Heartbroken Seahawks fan cries on live TV because he can’t get into the Super Bowl after broker sells him tickets ‘it never had’” (Daily Mail, Feb. 2, 2015), *available at* <https://www.dailymail.co.uk/news/article-2936521/At-didn-t-team-lose-Heartbroken-Seahawks-fan-cries-live-TV-t-Super-Bowlbroker-sells-tickets-never-had.html>.