

**EXAMINING THE BETTER ONLINE TICKET
SALES ACT OF 2016**

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION,
PRODUCT SAFETY, INSURANCE,
AND DATA SECURITY

OF THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 13, 2016

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ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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EXAMINING THE BETTER ONLINE TICKET SALES ACT OF 2016

TUESDAY, SEPTEMBER 13, 2016

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT
SAFETY, INSURANCE, AND DATA SECURITY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:35 p.m. in room SR-253, Russell Senate Office Building, Hon. Jerry Moran, Chairman of the Subcommittee, presiding.

Present: Senators Moran [presiding], Thune, Fischer, Heller, Gardner, Blumenthal, Nelson, McCaskill, Klobuchar, and Booker.

OPENING STATEMENT OF HON. JERRY MORAN, U.S. SENATOR FROM KANSAS

Senator MORAN. The hearing of the Consumer Protection, Product Safety, Insurance, and Data Security Subcommittee will come to order. We're pleased to have our witnesses here on a topic that I think is of value and has some opportunity for us to make a difference.

Whether it's a Garth Brooks concert at Wichita, a KU basketball game in Lawrence, or the most hyped and prestigious Broadway show of all time, *Hamilton*, the digital age has made acquiring tickets easier than ever. But an age-old issue of ticket scalping has been made even more prevalent by advances in technology.

When you're trying to pick up tickets for the next big event, you're no longer only competing against other eager fans when the tickets are released. You are now forced to compete against an army of sophisticated ticket bots that overwhelm the ticketing website through brute force, scoop up as many tickets as possible, and then resell them on a secondary market at a significant markup.

So what is a ticket bot? Here's my quick example. A live performance is happening, say, a Garth Brooks concert in Wichita. You know lots of people want to be there, and there are only so many tickets that are available. People who use bots first overwhelm the primary ticket issuer's website by cutting in line ahead of regular fans. While those tickets are taken out of circulation, they quickly use human operators to enter distinct names, credit cards and addresses, and circumvent other security measures.

The software is easy to find, and you don't even have to be a technology genius to use it. I don't want to direct anyone to a website, but a quick Google search for ticket bots will lead you to

a different kind of marketplace, one where you can purchase the software we're talking about today. The bots are advertised as specific applications for websites such as Ticketmaster or StubHub, and they even offer to make custom products.

Bots harm everyone in the live entertainment ecosystem, from performers to fans. Ticket issuers, like Ticketfly, have to invest heavily in server capacity and extra security measures to deal with the artificially generated stress that the bots produce. And when the site doesn't seem to work properly, or the event is listed as sold out seconds after tickets go on sale, consumers get frustrated with the ticket issuer or the venue. The secondary market is also impacted by this practice. For their part, eBay/StubHub supports BOTS legislation and believes that misuse of ticket bots "harms all parts of the ticket industry." Of course, perhaps the biggest impact is on the fans. A report by the New York Attorney General suggests that at least tens of thousands of tickets per year are being acquired using ticket bots.

I certainly believe that a vibrant secondary ticket marketplace is nothing but good for consumers. People can and should be able to sell their tickets in the marketplace, and if people are willing to pay extra for certain performances, that is their right. StubHub estimates that half the tickets sold on their platform are below face value, so the value prospect cuts both ways for consumers.

What I take issue with, and what this legislation that I and others have introduced seeks to address, is the practice of cutting in line when tickets are offered so that regular consumers don't even have a chance to pay face value for the tickets. Some have also raised ticketing concerns outside the scope of this legislation. We do not claim that this legislation will be a silver bullet for all that ails us or can solve every consumer problem, but I look forward to a robust discussion today about many of these proposals.

Many groups, including StubHub, in their testimony today have advocated additional provisions that they believe would be beneficial to consumers. But our legislation has been narrowly tailored to address a real and significant problem that impacts peoples' lives, and there is strong bipartisan and bicameral support for this legislation.

It is my expectation that this committee, the Commerce Committee, will consider BOTS at its next markup. I believe that's next week. I would encourage all of my colleagues to cosponsor and support this bill. I would like to specifically thank my Commerce colleagues for their interest and support in this issue.

Ranking Member Blumenthal, thank you for your support in advancing this legislation and for putting together today's hearing.

Senator Fischer, thank you for your support as well, and I'm sorry that the Big 12 has trumped the Big 10 once again and our testifying witnesses here today.

[Laughter.]

Senator MORAN. Yesterday, the House of Representatives passed on suspension a very similar version of the BOTS Act. I'd like to thank Congresswoman Blackburn for her work on this issue, and I look forward to continuing to work with her to make this bill a law.

I would now like to recognize the Subcommittee's Ranking Member, Senator Blumenthal, for his opening statement.

**STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thank you, Mr. Chairman, for your leadership in bringing us together today for this hearing, and to you and our other colleagues for supporting the Better Online Ticket Sales Act of 2016, a good step, if only a modest step, toward stopping ticket scalping in this country.

In one of my favorite shows of all time, *Hamilton*, and in one of my favorite numbers in that show, one of the show-stopping songs, is "The Room Where It Happened." The room where it happens—that's all fans want to do, to be in the room where it happens, and what this bill does is give them fair access to be in that room. It may be a sports stadium or a music venue or a show like *Hamilton*.

Anybody who says that these are victimless abuses is kidding themselves. This kind of abuse affects boys and girls who want to celebrate birthdays and who are denied that opportunity at the show that they have waited an eternity, it may seem to them, to see. It affects the music fans who want to go to the concert that they cannot access. It affects the sports fans who can't see their teams in victory or defeat.

I spent many years as Attorney General of the state of Connecticut fighting to protect consumers from ticket scalpers making unseemly profits from unscrupulous and illegal practices. Ticket scalping is not a victimless abuse. It is not a victimless crime. It affects ordinary Americans in their pocketbooks, in their hopes and aspirations, and it affects respect for the rule of law and fairness in our society and appreciation of the great cultural richness of this Nation.

My former colleague as attorney general, or one who followed as attorney general after I left, Attorney General Eric Schneiderman, has done an investigation and produced a report back in January. I ask, Mr. Chairman, that his prepared statement be submitted for the record.

Senator MORAN. If there's no objection, so ordered.
[The information referred to follows:]

PREPARED STATEMENT OF ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL,
STATE OF NEW YORK

Mr. Chairman, Mr. Ranking Member, and other distinguished Members of the Subcommittee: I am pleased to present this prepared testimony regarding the problem of ticket purchasing software, commonly known as "ticket bots."

As the Attorney General for the State of New York, my responsibilities include enforcing New York law governing the market for tickets to concerts, sports games, and other live events. For more than three years my office has led a wide-ranging investigation into this market, and the facts we uncovered all lead to one conclusion: Ticketing is a fixed game. Fans are shut out of buying tickets from primary sellers such as Ticketmaster and are then forced either to pay exorbitant markups on the secondary market, at resale sites such as StubHub or Ticketmaster's Tickets Now, or else miss out on vital cultural events altogether.

Through our investigation, my office has gained in-depth, first-hand knowledge of ticket bots. We subpoenaed documents and data, performed analyses, and took testimony. We presented our findings in January 2016 in a detailed report entitled "Obstructed View: What's Blocking New Yorkers from Getting Tickets," which accompanies my testimony. The report described myriad ways in which the ticket industry

is broken, with bots as a particular focus. Bots are a particularly pernicious force in the ticketing industry. By automating the ticket-buying process, bots have two huge advantages over human buyers: (1) they perform each transaction at lightning speed, and (2) they can perform thousands of transactions simultaneously. As a result, they crowd out human purchasers and snap up most good seats. My investigation found one bot that purchased more than 1,000 tickets to see U2 at Madison Square Garden within a single minute, and more than 15,000 tickets to U2 shows nationwide within a single day. Three of the biggest bot users collectively bought more than 140,000 tickets to New York over three years. Multiply that by fifty states and you can see the enormity of this problem nationwide. Millions of fans are shut out from getting tickets at face value. Moreover, the integrity of the entire market for tickets is undermined by the fact that bot users have made the process so unfair.

In addition to reporting on industry practices, my office also took enforcement actions against bot developers, users, and illegal resellers. My office has already reached settlements with some of the country's biggest bot-users, requiring them to abstain from using bots for events in New York and recouping millions in penalties. For example, one of those bot users scooped up 520 tickets to a Beyoncé concert in Brooklyn in just three minutes, and was required to pay \$600,000 in disgorged profits and penalties. Our investigations into even more bot-users are ongoing and we expect to announce additional significant enforcement actions.

Our report and enforcement actions also helped spur a push in the New York State Legislature to take additional action to crack down on bot use. My office worked with leading State legislators from both parties on a bill that increased civil penalties, for the first time in New York imposed criminal penalties for bot use, and extended liability to those who may try to evade the law by outsourcing the bot use to a third party while reselling the tickets the bot obtained. That bill passed with unanimous support in both houses and awaits the Governor's signature.

I applaud this committee's efforts to craft an anti-bot law at the Federal level, because while state laws like the one pending in New York will increase deterrence, I believe the bot problem could be much more effectively addressed with a Federal anti-bot law that complements existing state laws. Ticket reselling is enormously lucrative. My investigation found that reseller markups on tickets are 50 percent over face value on average, but sometimes reach more than 1,000 percent. One bot user we investigated had more than \$40 million in annual revenue, a large portion of which he split with his bot-programmer partner. These riches create large incentives for resellers to use bots. Compare that with the resellers' view of current deterrence: First, states with anti-bot laws must discover the bot use (which may not happen considering sophisticated bots are very good at mimicking human behavior) and then bring an action. Second, even if the action results in disgorgement and penalties, the bot user has ample funds to pay those costs, not only from the illegal bot use in states with bans but also from the legal bot use in states lacking such bans. In short, the states without bans subsidize illegality in states with bans. A Federal prohibition could help change the incentives so it no longer pays to use bots.

Outlawing bot use is not just logical, it is fair. Currently, the small-time scalper standing outside a venue selling a pair of tickets is far more likely to be subject to arrest and sanction, while the highly sophisticated and well-financed bot users who scalp tens of thousands of tickets gets off scot free. This is akin to punishing a three-card monte dealer for deception while giving a pass to a fund manager running a Ponzi scheme that affects thousands of people.

For all of these reasons I strongly support the chief provisions in the proposed Federal BOTS Act of 2016, bill S. 3183, introduced July 13, 2016, by Chair Moran and Sens. Schumer, Fischer, and Blumenthal. In particular, I support the bill's provisions in §(a) that ban on the knowing use of bots and the resale of tickets knowingly obtained using bots. Indeed, the legislation I proposed and supported in New York similarly imposed liability on knowing resale to ensure that resellers cannot insulate themselves from liability by outsourcing bot use to third parties. I also support the provisions in §§(b) and (c) of the bill that grant authority to the FTC and state attorneys general to enforce the proposed law, while being careful not preempt existing state laws that my office and those of my fellow attorneys general may enforce against bot use in our own jurisdictions.

Based on my experience enforcing bots laws in New York, I have a few suggestions for how the bill could be improved. I urge you to consider clarifying certain provisions of the bill to ensure that it provides the strongest deterrence possible against bot use and does not complicate the efforts of state attorneys general to police ticket scalping:

- First, §(a)(1) prohibits bot use “on an Internet website of a ticket issuer.” This provision should clarify that the prohibition is not limited to sales on the Internet and encompasses any technology platform, since Ticketmaster and others already sell a large share of their tickets through smartphone apps and may later develop as-yet-unknown platforms. Moreover, it should clarify that the prohibition is not limited to the issuer’s own platform, since some issuers sell tickets on third-party websites, such as Facebook.
- Second, §(c)(1) of the current bill provides that states may sue “as *parens patriae*” to obtain injunctive relief and “damages restitution or other compensation on behalf of . . . residents” of the state. This provision should clarify that the bill does not limit state attorneys general to suits in their *parens patriae* capacity. My office currently may bring a claim under state anti-deception laws, not as *parens patriae*, for violations of Federal law, and I would not want a court to construe this bill to preclude such an action. Further, §(c)(1) should expressly provide that state attorneys general may obtain the same civil penalties the FTC may obtain. These monetary penalties are critical to increasing deterrence, and that is just as true in a case brought by a state attorney general as in a case by the FTC. Additionally, this provision of the bill should expressly state that disgorgement of profits obtained illegally is also available, since that remedy is useful where restitution is difficult or unwieldy to obtain. This provision should also clarify that it is not restricted to injuries facing “residents of” the state, to avoid limiting my office’s established authority under state law to obtain relief for violations within New York’s borders that other states’ citizens, for example bot use affecting New Jersey or Connecticut fans seeking tickets to shows at nearby New York venues.
- Third, §(c)(3) of the current bill provides that “[n]othing in this subsection may be construed to prevent” states from exercising powers conferred on them by state law to conduct investigations. This provision should clarify that, beyond investigations, the bill also does not prevent states from bringing any claims they are authorized to bring under their own states’ laws.
- Lastly, I urge you to consider following New York’s lead in imposing criminal sanctions in addition to civil ones. New York imposed civil penalties for bot use in 2010, yet many resellers still used them despite the risk of detection and litigation. Indeed, my office’s investigation turned up communications from one bot user claiming that he would only refrain from bot use if he risked criminal charges in addition to civil ones.

In closing, I wish to stress that while strong anti-bot laws are a necessary step to address the fixed game in ticketing, more will be needed to improve fans’ access to cultural events. My report showed that half of all tickets, on average, are held back for industry insiders, special groups, and holders of special credit cards. These set-asides are even larger for many events, such as two Justin Bieber concerts in 2012 where only 2,000 seats at an 18,000 seat arena in New York City were released during the sale to the general public. Promoters, venues, and ticketing agents such as Ticketmaster must level with fans by disclosing the allocations of tickets to the general public versus insiders and other preferred groups. Additionally, if a ticketing agent such as Ticketmaster claims that ticket limits are enforced, it should enforce those limits as a matter of course on a per-person basis or else disclose that such limits are not so enforced. Secondary sales platforms such as StubHub and TicketsNow must ensure brokers reselling tickets on their sites can comply with laws like those in place in New York that require resellers to post licensing information and ticket face values. These sites already make face values available in the United Kingdom and should do the same for U.S. fans.

I will continue to work with New York’s State Legislature to improve the ticketing industry in my state, and urge your Subcommittee to consider these issues at the Federal level as well.

Senator BLUMENTHAL. His report shows that tickets remain even more out of reach for consumers than ever before. And much of this denial of access is due to the illegal use of special software, known as ticket bots, that consume, literally devour, the best tickets at high speeds the moment they go on sale or before and make it impossible for ordinary consumers to purchase tickets at reasonable prices. The use of this technology basically deprives consumers of fair markets.

If you believe in the markets, you should believe in this legislation. If you believe in fairness in the markets, you should support this legislation. Whether it's a mega hit like *Hamilton* or the football games that occur regularly in this country over the weekends coming this fall or the concerts that occur around the country regularly, the current epidemic of ticket bot software is blocking fair access to event tickets, and it is maddening and frustrating to consumers, no matter where they live or what their background, age, class, or race may be. It affects everyone.

I believe that the current state of affairs is untenable and unacceptable, and that's why I am very strongly in favor of this first step. And I've heard from some of our community performing arts in Connecticut, like the Bushnell Theater in Hartford and the Eugene O'Neill Theater in Waterford, about how this practice makes their serving subscribers more difficult and how they are hampered in building relationships with future patrons of the arts. So the ripple effect is beyond Broadway. It is in every community theater, every community around the country.

I want to thank the witnesses for being here today and contributing to our understanding of this issue.

Thank you very much, Mr. Chairman.

Senator MORAN. Senator Blumenthal, thank you very much.

We're honored to have with us the Ranking Member of the full committee, Senator Nelson.

Senator, is there anything you would like to say as we begin this hearing?

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Thank you, Mr. Chairman. Just to say to my colleague here, I did not get to go see *Hamilton* because—

Senator BLUMENTHAL. I'll go a second time if you'll go with me.

Senator NELSON. Well, not at the price, because the reason I didn't go was I did not want to pay \$800 a ticket, and it—well, at the time that I tried, indeed, all the tickets had been bought up, just about what we've been talking about.

Now, you put it in everyday folks' lives, the retirees, who want to go to mark their anniversary at the theater, or you talk about the folks who want to get a ticket for their child on their birthday to go see their favorite singer, or what about the college football fans that want to go to the ball games, and they are denied because of what we see going on. This is not capitalism. This is not the free market. This is a rigged market benefiting some greedy speculators, and it's not right, and I appreciate what you all are doing.

Senator MORAN. Well, Mr. Ranking Member, in just a moment, I'm going to introduce you to the producer of *Hamilton*, and perhaps you two can get acquainted today, and perhaps you can see the show.

[Laughter.]

Senator BOOKER. Mr. Chairman, can I request for the record that Senator Blumenthal does his opening statement again, but this time sings "The Room Where It Happens?" I would greatly appreciate that.

Senator MORAN. I hear objection.

[Laughter.]

Senator MORAN. Again, we're delighted to have our Committee members here, but especially appreciative of those who have come here to testify on this topic, and I would introduce them.

We have as witnesses today Mr. Tod Cohen, who is the General Counsel of StubHub. We have Mr. Jeremy Liegl, the Associate General Counsel for Pandora and Ticketfly; Mr. Jeffrey Seller, the Producer of *Hamilton*, an American musical; and Mr. Bob BOWLSBY, the Commissioner of the Big 12 Conference.

Commissioner, we would start with you and work our way across the panel. Commissioner, welcome.

**STATEMENT OF BOB BOWLSBY, COMMISSIONER,
BIG 12 CONFERENCE**

Mr. BOWLSBY. Thank you, Chairman Moran, Ranking Member Blumenthal, Senator Nelson. I appreciate the opportunity to be here and thank all of the distinguished members for taking the time to hear from the witnesses.

This is a terrific opportunity to talk about a vexing situation that brings all of us with relatively diverse backgrounds together to talk about a common challenge. I'll let the first three paragraphs of my statement stand for themselves, but I think it's self-evident that some of our sports produce revenue from tickets, from merchandise licensing, and from television contracts. This revenue is vital to the operation of intercollegiate athletics programs, particularly at the highest level where we operate in a fairly autonomous manner and mostly through self-funded resources.

There is a unique relationship between an institution and its fans. It is not uncommon for our programs to have families that have been season ticket holders across multiple generations. Because of these special relationships, we try and keep the value and cost of college tickets at a reasonable level. Because of the reasonable level of this pricing, we make ourselves an obvious target in some cases. This is particularly true of big regular season contests in football and men's basketball, as well as many of our post-season games, for which there are already a very limited number of tickets.

I'm convinced that for certain games, we could charge an awful lot more than we do. And yet our traditional relationships and our loyalty to our fans presents a maximum pricing when we know that the supply is fixed.

The demand to see live events may overwhelm the supply in virtually every one of our environments. A school could substantially raise prices for that one big game or for a group of big games. It could also bundle tickets together so that less advantageous contests are bundled up with very highly advantageous activities. Accordingly, in a scenario where individuals are willing to pay a great deal more for a ticket than its stated face value, some unscrupulous actors will exploit that situation.

While many of the tickets to our athletic events are held by season ticket holders, individual game tickets are also sold. I fully support a free market and a capitalist economy and the ability of individual ticket holders to profit from the sale and of market forces on their tickets. However, with respect to many games, scalpers

will use computer programs to pick up and buy more tickets than individuals are allowed to buy on an individual basis.

Whether it's an individual lurking outside the perimeter of an arena or a sophisticated computer operator unleashing a torrent of bots, the bottom line is this: the hard-earned money of our fans spent on tickets to our sporting events should benefit our schools and our student athletes, not third parties who seek to make a quick buck off our most passionate supporters.

Our conference has some of the best college sports fans in the country. The bad actors that use the bots to buy up and create unnecessarily inflated markets are essentially cutting in line in front of the real fans in order to profit off something they did nothing to create.

I'm aware that some of the naysayers and pundits question whether there is anything that Congress can or should do about this situation. There are 21st century scalpers that are still going to find a way to do whatever they can to game the system. Well, I disagree. I think this is a logical step in the right direction. I also applaud allowing the Federal Trade Commission and the State Attorneys General to take civil enforcement actions against individuals who employ deceptive practices to thwart and challenge the lack of integrity of online purchasers in volume.

We support this legislation as a necessary measure to ensure that our universities' fans have access to good tickets at face value. My professional career has been spent around students, fans, and college sports as an athletic director and now as a commissioner of a high visibility sport. We should celebrate and encourage healthy competition on the field of play between student athletes, coaches, and their respective teams. But we should denounce, however, forced competition on Internet ticket sites between ardent fans and faceless scalpers who seek to profit from those fans who are passionate about college athletics.

Thank you again for your invitation to testify, and I look forward to your questions.

[The prepared statement of Mr. Bowsby follows:]

PREPARED STATEMENT OF BOB BOWLSBY, COMMISSIONER, BIG 12 CONFERENCE

Chairman Moran, Ranking Member Blumenthal, and distinguished members of the Subcommittee, on behalf of the Big 12 Conference and its member-institutions, thank you for holding this hearing and providing me an opportunity to testify. I have personally been here in Washington, D.C., many times to socialize issues affecting intercollegiate athletics. We have many challenges—the welfare of our student-athletes, too many victims of sexual assaults on our campuses, multiple class action lawsuits, rules enforcement and violation investigations—the list is long and ever-evolving.

That said, there is a lot going right with college athletics. Over \$2.7 billion dollars annually goes to scholarships for student-athletes, which is the second largest scholarship program in the country behind the GI Bill as far as effectiveness in providing a college education for our citizens. One in six student-athletes is a first-generation college student. More than eight out of 10 student-athletes at Division I schools will earn bachelor's degrees, a higher percentage than the rest of the student population.

Intercollegiate athletics are an integral part of the college experience. The 150,000 student-athletes that compete at the NCAA level and the teams on which they play are the source of pride among student bodies, faculty, alumni and the communities where they reside. This was demonstrated yet again during the recently-concluded Olympic Games in Rio. The Big 12 Conference had 87 current or former student-athletes who participated in the Games, representing their countries and—indirectly—the schools from which they came.

Some of our sports produce revenue from ticket sales, merchandise licensing and television contracts. This revenue is vital to an athletic department's autonomous budget and is used to enhance the educational mission of our universities.

There is a unique relationship between a school and its fans. It is not uncommon for our programs to have families that are season ticket holders across multiple generations. Because of these special relationships, tickets to college sporting events are often priced below fair market value, in order to appeal to a wide variety of supporters—boosters, alumni, young professionals, and students, to name a few. We are constantly looking for ways to enhance the fan experience and hopefully encourage them not to succumb to the temptations of the couch.

I am convinced that for certain games in a given season our universities could charge more than they do for tickets. After all, there are a finite number of seats to an athletic contest in any venue, so supply is fixed. The demand to see that live event may overwhelm the supply of available tickets. Schools could substantially raise ticket prices for that big game. However, doing so would not be in the interest of that school's long term relationship with its fan base. Accordingly, in a scenario where individuals are willing to pay a great deal more for a ticket than its stated face value, some unscrupulous actors will exploit that situation.

While many of the tickets to our athletic events are held by season ticket holders, individual game tickets are also sold. I fully support free-market, capitalist economics and the ability of individual ticket holders to profit from market forces if they so choose. However, with respect to certain games, scalpers will use computer programs to buy up more tickets than individuals are allowed to buy just so they can re-sell them on secondary ticketing sites. For the record, the Big 12 Conference's member-institutions strongly oppose this type of ticket-scalping. Whether it is an individual lurking outside the perimeter of an arena or a sophisticated computer operator unleashing a torrent of bots, the bottom line is this: The hard-earned money our fans spend on tickets to our sporting events should benefit our schools and student-athletes; not third parties who seek to make a quick buck off of our most passionate supporters. Our conference has some of the best college sports fans in the country. The bad actors that use bots to buy up large blocks of tickets are essentially cutting in line in front of real fans in order to profit off of something they did nothing to create.

I know that individual states are attempting to address the issue of bulk purchasing by banning ticket bots. However, this is an issue that goes beyond a State's geographical borders and I believe a Federal solution is in order. I fully support S. 3183, The Better On-line Ticket Sales (BOTS) Act, and I commend the bipartisan approach by the bill's sponsors and those taking a leadership role in this matter.

I am aware that some naysayers and pundits have questioned whether there is anything that Congress can or, should, do on this issue and that 21st-century ticket scalpers will still find a way to game whatever system is in place. I disagree. I believe it is appropriate to make the use of bots an unfair and deceptive practice if used to circumvent an Internet website's ticket access control measures. I also applaud allowing the Federal Trade Commission or state attorneys general to take civil enforcement actions against individuals who employ deceptive practices to thwart the integrity of online ticket purchases. We support this legislation as a necessary measure to ensure that our universities' fans have access to good tickets at face value.

I attended college on an athletic scholarship as a wrestler. My professional career has been spent around students, fans, and college sports as an athletic director and now as Commissioner of a high-visibility conference. We should celebrate and encourage healthy competition on the field of play between student-athletes and their respective teams; we should denounce, however, forced competition on Internet ticket sites between ardent fans and faceless scalpers who seek to profit from those fans' passion for college athletics.

Thanks, again, for your invitation to testify and I look forward to your questions.

Senator MORAN. Commissioner, thank you very much. When it comes time for questioning, I would admonish my colleagues from Nebraska and Missouri to treat you respectfully. And we may get some questions—

Senator McCASKILL. It's KU we won't treat respectfully.

Senator MORAN. I've noticed that, Senator from Missouri.

[Laughter.]

Senator MORAN. Let's now turn to Mr. Seller.

Mr. Seller, congratulations. Thank you for being here. Congratulations on being a producer of a show that actually can make political figures interesting and entertaining to the general public. We'd be delighted to learn from you.

STATEMENT OF JEFFREY SELLER, PRODUCER, "HAMILTON"

Mr. SELLER. Thank you, Chairman Moran. I have to tell you that being in your presence, being in the presence of Senator Blumenthal, Senator Nelson, Senator Booker, I am honored to be in this room where it happens today, to watch and participate in the American democratic process.

Yes, I'm the proud producer of *Hamilton*. By way of introduction, my career has been defined by my passion for the American musical. In addition to *Hamilton*, I produced *Rent*, *Avenue Q*, *In the Heights*, and the 2009 Broadway revival of *West Side Story*, and I'm the fortunate winner of four Tony Awards for Best Musical.

I started attending Broadway shows in my hometown of Detroit, Michigan, in 1978. I was 13 years old. My family was lower-middle class. My father was a process server. My mother was a clerk at a local drugstore. Though we had little money available for entertainment, my passion for musicals motivated my parents to scrape together whatever funds they could so that I could see shows at The Fisher Theater.

Mezzanine seats were \$10 and we couldn't afford seats for the entire family. My father and I alone went to musicals like *Shenandoah* with John Raitt, *A Chorus Line*, and *Pippin*. When *Annie* came to town in 1979, we all wanted to go, so my father stood in line for 4 hours at the Fisher Theater so that we could get tickets and have that gift for the holidays for the entire family.

I would not be sitting here today were it not for the determination of my parents to give me the unforgettable, inspirational, and educational experiences I was able to have seeing the great American musicals of my childhood. But my reason for being here today, my mission, is to ensure that young people and, in fact, people of all ages—Senator Nelson, for example—have the same opportunity to see live performances of whatever interests them, musicals, plays, or, in fact, Big 12 or Big 10 Conference sporting events.

I have received numerous letters from children and parents appealing to me to help them get tickets to *Hamilton*. They have simply been unable to obtain tickets at regular prices, because every time we put a new block of tickets on sale, the "bots" or "robots" have invaded the Ticketmaster system the second they went on sale and then electronically purchased almost all of the available inventory. Then they have reposted the tickets on multiple secondary ticketing sites at prices that are up to 10 times their face value. *Hamilton* tickets have regularly been sold in excess of \$1,000. In essence, these bots cut the line and buy up all the available product before anyone has a chance.

You might ask why should I care. I have succeeded in my goal, which is to sell out all of my available tickets. The forces of free trade and capitalism that in some ways were created by Alexander Hamilton himself took care of the rest, right? Wrong. Bots are computerized cheaters.

The people who employ bots use sophisticated software that cuts the line, paralyzes the system, and holds and purchases every available seat before a consumer has a chance. They remove the notion of a level playing field from the very system that was designed to make it easy for consumers to buy tickets, no matter where they live.

The secondary market was introduced into show business in the United States around 1850. The politically offensive slang word, “scalping,” came from the notion that those reselling tickets were, in fact, taking the skin off the back of the general public.

I’m not here to make any recommendations regarding the function or existence of the secondary market. In many instances, it’s a useful tool for buyer and seller. And though I must confess I am a graduate of a Big 10 school, the University of Michigan, I will also confess today that maybe once or twice I took my football tickets and resold them at the Michigan Union so I could buy a pizza after. But I am here to argue for fairness, for the ability of consumers to have a fair shot at purchasing tickets at the price set by the producer of the event. I’m advocating for a level playing field.

The business of Broadway is a unique one that offers a living wage to thousands of talented and skilled artists, craftsmen, and technicians. For many structural reasons, beginning with the labor intensive nature of theater, I acknowledge that tickets are expensive and sometimes prohibitively so. We at *Hamilton* have put in place two powerful tools to make affordable tickets available to all.

First, our groundbreaking educational initiative supported by the Rockefeller Foundation will make 20,000 \$10 tickets available each year to high school juniors who would not otherwise be able to afford to see the play. In addition, we make over 40 tickets a performance available to the general public by digital lottery with seats in the front of the orchestra section. That’s every single day, \$10 for the first 25 seats.

We aim to serve as many constituencies as possible. But in order for this to work, we need fairness in ticketing. We need a level playing field. We need to prevent bots from tampering with a system that is designed to allow all consumers access to tickets at face value. This is why I wholeheartedly support the BOTS Act.

Thank you, Senator Moran, Senator Schumer from New York, Senators Blumenthal and Fischer, for taking leadership roles on this issue.

I thank you for your time, and I am happy to be with you this afternoon.

[The prepared statement of Mr. Seller follows:]

PREPARED STATEMENT OF JEFFREY SELLER, PRODUCER, “HAMILTON”

Good afternoon,

My name is Jeffrey Seller and I am the proud producer of *Hamilton*, an American Musical. By way of introduction, my career has been defined by my passion for American musicals. In addition to *Hamilton*, I produced *Rent*, *Avenue Q*, *In the Heights* and the 2009 Broadway revival of *West Side Story*, which incidentally, opened here in Washington at the National Theatre in December 2008. I am the fortunate winner of four Tony Awards for Best Musical.

Chairman Moran, Ranking Member Blumenthal and members of the Subcommittee, I would like to thank you for holding this hearing and for providing me the opportunity to testify about my passion for Broadway and live performance.

I started attending Broadway shows in my hometown of Detroit, in 1978, when I was 13 years old. My family was lower-middle class. My father was a process server and my mother was a clerk at a local drugstore. Though we had little money available for entertainment, my passion for musicals motivated my parents to scrape together whatever funds they could so I could see shows at The Fisher Theatre. Tickets for mezzanine seats were \$10 and we couldn't afford tickets for the whole family. My father and I saw musicals like *Shenandoah* with John Raitt, *A Chorus Line*, and *Pippin*. When *Annie* finally came to Detroit in 1979 we all wanted to go, so my father stood in line at the Fisher Theatre for over four hours to buy tickets—it was a huge splurge and a holiday gift for the entire family.

I would not be sitting here today were it not for the determination of my parents to give me the unforgettable, inspirational and educational experiences I was able to have, seeing the great American musicals of my childhood on national tour.

My reason for being here today—I would even go so far as to call it my mission—is to insure that young people, and people of all ages, for that matter, have the same opportunity to see live performances of whatever interests them—musicals, plays and concerts.

I have received countless letters from children and parents appealing to me to help them access tickets to *Hamilton*. They have simply been unable to obtain tickets at our regular prices. Why? Because every time we put a new block of tickets on sale, the “robots” or “bots” have invaded the Ticketmaster system the second they went on sale, and then electronically purchased almost all of the available inventory. Then they re-post the tickets on multiple secondary ticketing sites or fan exchanges at prices that are up to ten times their face value. *Hamilton* tickets have regularly been sold in excess of \$1,000. In essence, these BOTS cut the line and buy up all the available product before anyone else has a chance.

Why should I care? I succeeded in my goal to sell out all my available tickets. The forces of free trade and capitalism that were in some ways created by Alexander Hamilton himself, took care of the rest, right?

Wrong.

BOTS are computerized cheaters. The people who employ BOTS use sophisticated software that cuts the line, paralyzes the system, and holds and purchases every available seat before a human consumer has a chance. They remove the notion of a level playing field from the electronic system, which was designed to help consumers purchase tickets with ease.

Throughout the *Hamilton* run, I've been working with Ticketmaster to mitigate the effectiveness of BOTS by cancelling tickets of those we suspect are using BOTS, and getting them into the hands of real fans. Ticketmaster is spending millions of dollars in software and labor to stop BOTS, but we are here together to ask for your help in passing the BOTS Act to punish abusers of a system designed for consumers and fans, not just for those looking to “game the system” and make a quick buck.

The secondary market was introduced into show business in the United States around 1850. The politically offensive slang word “scalping” came about from the notion that those re-selling tickets were taking the skin off the backs of the general public.

I am not here to make any specific recommendations regarding the function or existence of the secondary market. In many instances it's a useful tool for both buyer and seller. I confess that when I was a student at The University of Michigan I sometimes re-sold my student football tickets and used the profits to buy a pizza at The Cottage Inn.

I am here, however, to argue for fairness. I am here to fight for the ability of consumers to have a fair shot at purchasing tickets at the price set by the producer of the event. I am advocating a level playing field.

The business of Broadway is a unique one that offers a living wage to thousands upon thousands of talented and skilled artists, craftsmen and technicians. I acknowledge that, for many structural reasons beginning with the labor intensive nature of theater, tickets are expensive, and sometimes prohibitively so. We at *Hamilton* have put in place two powerful tools to make affordable tickets available: First, through our groundbreaking educational initiative supported by The Rockefeller Foundation, we will make 20,000 \$10 tickets available each year to high school juniors who would not otherwise be able to afford the show. In addition, we make over 40 tickets a performance available to the public by digital lottery, with seats in the front of the orchestra for 10 dollars each.

We aim to serve as many constituencies as possible. But, in order for this to work, we need fairness in ticketing. We need a level playing field. And we need to prevent

BOTS from tampering with a system that is designed to allow all consumers access to tickets at face value. This is why I wholeheartedly support the BOTS Act.

I would like to thank Senators Moran, Schumer, Blumenthal, and Fischer for taking a leadership role on this issue. Thanks so much for your time today.

Senator MORAN. Thank you very much.
Mr. Cohen?

STATEMENT OF TOD COHEN, GENERAL COUNSEL, STUBHUB

Mr. COHEN. Chairman Moran, Ranking Member Blumenthal, Ranking Member Nelson, and members of the Subcommittee, thank you for inviting me to participate in this important hearing today. My name is Tod Cohen, and I'm the General Counsel for StubHub.

StubHub, owned by eBay, is a global online marketplace for event tickets. As the world's largest online ticket marketplace, StubHub offers fans a safe and convenient place to get tickets to the games, concerts, and theater performances they want to see and an easy way to sell their tickets when they can't go.

Today, some fans are rightly frustrated with how tickets are sold and distributed. They often face unreasonable technological, licensing, and legislative restrictions when they attempt to buy or sell tickets. The rules and processes are too often unfair for fans and inconsistent with free market principles. Like nearly every other industry, a more open and transparent ticket marketplace would mean lower prices, broader availability and access, as well as greater safety and security for people like each of us, like me, especially, who crave and want to attend live events.

But the ticket marketplace is not transparent. The main focus today is rightly on ticket bots, the software programs designed to bypass ticket purchasing limits or skip ahead in virtual ticket queues. StubHub believes that misuse of these programs harms all parts of the ticket industry, including consumers. That is why we have consistently supported anti-bots legislation at the U.S. state level, and we commend Senators Moran, Schumer, and Representative Blackburn on their efforts to enact a Federal anti-bot bill.

Still, not all bots are malicious. Overwhelmingly, most bots perform a number of functions that are critical to the Internet. Bots are used by nearly every portion of the Internet, including search engines, e-commerce sites, news and weather services, as well as nearly every other Internet functionality. As the Committee considers this bill, I encourage you to avoid any technological mandates that needlessly undermine innovation or provide certain private actors unfair competitive anti-consumer protections.

Ticket bots are just one component in a suite of anti-competitive and anti-consumer ticketing practices that operate as restraints of trade in the ticketing market. Rather than focus exclusively on bots, I hope for the fans' sake that we have a more comprehensive dialog today and going forward.

For most fans, a fundamental question is: Why can't I get tickets when they go on sale? Ticket bots are only part of the answer. A lack of transparency, principally with the practice called ticket holdbacks, are also largely to blame. In a report on ticket sales released earlier this year, the New York Attorney General found that, on average, less than half, 46 percent, of concert tickets are

actually made available for purchase to the general public. In some cases, these holdbacks are more extreme, with reports of major headliners releasing as little as 12 percent of tickets to the public for sale.

The held back tickets are generally reserved for presales and for industry insiders, including artists, agents, venues, brokers, and promoters. Understanding the primary market's allocation practices would be a helpful development, and I hope that we can explore the issue going forward.

Even for the lucky few who are able to buy tickets at the initial on-sale, there are often downstream restrictions imposed by primary ticketing providers, teams, venues, and artists as a condition of the sale. I want to highlight a couple of those restrictions today.

There are some ticketing practices that are intended to make it more difficult, if not impossible, for the original purchaser to transfer freely the ticket. These restrictions, imposed technologically or through onerous licensing terms, are an inconvenient limitation on fans' ownership rights. They prohibit fans from buying tickets as a gift, giving away tickets to friends or family, or even used as donations. And if a ticket buyer cannot attend the event, the intended purpose is to block easy resale, which sticks that fan with tickets they cannot use.

Restrictions are utilized in ways that ticket resales can only occur on specific platforms approved by primary ticket providers. These also harm consumers.

Ultimately, we encourage Congress to assist in a comprehensive dialog around the ticket industry. It is worth noting that there is no independent Federal legislation regarding the ticket industry. Regulation of the ticket industry has always been at the state, local, and municipal levels. We hope that Congress will engage in a broad, in-depth examination of the ticket industry and require all elements and stakeholders to participate in the examination or study. StubHub believes that a fair, secure, and competitive ticket marketplace unequivocally supports fans.

Thank you again for the opportunity to testify. I look forward to answering any questions that you may have.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF TOD COHEN, GENERAL COUNSEL, STUBHUB

Chairman Moran, Ranking Member Blumenthal, and Members of the Subcommittee,

Thank you for inviting me to participate in this important hearing today. My name is Tod Cohen, and I am the General Counsel for StubHub. StubHub, owned by eBay, is a global online marketplace for event tickets. As the world's largest online ticket marketplace, StubHub offers fans a safe and convenient place to get tickets to the games, concerts, and theater performances they want to see—and an easy way to sell their tickets when they can't go.

Today, some fans are—rightly—frustrated with how tickets are sold. They often face unreasonable technological, licensing and legislative restrictions when they buy or sell tickets. The rules and processes are too often unfair for fans and inconsistent with free market principles. Like nearly every other industry, a more open and transparent ticket marketplace means lower prices, broader availability and access as well as greater safety and security for people like each of us who crave and want to attend live events. But, the ticket marketplace is not transparent.

The main focus today will be on ticket bots, the software programs designed to bypass ticket purchasing limits or skip ahead in a virtual ticket queue. StubHub believes that misuse of these programs harm all parts of the ticket industry, includ-

ing consumers. This is why we consistently support anti-bots legislation at the U.S. state level, and we commend Senator Moran, Senator Schumer, and Representative Blackburn on their efforts to enact a Federal anti-bot bill. Still, not all bots are malicious. Overwhelmingly, most bots perform a number of functions that are critical to the Internet. Bots are used by nearly every portion of the Internet, including search engines, e-commerce sites, news and weather services as well as nearly every other Internet functionality. As the Committee considers this bill, I encourage you to avoid any technological mandates that needlessly undermine innovation or provide certain private actors unfair competitive anti-consumer protections. Ticket bots are just one component in a suite of anticompetitive and anti-consumer ticketing practices that operate as restraints of trade in the ticketing market. Rather than focus exclusively on bots, I hope for the fans' sake that we have a more comprehensive dialogue today and going forward.

For most fans, a fundamental question is: Why can't I get tickets when they go on sale? Ticket bots only partially answer this question. A lack of transparency, principally with respect to the practice called ticket "holdbacks", are also largely to blame. In a report on ticket sales released earlier this year, the New York Attorney General found that—on average—less than half (forty-six percent) of concert tickets are actually made available for purchase to the general public. In some cases, these holdbacks are more extreme, with reports of major headliners releasing as little as twelve percent of tickets to the public for sale. The held back tickets are generally reserved for presales and for industry insiders, including artists, agents, venues, and promoters. Understanding the primary market's allocation practices would be a helpful development, and I hope that we can explore that issue today.

Even for the lucky few who are able to buy tickets at the initial on sale, there are often downstream restrictions imposed by primary ticketing providers, teams, venues, and artists as a condition of the sale. I want to highlight a couple of those restrictions today.

There are some ticketing practices that are intended to make it difficult, if not impossible, for the original purchaser to transfer freely the ticket. These restrictions—imposed technologically or through onerous licensing terms—are an inconvenient limitation on fans' ownership rights. They prohibit fans from buying tickets as a gift, giving tickets away to friends or family, or as donations. And if a ticket buyer cannot attend the event, the intended purpose is to block easy resale, which sticks that fan with tickets they cannot use.

Additionally, some primary ticket providers, venues, and teams will cancel—or threaten to cancel—tickets that are sold outside of their preferred or affiliated secondary platforms. Restrictions that are utilized to ensure that ticket resales can *only* occur on the platform *approved* by the primary ticket provider locks consumers into a single ecosystem, which discourages competition among secondary ticketing exchanges and prohibits consumers from shopping around for lower fees and better service.

One common justification for these restrictions is to reduce fraud. Count us as highly skeptical of this argument. The incidence of fraud on the StubHub platform is less than 0.01 percent, and in those very rare instances of fraud, we offer a robust FanProtect Guarantee to protect our buyers by providing a full refund or, more importantly, access to the event in question whenever possible. Our evidence shows that there is no link between reducing fraud and adopting restrictions. Instead, when restrictions are imposed fans lose out with higher prices, less availability, increased uncertainty and unnecessary stress.

Primary ticket providers, venues, and artists will also point to brokers and the above-face value prices on secondary ticket sites when defending these practices. However, this is a selective argument. StubHub estimates that approximately fifty percent of the tickets on our site are sold below the "face value" set by the ticket issuer. Although there are tickets listed on StubHub at above face value, those are set by market forces and a healthy competitive broad trading market is created by allowing prices to be set by the market as opposed to artificial restrictions. Many artists, promoters, teams and content creators use broad online markets to their advantage by monitoring the market value and releasing new blocks of tickets at whichever price the market will bear.

Ultimately, we encourage Congress to assist in a comprehensive dialogue around the ticket industry and whether Federal legislation is necessary. It is worth noting that there is no independent Federal legislation regarding the ticket industry. Regulation of the ticket industry has always been at state, local and municipal levels. We hope that Congress will engage in a broad in-depth examination of the ticket industry and require all elements and stakeholders participate in such an examination or study.

StubHub believes that a fair, secure, and competitive ticket marketplace unequivocally supports fans. We think that fans have the right to decide how—and for how much—tickets will be bought and sold after the initial purchase. We are strongly committed to partnering with industry, public policy and other leaders to achieve this goal. Public education is essential to the effort, and this hearing is a great start. For our part, StubHub earlier this year launched StubHub Concourse, a public policy informational and engagement tool for fans. For those in the room or watching via webcast that are interested in these issues, I encourage you to sign up at stubhubconcourse.com.

Thank you again for the opportunity to testify today. I look forward to answering any questions you may have.

Senator MORAN. Mr. Cohen, thank you very much.
Mr. Liegl?

**STATEMENT OF JEREMY LIEGL, ASSOCIATE GENERAL
COUNSEL, PANDORA MEDIA, INC. AND TICKETFLY, LLC**

Mr. LIEGL. Chairman Moran and Ranking Member Blumenthal and members of the Subcommittee, I want to thank you for holding a hearing on the harmful effects that bots have on the live events industry. Your efforts are very much appreciated by people across the industry's ecosystem, from fans and artists to venues and promoters.

My name is Jeremy Liegl, and I'm Associate General Counsel for Pandora and Ticketfly. At Pandora, our mission is to connect fans with the music they love and to connect artists with their audience. This is why it was a natural fit when we acquired Ticketfly, a live event technology provider, last year. Since its founding in 2008, Ticketfly has partnered with more than 1,600 leading event venues and promoters, including Cotillion Ballroom in Wichita and StageOne in Fairfield, Connecticut, helping them sell more tickets and bring more fans out to see live shows.

Ticketfly's integrated software powers talent booking, ticketing, digital marketing, and analytics for live event promoters, while its consumer tools help fans discover and purchase tickets to great events in just a few taps. Since selling its first ticket in 2009, the company has processed more than \$1 billion in transactions. And in the second quarter of this year alone, we processed 3.7 million tickets to over 38,000 live events.

The value of live events cannot be overstated. Concerts, live theater, comedy, and sports bring people together and create tangible economic benefits that can make a real difference in a community. Local bars, restaurants, taxi drivers, hotels, gas stations, and retail stores all see a direct benefit from live events.

At Ticketfly and Pandora, we've seen the transformative nature of live music events firsthand. Take the annual Memphis in May International Festival. The month-long celebration features the famous Beale Street Music Festival, ticketed by Ticketfly. In addition to being a source of pride for the people of Memphis, the economic impacts of the festival's music, barbeque, and international celebration are astounding. This year, Memphis in May supported more than 1,000 total local jobs, attracted more than 93,000 visitors, and generated nearly \$72 million for the city of Memphis.

So what's the problem? Profit-hungry bot operators on the web are exploiting the livelihood and creativity of working artists and robbing the fans and venues that support them. A growing body of

research shows how pernicious use of automated software, or bots, is keeping tickets out of the hands of fans, siphoning money from artists and venues.

These computer programs pose as real fans, bombarding ticket sites with requests in order to circumvent ticket purchase limits and security measures. They can seize large chunks of the available tickets within seconds of when the sale goes live, far faster than any human being could ever type and click. The end result: real fans are unable to get good tickets at face value.

There are other costs to this practice. A common issue with ticket bots is that the same ticket can be resold into the market more than once. This can lead to longer lines and added confusion at the box office and even denial of entry at the door. It also unfairly tarnishes the reputation of artists and venues who often shoulder the blame for miscues and problems created by bot operators.

Thankfully, there are steps that can be taken by lawmakers at both the state and Federal level that strike the right balance for fans, artists, and venues alike. Ensuring consumers can access tickets in an easy way and at fair prices is a win-win for all, boosting attendance at events, encouraging greater spending by consumers on concessions and merchandise, and resulting in increased revenue for artists, venues, promoters, and the unsung staff who work hard every night putting on shows.

With that in mind, we are encouraged by and strongly welcome the introduction of the Better Online Ticket Sales Act of 2016, or BOTS Act, in order to increase fairness in the ticket purchasing industry. We want to thank Senators Moran, Schumer, Fischer, and Blumenthal for introducing this legislation to benefit fans, artists, and live event venues alike.

As I said at the beginning of my testimony, at Pandora and Ticketfly, our goal is to connect fans with the artists they love, whether it's live at a concert, at the gym, or even driving to work. That's why we support a music economy that works for everyone, artists and fans, music venues, and promoters, and why we urge the Senate to take action to stop the insidious practice of ticket bots depriving your constituents of fair access to tickets.

Thank you, and I look forward to your questions.
[The prepared statement of Mr. Liegl follows:]

PREPARED STATEMENT OF JEREMY LIEGL, ASSOCIATE GENERAL COUNSEL,
PANDORA MEDIA, INC. AND TICKETFLY, LLC

Chairman Moran, Ranking Member Blumenthal, and distinguished members of the Subcommittee.

My name is Jeremy Liegl, and I am the Associate General Counsel at Pandora Media, Inc., and Ticketfly, LLC. I want to begin by thanking the Subcommittee for taking the time to hold this hearing to understand the marketplace for the sale of tickets to live events and the role of concert ticketing in the broader music market. I am grateful for the opportunity to testify and offer the Pandora-Ticketfly perspective on these issues.

Pandora, the popular Internet radio service, launched in 2005 and has become the world's most powerful music discovery platform. Pandora introduces listeners to new music based upon our proprietary Music Genome and also connects fans with the artists they enjoy, in part by informing them of upcoming concert events and providing a vehicle for purchasing tickets to those events. Pandora (assisted by its recent integration with Ticketfly) also provides artists with tools to connect with their audiences, including the opportunity to connect through live music events.

In late 2015, Pandora acquired Ticketfly, a live events technology company that powers the entire event lifecycle for venues and promoters. Ticketfly was founded in 2008, and since its inception, has processed over \$1 billion in gross ticket sales. In 2015 alone, Ticketfly sold 12.5 million tickets to 90,000 different events, and worked with over 1,200 venue and promoter partners. The Ticketfly platform does not stop at ticket sales, however. Venues and promoters come to Ticketfly for talent booking, ticketing, and marketing, mobile analytics, and through its partnership with Pandora, the ability to match online music listeners with live event information. Just this past July, Pandora launched a feature to notify users who like a particular artist when that artist will be playing nearby. Pandora-Ticketfly connects artists and promoters with America's largest and most engaged music audience—over 78 million listeners on Pandora every month.

Given this deep engagement with the live events space, Pandora-Ticketfly strongly supports the Better Online Ticket Sales Act of 2016, S. 3183 (the “BOTS Act”). We believe that fans—our core user base—deserve a fair and reasonable opportunity to support their favorite music artists by buying tickets at the face value set by those artists and the venues, not by online bot operators employing software tools that disadvantage the general public and circumvent technical measures designed specifically to defeat the use of bots. Since the misuse of bots to subvert the security mechanisms and terms of service ticketing platforms put in place is fundamentally unfair to platform operators, the public, and the broader music industry, the BOTS Act provides an especially appropriate solution to this problem by making the use of bots subject to the prohibition of “unfair or deceptive acts or practices” in Section 5 of the Federal Trade Commission Act.

Attending a show to see a favorite performer is a special moment for a music fan—a moment that can be recalled weeks, years or even decades later—and that makes live events a critical part of the music industry's success. Even in an age of social media, when fans and artists are more connected than ever, there is no substitute for seeing a live performance by one of your favorite artists. For some fans, this means singing along to Taylor Swift at the height of her latest stadium tour; for others, it's seeing that indie band that Pandora introduced you to along with 100 other committed fans in a tiny venue. Every concert-goer has a story they will share with friends and fellow fans.

Those stories help create and expand the fan base for each artist, and therefore help to drive the success of all the individuals and companies who participate in the music industry. When fans are precluded from purchasing tickets at face value due to the use of automated ticket-purchasing programs called “bots,” the entire music ecosystem suffers because fans miss out on opportunities to create the memories that build the bonds between artists and their fans. These bonds are critical for artists looking to sustain a multi-decade music career. Fans may also be priced out of a concert entirely, and even if they get to attend by purchasing on the resale market, the markups they pay mean they have less money to attend other events or to purchase merchandise and concessions, which also directly benefits artists and venues.

Tens of thousands of tickets each year are acquired using bots¹ that violate ticketing platforms' terms of use, and circumvent measures designed to ensure that the average fan has a fair and equal opportunity to buy a ticket to a live event. Bots facilitate the purchase of hundreds or even thousands of face-value tickets in a matter of seconds (typically, as soon as the tickets become available to the general public), dramatically decreasing the number of tickets available to fans seeking to support their favorite artists. Bot operators can then demand extraordinarily high prices in the secondary sale market—essentially extorting additional payments from fans that should have the ability to purchase tickets at face value.

The presence of bots harms everyone in the music industry save only for the operators of the bots. The ticket price for a face-value ticket gets distributed to numerous participants in the music ecosystem, including performers, authors, promoters, venue staff, and numerous other stakeholders. But the markup that fans pay on resale tickets, which can be in the hundreds and occasionally thousands of dollars per ticket for high-profile events, is retained solely by the bot operator.

Music industry economics are undoubtedly unique. There are often multiple rights holders for each musical work, a separate rights holder for the sound recording, and rights may be managed, administered and licensed by various stakeholders. One of the benefits of this unique system, however, is that profits are typically reinvested

¹ Obstructed View: What's Blocking New Yorkers from Getting Tickets, the Office of New York State Attorney General Eric T. Schneiderman, available at https://consumermediallc.files.wordpress.com/2016/01/ticket_sales_report.pdf.

in the creation, promotion, marketing, and distribution of more music and prosperity of the industry. For example:

- Online music distribution services, such as Pandora, generate advertising and subscription income from music users, much of which is paid out to rights holders and creators so that there are continued incentives for creations of new works of authorship.
- Artists contract with promoters to set up tours, so that they can make money off ticket sales and merchandise. These promoters keep a portion of ticket sales so that they can continue to plan tours, including finding the right venues and sponsors.
- Internet services and applications, such as BandPage, offer artists a platform, at a low cost, to provide concert listings and sell merchandise, so that they can connect with their fans without having to create its own platform.
- Ticket fees collected by ticket platforms are primarily passed on to venues and promoters. Venues and promoters can then pass on nearly the entire face value of the ticket directly to the artists. This allows venues to keep the lights on and host more acts, and allows artists to continue to tour and provide fans with opportunities to see them live.
- Venues charge ticket prices so that they can pay the artist for performing, compensate songwriters for public performance rights, and generate revenue to keep the doors open, ensuring that more live events can be enjoyed at an affordable price to fans.

The list could go on. These different industry participants depend on each other's success, and music industry stakeholders are strongly committed to reinvesting money from their various revenue streams to foster further creativity and ensure that fans have access to live music. When third parties subvert the cyclical nature of this ecosystem through the use of bots in violation of ticket purchasing agreements, everyone else suffers. Demand for tickets declines, making live concerts less attractive to artists and venues. Songwriters and composers receive less for the performances of their songs, reducing their motivation to create new music.

All the while bot operators line their pockets with ill-gotten gains. As Adam Tudhope, a tour manager for Mumford & Sons, recently observed, "On Mumford & Sons last 16-date arena tour of the U.S. in April 2016 we estimate that \$3m went into the pockets of scalpers and secondary sites[.]"² Ultimately, the use of bots to make mass purchases of tickets in seconds and then resell those tickets at premiums on the secondary market extracts value out of the ticket without contributing to the development of more creative works, meaning it arguably has no positive social value.

It is also important to recognize that live event pricing is not always focused on short-run profits. For example, promoters seek to sell out venues and do not necessarily want to do so at the expense of discriminating amongst fans. Artists also want a broad swathe of their fans to have access to concerts in order to build deeper ties with their fan bases. So ticket prices are often deliberately set below the short-run, profit-maximizing price for the ticket because the performer wants to ensure that fans of all economic means have access to the event, and promoters want to show that they can deliver full houses for performances.

For example, in 2011, during a multi-city, multi-night tour, Prince made "approximately 85 percent" of tickets available for \$25 each, "in an effort to make the show affordable for all of his fans."³ Prince clearly wanted a wide range of fans to attend his shows and intentionally priced them below market as a means to that end. Two years later, Kid Rock priced most of the tickets for his summer concert tour at \$20, protesting high resale prices, he said "[s]omeone has to go out there and fight these high prices and change things up, and I'm lucky enough that I can afford to take a pay cut."⁴ Pearl Jam took similar action in the mid-1990s, when it sought to keep prices under \$20 because the band "remember[ed] what it was like to have little

²Ticket Touts Made \$3M From the Last Mumford & Sons Tour. \$0 Went Back to the Music Industry, Adam Tudhope, Music Business Worldwide, Sept. 6, 2016, available at <http://www.musicbusinessworldwide.com/ticket-touts-made-3m-from-the-last-mumford-sons-tour-0-went-back-to-the-music-industry/>.

³Prince Shows Announced: '21 Nite Stand' In Los Angeles Starts This Week, Most Tickets \$25, Lisa Brenner, LAist, April 11, 2011, available at http://laist.com/2011/04/11/prince_announces_first_three_shows.php

⁴Kid Rocks' \$20 Concert Ticket Plan: Good for Fans, Bad for Scalpers, Time, June 26, 2013, available at <http://business.time.com/2013/06/26/kid-rocks-20-concert-ticket-plan-good-for-fans-bad-for-scalpers/>.

money for concert tickets.”⁵ Artists like these intentionally choose lower prices for live concert tickets because having the long-term commitment of an excited fan base benefits them more over the course of their careers than simply maximizing revenues they can generate on a single concert or tour.

When an artist intentionally keeps ticket prices affordable but bots are utilized to improperly purchase a large percentage of the available tickets at that affordable price, this strategy for building the artist’s fan base (and the loyalty of that fan base) is undermined. The true fan—who is more likely to spend money on merchandise, additional concerts, and future albums—has no opportunity to buy a ticket at a fair and reasonable price. The bot operator is therefore inappropriately extracting money from the system and investing those funds into the development of more sophisticated bots rather than contributing to the creative economy.

When the upside from the resale price is not shared, livelihoods of artists, venues, and promoters are diminished. Fans are harmed through above-market prices, and subsequently become discouraged from even trying to obtain tickets to shows because they are rightly skeptical when there are no tickets available on the primary ticketing platform seconds after tickets go on sale, but hundreds are available on the secondary market for a significant mark-up. When consumers believe the system is rigged against them, their willingness to engage in supporting an artist by attending an event, buying a t-shirt, or purchasing the artist’s music could be significantly undermined.

While Pandora-Ticketfly and other primary ticketing platforms will get paid the same fee regardless of whether a diehard fan or a bot operator purchases the ticket, when the bot wins out over the diehard fan, that fan may not come back in the future to purchase tickets for another show. This undermines the integrity of the ecosystem and jeopardizes the long-term health of the live music industry.

Artists go to great lengths to build relationships with fans and encourage them to attend shows and experience the live event. For a number of artists, touring is their primary source of income—they make money not just on ticket sales, but also on merchandise sold at the venue. If a fan has spent two or three times the face value of a ticket to get in the door, it is unsurprising that they are less likely to purchase merchandise or download songs, for which the artist is directly compensated.

Our goal and hope is that the over 78 million music fans on Pandora, who listen to over 130,000 unique artists each month and who learn about their favorite artists touring via Pandora-Ticketfly have a fair and reasonable chance to buy tickets to see the artists they want to support. When illegal bot operators usurp the market—violating our terms of use and driving up costs to consumers—the ecosystem is jeopardized: the fan becomes discouraged, cynical, and is likely to spend less money to support music.

Pandora-Ticketfly therefore believes that the use of bots in interstate commerce to purchase tickets in violation of control measures used to prohibit their use warrants Congressional action. We greatly appreciate this Committee’s attention to this important issue for the benefit of all stakeholders—most importantly touring musicians and their fans. Pandora-Ticketfly strongly supports the passage of the BOTS Act as an important step toward ensuring that fans have fair access to tickets at the prices chosen by artists and venues, not by bot operators.

I would like to close by thanking you again for your careful consideration of this important issue. Pandora-Ticketfly is ready to provide any information the Committee may need in its deliberation, and I look forward to answering your questions.

Senator MORAN. Thank you all very much.

Let me begin my questioning by making sure I have an understanding of what’s legal and what’s illegal. So in today’s world, is it satisfactory to, quote, “scalp a ticket,” sell it for more than what you paid for it, more than what the price is on the ticket? And I assume that there’s an answer to that question.

Maybe, Commissioner Bowsby, is there something in the Conference that prohibits that from happening? Is it illegal to sell or to buy that ticket? And my guess is that this has a lot to do with state law or perhaps municipal ordinance.

⁵Pearl Jam Musicians Testify on Ticketmaster’s Prices, Reuters, Los Angeles Times, July 1, 1994, available at <http://www.nytimes.com/1994/07/01/arts/pearl-jam-musicians-testify-on-ticketmaster-s-prices.html>.

Mr. BOWLSBY. It does. It's almost entirely governed by state, county, city ordinance, and in some cases university policy. It sometimes limits not whether they can be resold, but where they can be resold. You'll frequently see scalpers across the street from a stadium on private property rather than on state property or private property. So it is governed in some cases, but not well enforced.

That kind of a robust secondary market is really not my concern in this. It has been there for a long time. The market tends to—there tends to be a leavening effect in the marketplace, and I think the creation of an artificial marketplace by purchase of an exorbitant number of tickets is really a different matter that does rise to the level of importance for us, because we have a number of very large events where the participating teams logically get a fairly large number of the tickets, and then the remaining tickets, if bought up by bots, are next to impossible to get at anything close to face value.

Senator MORAN. Let me ask the other witnesses. Does anybody want to add anything to what the Commissioner had to say?

Mr. COHEN. I would just mention that there are a few states that still prohibit ticket resale above face value. The enforcement is very spotty, but there are a few states that still do it, and the location restrictions that the commissioner has mentioned are also in existence.

Senator MORAN. So this legislation is not designed and wouldn't get to anyone who considers that a problem. We're not dealing with that issue. The goal here is to create the circumstance in which you can't acquire a huge magnitude of the tickets that are available and, therefore, control or corner the market with your resale of those tickets.

Does that make sense, Mr. Seller?

Mr. SELLER. It makes exact sense. I'm not here to prevent buying and selling. I'm here to make a level playing field so everybody has the same shot at that ticket.

Senator MORAN. Mr. Seller, you heard Mr. Cohen talk about holdbacks. Maybe you can describe how the tickets for *Hamilton* or one of your other musicals become available. In the venue, there are approximately how many tickets for seats, and what happens?

Mr. SELLER. First, I want to define that I think the issue he is speaking to with holdbacks has more to do with the concert industry than the theater industry.

Senator MORAN. OK.

Mr. SELLER. They're really not the same, and that issue is not an issue in our industry. To put it in perspective, if I have 2,000 seats on sale at the PrivateBank Theater in Chicago where we start previews in two weeks, I might have 130 tickets that are what we call house seats, and those are the tickets that are controlled by the writer of the show, the director, the actors, for their personal use, and those tickets, of course, are sold at face value. So it's less than 10 percent of the house. It's a non-issue in the theater.

Senator MORAN. In your testimony, you indicated that—I don't know if the word, hold-back, applies to this—but you have tickets available for \$10 for students and others, which, in a sense, is—

Mr. SELLER. Well, I guess that would be a hold-back, and I think that hold-back goes with God.

Senator MORAN. Mr. Cohen, before my time expires, you indicated that there ought to be a broader discussion. Who is not at the table? If there was a broader discussion to occur, who needs to be involved in that conversation?

Mr. COHEN. A couple of different people are missing from the table. Our friends at Ticketmaster actually need to be at the table, and I know that they have very strong opinions and are subject to a lot of attacks by bots and would add a lot to the debate, and it would be helpful to have them at the table today, as well as other parts of the industry. The brokers have an absolute need and desire to be at the table to help work this issue out and to be part of the discussion.

Senator MORAN. Mr. Liegl, do you have anything to add or subtract to what Mr. Cohen was indicating about a broader discussion and the broader range of problems with ticket purchases?

Mr. LIEGL. Similar to what Mr. Seller said, our experience at Ticketfly is very different than the New York AG's report, in that total holdbacks tend to total an average of less than 10 percent. So the numbers that we read in the New York AG's report just tend not to be very reflective of our experience with predominantly smaller and medium sized venues.

Senator MORAN. Thank you.

Mr. SELLER. If I may add something, Senator.

Senator MORAN. Please.

Mr. SELLER. Ticketmaster is the vehicle through which we sell all of our *Hamilton* tickets. We have worked very closely on the bots issue over the last 6 months—Ticketmaster and *Hamilton*—and, in fact, we had a huge tranche of tickets that we put on sale February 1. We know that bots purchased over 70 percent of those tickets. And working with Ticketmaster by identifying people that—bad actors that they were able to identify, and, principally, through identifying those actors according to them exceeding the ticket limit, we were able to, in fact, refund over \$5 million of bot-purchased tickets in the month of April.

So we refunded those tickets. We put—or I should say to my friends at Ticketmaster—they put much, much more advanced anti-bot software into their system. We put those tickets back on sale through our system and getting the message out to our fans to try again, and we got our success rate closer to 70 percent in terms of tickets getting into the hands of regular consumers. So Ticketmaster has worked relentlessly to try to combat the bots.

Senator MORAN. Who are the—if you can just sort of—a standard description of the individuals or businesses that are using bots to acquire tickets. Who's the culprit here? How would you describe those people or entities?

Mr. SELLER. I think that there—

Senator MORAN. How many of them are there?

Mr. SELLER. I'm sorry?

Senator MORAN. How many people participate in this kind of market?

Mr. SELLER. Oh, we don't know how many, but some of them are overseas, some of them are in Connecticut, some of them are in

Florida. But we certainly know that there are a variety of companies that each have the software and then give the software away or sell the software to other bad actors who are buying up these tickets. They're like stock brokers. And, by the way, I'm not saying that in a pejorative way. I'm saying they're using, as their form of making a living, the buying and selling of tickets just to try to make a buck.

Senator MORAN. Thank you.

Senator Blumenthal?

Senator BLUMENTHAL. Thanks, Mr. Chairman. With your permission, I'm going to yield to my friend and colleague, Senator Booker, who I understand has a scheduling conflict. He has assured me that he's going to sing his questions.

[Laughter.]

**STATEMENT OF HON. CORY BOOKER,
U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. I feel suddenly silenced. Thank you very much, Senator, for your graciousness. I'm really grateful, and to the Chair and Ranking Member, again, for holding this very important session.

I'm from New Jersey, and there's a champion on this issue, Congressman Bill Pascrell, who has been—for years and years and years before I came to the United States Senate, this is something he was very upset about, often seen with one of New Jersey's patron saints and sons, Bruce Springsteen. So he has a bill in the House that I think some of you are familiar with.

Mr. Cohen, are you familiar with that bill?

Mr. COHEN. Yes.

Senator BOOKER. I think he talks a lot—he really focuses a lot on the issue of holdbacks, and I just want to invoke Congressman Pascrell for a moment and just really press on some of the issues he is concerned with and has enlightened me on. A lot of it has to do with transparency requirements, and I'm curious, Mr. Cohen—these are some of the things that the BOTS Act does not have. Are these important to mitigate the harms that happen to the consumer? Other elements of transparency—can they be helpful?

Mr. COHEN. We think it would be. We absolutely think that the ability to be more transparent in the market would have the greatest impact. We actually don't know how many tickets are held back, and that is one of the things that consumers would actually benefit from knowing. When there is an on-sale, how many tickets have been placed on sale and at what prices? We've worked with Congressman Pascrell for years to try to come up with some solutions and are ready and willing to continue to work on that.

Senator BOOKER. And there's also an element of which—it's embarrassing to folks if they're only putting 10 percent of their tickets on sale. But it actually has a self-correcting behavior—the transparency would.

Mr. COHEN. Well, we have examples of that being true. In Australia, the State of Victoria, Melbourne has a ticket law under which they will only restrict resale if the promoter provides the ticket manifest to the government, and that is then distributed publicly. There are only six events a year in a sports-crazy place

and a concert-crazy place that use the law to do stop or limit resale.

Senator BOOKER. What about the argument against? I mean, shouldn't somebody be able to obscure their behavior when it comes to holdbacks or obscure their behavior in terms of how many tickets they're putting on sale? How do you feel about that argument of just—you know, this is my private venue. If I was performing and singing and rapping, as was indicated as my skill, why couldn't I just hold back those tickets?

Mr. COHEN. And there are ways in which you can do that. That is perfectly fine and doable as we speak today. So the 9:30 Club here in Washington, D.C., uses a credit card entry system for Green Day tickets, and the only people that will get into those shows will be the people that bring their credit card used to purchase the ticket to that show.

Senator BOOKER. Any other elements that Congressman Pascrell is talking about that you think are critical that are not in this bill that you might want to mention?

Mr. COHEN. There's a variety. It's not in my statement, but I'm happy to provide that to the Committee.

Senator BOOKER. OK. Thank you very much.

Mr. Chairman, I'm grateful for the time and allowing me to—especially the Ranking Member allowing me to slip ahead.

Senator MORAN. We appreciate your questioning, and I now call on the Senator from Missouri.

**STATEMENT OF HON. CLAIRE McCASKILL,
U.S. SENATOR FROM MISSOURI**

Senator McCASKILL. Thank you. I want to talk a little bit about prosecution. I think the bill that we're talking about is just civil penalties, and as an old prosecutor, I believe in the deterrent effect of the potential of jail time, especially for people who are committing a crime that is just making them money. At the end of the day, what's motivating people to use bots is just money. They're making a lot of money. In fact, they are stealing money from legitimate customers who want to buy tickets to events.

Since we started this hearing with a quote from *Hamilton*, I will quote the King and say, "And when push comes to shove, I will send a fully armed battalion to remind you of my love." It seems to me a fully armed battalion in this case is one that would include the threat of criminal prosecution.

Are any of you aware of any criminal prosecution that has occurred in any of the 13 states that have laws that could go after bots?

Mr. COHEN. To my understanding, Senator, there are no states until New York in June changed their law to criminalize the use of bots, and there have been no prosecutions yet in New York. We are working with the New York Attorney General, as I know many others in the industry are, to see if there are some that actually can be criminally prosecuted.

I agree with you. I actually think that criminal prosecution is the easiest and most effective way to do it. We'll see it at the state level, and then there's a question as to whether it's appropriate at the Federal level. And in the other 12 states, I know of no cases

that are current or past, but I can't state unequivocally that there are not criminal provisions.

Senator MCCASKILL. Are you aware of any model legislation that has been drafted for states, since—I do have a hard time imagining that U.S. Attorney's offices are going to prioritize prosecuting bots, because, knowing the nature of where crime is prosecuted in this country, typically, crimes like that are not prosecuted at the Federal level. They're more likely prosecuted at the state level. Are you aware of any model state legislation that has been drafted that might assist states in putting these laws on their books?

Mr. COHEN. I do know there has been model legislation drafted. We've participated in drafting model legislation, both specifically narrowly limited to bots and a broader examination of the ticket industry. So we have both forms of model legislation.

Senator MCCASKILL. I don't mean to pick on someone who's not here, but let's talk about the ticket services that are making money coming and going. Let's see if I have this right. Live Nation owns Ticketmaster, correct?

Mr. COHEN. Yes.

Senator MCCASKILL. And they also own TicketNow, correct?

Mr. COHEN. They do.

Senator MCCASKILL. So someone can use a bot and buy a large inventory of tickets to a concert, and then they can turn around and place those tickets for sale on TicketNow, correct?

Mr. COHEN. Yes, and in all fairness, they could place them for sale on our platform as well as other competitors.

Senator MCCASKILL. Correct. I was trying to pick on somebody who wasn't here.

Mr. COHEN. I appreciate that.

[Laughter.]

Senator MCCASKILL. So Live Nation is making money coming and going, correct? They're making money—they're making the fees on the first sale, and then they're turning around and making a fee on the second sale also.

Mr. COHEN. That is true.

Senator MCCASKILL. So why can't you all put in something on your resale that would limit the number of tickets that could be placed for sale?

Mr. COHEN. You can adopt limits, and there are examples in which we have done that. You could run a lottery system to do the original ticket distribution to reduce prices. There are ways in which the bots have been drastically reduced through some technology. What I'm saying is that you could actually do a lot of these things under current law, and that steps are being taken. This is another step that could be useful, but it certainly won't fix the problem.

Senator MCCASKILL. I'm just thinking that there might be ways to fix this problem without government. But there seems to be a financial incentive to sell the tickets twice because the money that your sites make, or that Ticketmaster makes, is, in fact, the fees that they are charging on every ticket they sell, correct?

Mr. COHEN. Well, to be fair, Senator, there's also something to be said for open markets that allow for multiple resales. That's not necessarily a bad thing at all. It's quite common that you may buy

a ticket, not need it, sell it, and then need to go back into the market.

Senator MCCASKILL. No, I've had to do that. I completely understand that. But it also reduces the incentive for the businesses that are making money on the same ticket again to want to be part of solving the problem.

Mr. COHEN. That is true. You could separate out that. We would not advocate that. We advocate that tickets are tickets, that the market would be much healthier with open and free resale in any platform, and then let the market handle it.

Senator MCCASKILL. My time is up, and I don't want to take anybody else's time. I hope somebody asks why are so many—what are all the holdbacks for in the concert industry? Where are they going? I hope somebody answers that before this is over.

Senator MORAN. Does someone want to answer it now?

Senator BLUMENTHAL. I'll ask it since I'm up next. What are all the holdbacks for in the concert industry?

Mr. COHEN. We know that they go to promoters. The ticket manifest determines what percentage will go to the artist, what percentage will go to the promoters, what percentage will go to different sponsors, the arenas, the season ticket holders of the arena, as well as the American Express ticket system Gold Card holders, and presales, and fan clubs.

Senator BLUMENTHAL. Is it fair to say, Mr. Cohen, as your answer, I think, implies, that there may be elements of the industry that are complicit in these kinds of unfair markups and denial of access?

Mr. COHEN. I think that there's a lot more knowledge in the industry that's kept from the general public.

Senator BLUMENTHAL. I take it that's a yes.

Mr. COHEN. That's a yes.

Senator BLUMENTHAL. Thank you. I want to thank you for your candor and thank both you and Mr. Liegl for being here today, as well as the other panelists, and particularly say to Mr. Seller that I think your life story shows us why there is a larger value here in permitting ordinary Americans to come to the theater, to watch football games, to go to the concerts and sporting events. It's the place where the dreams begin and where future stars are inspired to devote not only the inspiration but the perspiration that it takes to get to where you have gone.

Your story also reminds us—and you may not have mentioned it here—but folks who do what you do also have to be ready for failure. You put skin in the game. You take the risk. These folks who prey upon American entertainment and sports are parasites. They have no skin in the game. They simply exploit other people's creativity and hard work, not to mention denying access to the future stars. So I think it makes us passionate about this cause, because it has such wide-ranging ramifications.

So let me begin by asking you about the digital lottery. How does that work? Has it been successful? Are people happy with it?

Mr. SELLER. Excellent. Thank you, Senator, for those kind words. The digital lottery actually started 20 years ago when I produced *Rent* in 1996. I was only 31 years old, and doing my first Broadway

show at 31, I could remember very clearly that only maybe 6 years before that, I couldn't afford a ticket to a Broadway show.

So when my then business partner and I were getting ready to put Rent on sale, we thought, "We have to make tickets cheap for people who can't afford it," and we thought, "We'll do a 20-dollar ticket," and then we thought, "Let's do something even better. We'll put those 20-dollar tickets in the first two rows of the orchestra section." And it was first come, first serve, and you just showed up at the theater. But then the lines became so long that we literally had kids on 41st Street sleeping over every night to try to get those tickets.

Then we went to a live lottery where you came and put your name in a hat, and we would do the live lottery every day at 6 o'clock, 2 hours before the show, and that was wildly successful from 1997 all the way through until basically last summer when we opened *Hamilton*. Our live lotteries on 46th Street were basically closing down 46th Street every single day, and it became a nuisance to the New York City Police, and it became a traffic hazard.

So out of that, last winter, we then reverted to a digital lottery in which anybody can go to our lottery place—I'm sorry I don't remember what it's called. You can all find it if you want to enter for tonight—and the person enters the lottery. They enter their credit card. If they win, the credit card will go through, but they can't show up and pick it up until late afternoon.

So using that system, the bots don't invade that system, because it's a \$10 lottery, and the turnover time is so short in between when you get your ticket and the show that they would never have enough time to go out and resell that ticket.

Senator BLUMENTHAL. So it's basically immune to the kind of—

Mr. SELLER. It has so far been immune to that, because—and there's no time—you know, it happens every day for that day, and that's why that has been effective.

Senator BLUMENTHAL. Let me say to Mr. Cohen that I actually prosecuted these cases when I was Attorney General of the State of Connecticut, and I agree with my colleague, Claire McCaskill, that the U.S. Attorney's Office is not going to undertake them. And I also served as U.S. Attorney in Connecticut, and I think these kinds of laws are very, very important, and may I suggest that your advocacy of them would be important in places like Connecticut, where we had a ticket scalping law which was repealed over my protest in 2007.

So there are interests on the other side here that are immensely powerful politically, because they command a lot of bucks. So the good guys like yourselves should be on the side of laws at the state level, not just here, but at the state level, and I think that is tremendously important.

Let me ask you, Mr. Liegl—I understand that there are limits that are imposed per transaction. Would it be more effective to impose per person limits so that the bot system might be frustrated or impeded?

Mr. LIEGL. That's a great question, Senator. My understanding is that the number of IP addresses that the attacks come in from and just the vast array of credit cards that they have at their dis-

posal—I'm not entirely sure that setting it at the per customer level would make a huge difference in frustrating the bot operators' efforts.

Senator BLUMENTHAL. Why is that?

Mr. LIEGL. My expectation is that they could appear to be multiple different people coming to our site at the same time using different IP addresses, different credit card numbers, or combinations thereof.

Senator BLUMENTHAL. Mr. Cohen, you indicated—and this will be my final question.

Senator MORAN. Take your time.

Senator BLUMENTHAL. You indicated that the change in StubHub's policy with respect to speculative tickets has had an effect. Do you think all speculative tickets should be banned? In other words, should there be disclosure by someone who is selling a ticket without actually having bought it, which now happens—should there be a required disclosure that that seller does not actually have the ticket?

Mr. COHEN. We have found that the law is helpful, but this has been much more of a policy change that is based on the market itself. Under our Fan Protect Guarantee, if you're not able to get into the show, if there's a problem with the ticket, we're going to do everything we can to get you in the show. So we will buy up extra tickets, if necessary, for a high-demand event, where we want to make sure all of our customers get in the show. It doesn't always work. We have to refund in some instances. But the vast majority of time, because of that, our systems are built to prohibit speculative ticketing because they can't be delivered. So if somebody says they are selling a ticket, and we have the information that they have not delivered historically, they're not going to be selling the ticket again.

So it's a very rare instance in which a customer ends up with, quote, "a speculative ticket." We do know it occurs. Bruce Springsteen is a classic example. There are no presales. There's no fan club. When tickets go on sale at 10 a.m. on Friday, they go on sale, the entire house. Now, Bruce Springsteen does structure and have some credit card only entry to restrict resale also. But, in general, all the tickets go on sale at the same time, same price.

So, therefore, if somebody is listing tickets ahead of time, we'll know that those are speculative. But because we don't know how the market is structured, where people release tickets at different times, and people have different rights to tickets in the arenas—season ticket holders have different rights than club seat owners—that information only becomes apparent to us when it's brought to our attention.

Senator BLUMENTHAL. Thank you.

Mr. Chairman, I want to thank you again for having this hearing. I would like to put in the record a number of letters that I received from my constituents about this practice.

Senator MORAN. Without objection, so ordered.

[The information referred to follows:]

CONSTITUENT MAIL

February 8, 2016

Dear Senator Blumenthal,

I am a frequent concertgoer, and I am very frustrated by the fact that ticket resalers always have the best tickets, but even more aggravating, they have tickets on sale, at exaggerated prices, even before the original tickets go on sale! This has to be illegal! As an example, I was trying to purchase tickets to see Ringo Starr at the Bergen PAC in Englewood, NJ on June 7. If you do a Google search for the box office, dozens of sites come up, each with tickets already available for hundreds of dollars. But on the official site of the venue, the concert isn't even listed yet! There are no "official" tickets on sale at this time. And this is happening every time I try to purchase any tickets at any venue! I know many of my friends have been confused by this, and think that they must either pay the higher prices in order to attend a show, or miss the event.

Can you please look into this matter? I know you have much more important problems to deal with, but this means a lot to me.

Thank you so much for your consideration, and thank you for the fantastic job you are doing in the Senate (although I miss you as Attorney General). With best wishes,

January 29, 2016

Subject: Concert tickets

My wife is a big fan of Bruce Springsteen. He is currently on tour. When tickets went on sale in December, I went online to purchase tickets to several of the venues in the Northeast that he is appearing at in Jan. and Feb. I went online at 10am, the time the tickets were going on sale. I could not purchase tickets. on every venue I went the tickets were sold out. How is that possible? Now my wife is able to buy tickets on the secondary market, StubHub, Vivid etc. However the prices are 250 percent or higher. How can this be legal for a \$150 face value ticket be sold for \$450 or more? I can understand a ticket broker making an honest fee. However, the general public is being taking advantage of. Can there be some legislation to stop these companies from making such large profits and hurting the average consumer?

December 6, 2015

Subject: Stub Hub Unfair Trade Practices

How is it possible that Stub Hub is able to advertise the sale of tickets with specific locations for Springsteen's recently announced concerts when sale of tickets to the general public is scheduled for next Friday. Very unfair and will likely result in getting tickets that are above face value if I ultimately choose to go to his shows.

January 6, 2016

Subject: StubHub

Senator Blumenthal,

I am a musician and I would like to share a view about the scalping site StubHub.

The music industry has been in a free fall. Arguments over streaming royalties are a hot topic.

The one place I see as the most egregious devaluation of music in on StubHub. Why should someone who buys 5 tickets to an event they don't plan on going to make \$500 because they have an Amex card and an Internet connection? They don't work their whole lives to learn music, write music and get an audience. They are sitting at home collecting money for something they did nothing for.

A concert goer who spends way over the face value of the ticket then has less money to buy merchandise and spend on concessions at a concert. StubHub makes money, the scalper makes money and the artist suffers.

I propose either a shutdown of this service, especially in states where there are scalping laws. Or a percentage of sale that must go to the artist. Or a cap on the percent that a person can charge, perhaps 10 percent.

These people didn't take risks with their lives to make it in an extremely competitive industry, they simply have a computer and an Internet connection. It's not right and it's devaluing a vital art that every single person on the planet enjoys and needs.

Thank you,

Mr. Blumenthal,

I'm writing to you today as a frustrated constituent. As I'm sure you are aware, access to event tickets via websites like Ticketmaster and Live Nation, are becoming increasingly difficult for people to obtain. The reason for this is due to the "ticket bot" and scalping industry. I have seen news of your colleague, NY Senator Chuck Schumer, trying to address this issue, and I'm hoping that you can help address this issue as well. How is it that these "ticket bots" are allowed to exist, and why is it that Ticketmaster and Live Nation are not held accountable for this activity. Not only that, but if you are unable to acquire said tickets, you have the option of buying from Ticketmaster's very own scalping "resale" website. The whole situation is very suspicious, and I'm interested in knowing if any investigation has been put in place on this practice. I do see that while at one time ticket scalping was illegal in CT, as of 2007, that changed due to the incompetence of former Gov. Jodi Rell. I feel that something needs to be done in regards to this issue. It's not fair for consumers to not have an equal chance to obtain tickets to an event. I would be interested in knowing your stance on this, and if there are any plans in Washington to further Senator Chuck Schumer's proposed legislation. Thank you for your time.

March 26, 2014

Subject: UCONN NCAA Tickets—MSG

Sen. Blumenthal, When you were our AG, didn't you take action against ticket agencies (*i.e.*, StubHub, TicketWorld, etc) for gross increases in originally-priced tickets??? I am sure that you are aware that the UCONN NCAA tickets for MSG are priced from \$489.00 up to \$3,000.00 per ticket. How can the ticket agencies increase the price of these tickets so much?? Why can't we have a law stating that ticket agencies cannot increase the price of a ticket for more than five or ten percent of the value of the ticket? Thank you.

RITA SHERIDAN

September 19, 2014

Hello,

I am 32 years old, married and have 3 children. I have been working full time since I was 16 years old. I have been at my current job for over 14 years. I work from 6 am–5pm, Monday–Friday. This gives me 2 1/2 hours per night that I can see my kids before they go to bed, and 2 days on the weekend to spend with my family. I have always paid my bills, mortgage and taxes on time. After paying all of this, it leaves us with \$200 per week for gas in 2 vehicles and groceries. My 10 year old daughters birthday is in January. All she wants to do is see Ariana Grande in concert, which is at Mohegan Sun in March. I don't know much about her, but I guess she was on Nickelodeon. We have been saving up to purchase a ticket for my wife and daughter. The tickets said they range from \$39.70–\$85.40. I went on Ticketmaster today for a presale that has been going on. Of course it was sold out. Another presale went on at 10am, and that sold out within a minute. I understand these tickets are in high demand. I was looking around online for others and came across StubHub.com. Its a resale ticket site. The tickets now range on their site, from the lowest price of \$233.00–\$938.90. Like I said earlier, I work full time and have always provided for my family with no state assistance, and I rarely spend time with them because I need to work to afford to live in CT. Now because of all these scalpers, I can not get my daughter the birthday present she wants. There is no way I can afford to buy these tickets. This is price gouging and has to be illegal. All these scalpers are purchasing high demand tickets, who have no interest in going to these concerts, just so they can take other peoples hard earned money. This has to be illegal. Something needs to be done.

Thank You,

July 9, 2014

Sir:

I contacted you earlier this year to request that you begin an investigation into TicketMaster's business practices and its monopolistic control of the entertainment ticket industry. I've pasted the full text of my original e-mail below.

I hereby request a response to my concerns. Thank you for your immediate attention to this matter.

Sincerely,

My original e-mail:

I'm writing to you to express my displeasure with Ticketmaster and to strongly request that you open an investigation into their business practices and monopolistic hold on concert venues across the country.

There's no question that Ticketmaster engages in monopolistic behavior. Its take-it-or-leave-it "convenience charges" and "order processing fees" are nothing more than scalping. Most tickets are delivered electronically these days, and the idea that it costs Ticketmaster \$17.25 to e-mail a \$98 ticket (the prices and fees Ticketmaster charged today for a ticket to a Bruce Springsteen show in Uncasville, CT, this May) is beyond belief. I could set up a secure website, sell electronic widgets at \$10,000 a pop, and deliver orders safely to my customers for a fraction of their "convenience" and "processing" costs, and I'm not even an IT expert.

More importantly, I don't understand why so many venues don't offer tickets through any outlet other than Ticketmaster. I don't know what Ticketmaster promises them (or perhaps what the company threatens them with), but the fact that there's no legitimate competition for selling face-value tickets to events at so many venues nationwide is prima facie evidence that a monopoly exists. (Seriously: Name one competitor to Ticketmaster. As a result of its merger with Live Nation, it now controls ticket distribution and pricing across the country.)

Beyond that, Ticketmaster's sales process is horrendous. I tried to purchase two tickets to one of the Springsteen shows this morning. I followed the website's ridiculously ironic "non-scalping" policy (*i.e.*, proving I'm a live person simply by typing proscribed letters into a field), was redirected to the site's "search" page, then kept seeing messages that claimed I was "approximately X minutes" from gaining access to a purchase. The "X minutes" kept changing; it dropped to as low as one minute but more frequently and inexplicably rose from, say, four minutes to seven or eight minutes—without me doing a thing. I have no idea what I could have possibly done to lose my place "in line," but as the minutes ticked by, tickets were gobbled up, and I have to believe that some tickets were sold to people (or, more likely, favored entities) that got "in line" after I did.

(I don't believe every ticket was sold to a person; professional scalpers have ways around Ticketmaster's prehistoric anti-scalping measures, not to mention high-speed computer programs that can apparently cut in front of those of us who might have been "in line" before them. It's now six hours and fifteen minutes after tickets to Springsteen's May 17 show went on sale, and I've found 30 tickets available on ConcertTicketCenter.com, over 200 tickets on VividSeats.com, and 749 tickets available on StubHub.com—all of them at prices considerably higher than face value, even if you factor in Ticketmaster's usurious extra fees. There's no way in hell that every one—or even the majority—of those tickets were bought by individuals who suddenly realized that they aren't actually available to see a show at Mohegan Sun that night.)

As I said, I'm no IT expert, but even I know that it's possible—and easy—to write a code that would allot a certain number of spots to people who could then buy tickets, and at the same time simply inform the rest of the potential buyers that they didn't make the cutoff and to try again later, just in case. Ticketmaster's lies kept me on their site, trying again and again, for an hour, and I doubt I was the only person thus abused. We have "truth in advertising" laws; how about a "truth in selling" law that would protect consumers from this sort of fake teasing? I'm fortunate in that I work from home and could get away with wasting that amount of time (mostly because I'm an exceedingly efficient worker), but I can only imagine how many hours are wasted every day in offices around the country because Ticketmaster refuses to treat its customers with dignity and respect by telling them the truth.

I play by the rules, and so do most people in this country, but too many people—and way too many corporations—don't. As an elected representative, your job is to act in the best interests of your constituents, regardless of whether that might adversely affect any corporation. One surefire way to do that—and to gain and/or boost populist street cred—is to investigate and punish monopolistic, anti-consumer be-

havior by corporations, and I can think of few corporations that profit from abusing a wide range of consumers as much as Ticketmaster does.

As your constituent (and therefore your de facto employer), I demand in no uncertain terms that you investigate Ticketmaster. Please let me know what you plan to do about their consumer abuses.

Thank you for your attention to this matter.

April 1, 2014

Subject: NCAA and UCONN ticket Scam

Your CT constituents need you to look into the ticket scam perpetrated by the NCAA and UConn regarding the Final Four for both Basketball teams. Reasonable pricing for tickets from the NCAA are sold to secondary venues who then charge an astronomical amount—season ticket holders at UConn have been dispatched without having any tickets available after making donations and attending games all season. This is a scam being promoted by both parties and I believe that the general public should have your attention in this matter!!!

December 26, 2012

Subject: On line ticket resellers

Hello,

On line ticket resellers allow speculators to buy season tickets for major sporting events and sell them on these secondary sites such as Stub Hub for 4–5 times (and more) the face value.

I always understood this to be ticket scalping but apparently it's not.

In addition to driving up the prices, these speculators eliminate all availability for these events so one is forced to buy from these scalping websites at exorbitant prices.

Just seems wrong.

April 10, 2012

Subject: Fraudulent ticket sales

Dear Senator Blumenthal:

My wife mentioned that she would like to go see Fiddler on the Roof at the Bushnell. I went online and thought that I was on the Bushnell's website, but I was on the "Tickets in Time" site. I purchased two tickets and my credit card was charged \$700. The tickets have a price of \$65.00 each. Why is this company allowed to stay in business? If you go on the Internet and read some of the comments about Tickets in Time, they all claim that the company is a fraud and that the people were deceived. There is no good reason why a company should be able to charge \$700 for \$130 worth of tickets when they are not providing any service. This company is stealing money that would be spent in restaurants and other businesses and sending it to their headquarters in Nebraska.

Please introduce legislation making it illegal to sell tickets for more than face value, then stop Tickets in Time from operating in Connecticut. Let's keep the money in Connecticut!

April 5, 2012

Subject: Event Ticket Fees

Dear Senator Blumenthal,

I write to ask for your consideration in developing and moving forward legislation which requires event ticket vendors (ticketmaster, livenation, and venues) to disclose the FULL ticket price, inclusive of ludicrous fees that are applied to ticket orders only after consumers near the end of a purchase transaction.

Tickets advertised as \$32.50 each nearly double after a \$11.00 per ticket processing fee, \$4.00 per ticket processing fee, and \$5.95 shipping and handling fee.

I strongly believe that advertising a ticket price as \$32.50 which actually ends up costing the consumer \$47.50 is deceptive.

Thank you for your consideration.

February 12, 2012

Dear Senator Blumenthal,

I am on the Democratic Town Committee in XXXXX and have had the pleasure of meeting you on a few occasions over the last 5 years. As AG, you did an outstanding job protecting consumers—something that we in CT all appreciated.

I have a question about the legality of “ticket brokers.” I am referring to companies that buy up event tickets and then sell them at a profit on the internet.

Case in point, the Beach Boys at the Mohegan Sun Arena in May. I wanted to bring my 10 year old son to his first concert and looked for tickets this morning. The lowest priced seats are no longer available on Ticketmaster. When I Google searched these tickets-various companies-like StubHub-were selling tickets for this event with as high as a 600 percent mark up on them.

How is this legal? If I were to buy up tickets in bunches and then stand out in front of the venue, that would be illegal and I would be called a ‘scalper’. Why do these companies have these privileges? The cheapest tickets for the event were \$55 + service charges—none of which are available through the box office. If I go on StubHub—I can buy them for \$107.

This seems to be taking advantage of consumers at a profit-especially when the tickets for the event only went on sale this past Friday.

Thanks for working hard for the folks in Connecticut—I look forward to your response.

Thanks,

June 17, 2011

Dear Senator Blumenthal,

As a longtime concertgoer, I am frustrated by the current practices of ticket agencies like Ticketmaster. Today, for example, I went online at 10:00, the time tickets went on sale, to purchase tickets for Katy Perry at the XL Center. I checked back several hours later, only to find tickets in a section closer to the stage than the ones I purchased. This calls into question whether ticket agencies like Ticketmaster really are providing the “best available” seats to customers, or more likely are trying to sell their less desirable tickets first. This is a very deceptive practice which should be looked into.

Thank you for your time.

April 15, 2011

Subject: Getting paid twice

Why is it that if I buy a concert or sports ticket, and find I have an extra and try to sell it for face value outside the venue I can have my ticket confiscated or voided or even be fined.

However, if I take that same ticket I can sell it for 5 times face value through StubHub or TicketExchange and that is perfectly legal? I assume it’s because the sports team/venue gets a cut of the sale and therefore is being paid twice for the same seat.

I am simply trying to not lose money and let someone else enjoy the seat. People selling on the secondary websites are trying to make money, encouraged of course by the teams & venues that profit twice. That has always bothered me. Doesn’t that bother you?

Sincerely,

Senator BLUMENTHAL. And to say on behalf of Senator Klobuchar that she had to leave, but she’s going to submit questions for the record, including one to Mr. Seller.

I understand she’s going to submit a question to you, sir, asking when you are going to bring *Hamilton* to Minnesota.

[Laughter.]

Senator BLUMENTHAL. And while she’s at it, I’ll ask the same about Hartford, Connecticut. When is *Hamilton* coming to Hartford? And I hope that when it does, you will have a digital lottery and enable some of our high school students in Connecticut to come see *Hamilton* because I think they will be inspired to pursue ca-

reers such as yours and the great director and writer and cast that has so inspired many Americans.

So thank you very much, Mr. Chairman.

Senator MORAN. You're welcome, Senator Blumenthal. Maybe somebody is sitting in the audience today being inspired by you with the desire to pursue a career of public service.

Senator BLUMENTHAL. Well, they don't have to buy any tickets at scalper prices to be here, to do that. But as flattered as I am, I tend to doubt it, but thank you.

[Laughter.]

Senator MORAN. Let me ask a couple of questions. And, Senator Blumenthal, if you want to follow up with anything else, we're just about ready to conclude this hearing.

But tell me, Mr. Liegl, about technologies existing or those that you think are out there that may address this issue. I understand that CAPTCHA can be circumvented. Is there a technological way of addressing this issue? And, if so, why is it not being implemented?

Mr. LIEGL. That's a great question, Senator. My understanding is that—and our experience has been that any technological measure that has been put in place to date, if it is even successful in the short term, it's not successful in the long term, because the ill-gotten gains that the bot operators derive from their practices get plowed back into investing in new software and technologies that can just circumvent those protections the next time around.

Senator MORAN. The testimony earlier was about IP numbers and credit cards. How are those acquired, and do they belong to somebody? Is there a benefit that accrues to the person who has that identification and credit card, or it's just fraud?

Mr. LIEGL. I think it's the latter, exactly. I think it's just the means through which they keep the shell game going.

Senator MORAN. So this is a result of stolen identity? Information stolen about people can become acquired by those who use bots to acquire tickets?

Mr. LIEGL. I don't know that they're stolen credit cards. I didn't mean to imply that. I think that they may just be—that these bot operators have whatever means at their disposal to amass as many credit cards as possible so that they can keep appearing to be different people.

Mr. SELLERS. If I could add something to that, Senator.

Senator MORAN. Please.

Mr. SELLERS. The bots frequently employ gift cards. So they can go out and get thousands and thousands of gift cards and use those to buy tickets. In our anti-bot movement between *Hamilton* and Ticketmaster, they have identified through software, the behavior of bots so that they can identify them. That is what has proved to be somewhat successful in curbing their behavior.

The problem is that it's an arms race. When the bot actor is making millions and millions of dollars a year by turning over tickets, it is worth his time to continue to employ engineers to create better and better software. So whereas if you went to Ticketmaster a year ago, you saw that in order to try to overcome bots, you would see the cursive letters that you had to enter into that little box. So you'd see an L and, you know, an H, a P, a Q, and then

you'd see a 4, 6, and an 8 or something, and then you'd have to write that in. That was an anti-bot measure. They overcame that very quickly.

Now they're giving you pictures, and they'll show you six pictures and they'll say, "Identify which picture doesn't have a wheel in it" to try to overcome the bot. So they keep employing new systems and then the bots up their game as well. And, frankly, they're just as good at it, so that's why we need the legislation, because the arms race is unending.

Senator MORAN. Thank you.

On the topic of holdbacks, it occurs to me that there may be a consequence of bots actors' behavior that actually encourages the hold-back. Would not those in the performance industry have holdbacks for their fans to try to better ensure that their fans get tickets—their fan club? Is that potentially just a response to the fact that the tickets are being acquired so quickly in such a prevalent manner?

Mr. COHEN. Yes.

Senator MORAN. I mean, my point is that while we talked about—Mr. Cohen, you, in particular, talked about the disadvantages, the wrongness of holdbacks, their consequences. Hold-backs actually may be a result of what we're trying to eliminate here.

Mr. COHEN. Absolutely. And I don't mean to imply that there's anything negative about a hold-back in and of itself. It's much closer to the question of transparency.

Senator MORAN. I guess your point was really about knowing the market—

Mr. COHEN. Right. Is there distribution in which there was actual transparency of where the tickets were going.

Senator MORAN. You indicated, Mr. Cohen, in your testimony about the potential positive uses for bots and to make certain that we didn't sweep away any technology that can play a positive role in the ticketing ecosystem or elsewhere. That's why we went to significant efforts to narrowly draft this legislation so that we didn't get outside the scope and enter into an arena that I'd be very reluctant to go. But are there examples of bots technology that would be advantageous for consumers?

Mr. COHEN. No, we don't see anything in this legislation that would be harmful.

Senator MORAN. But if this legislation was broader, what ought we to be fearful of? What positive benefit to consumers might be eliminated by a broader definition of—

Mr. COHEN. So a classic example would be—

Senator MORAN. What are you worried about?

Mr. COHEN.—if you said it was applicable to all automated systems. There are a lot of bots that—the whole point is the automated system, and human intervention will always overcome it. It's a problem with the CAPTCHA systems. A problem with almost all bots is that humans—it's worth it—there's still going to be people that do 40 people in line. It's not going to go away.

If you force everybody to identify every ticket at the moment of purchase, you have the airline ticket model, where you know who the person is, and that's the only person who can use that ticket.

You can restrict. That means that you will have a different ticket allocation system.

In this instance, we don't think there's any problem as you've drafted the legislation. It works fine for technological mandates. Our concern is much more of an issue, as when you merge it with this House bill, and whether there are criminal provisions in it or not and whether it's narrowly and only limited to ticket bots.

Senator MORAN. Thank you.

Senator Blumenthal?

Senator BLUMENTHAL. I have just another couple of quick questions.

Mr. Cohen, when I was Attorney General, one of the measures that I sought, in the interest of transparency, required the disclosure of the face value of the ticket. What do you think about that idea?

Mr. COHEN. So face value is an important indicator, but it's also one that requires—if you're going to make that a condition of legislation—that you understand and define what face value is. So a convenience fee on every ticket is not considered part of face value, so, therefore, a consumer, in some way, is misled.

In many instances, some of the holdbacks will result in tickets that are priced below the face value and sold to people, and then are resold to them allegedly below face value and are not technically below face value. It's just an imprecise term that requires legislation around it before it becomes part of a statute.

Senator BLUMENTHAL. It may be imprecise, but it is definable.

Mr. COHEN. And that's the key piece. So the statute where it's defined—it's not that difficult to do it. It does require a technological mandate because you're then requiring everybody's systems to display it, and our experience has been it's almost an irrelevant piece of information, in particular, with the advent of dynamic pricing.

So as ticket demand increases or decreases, the classic example being an announcement of the retirement of a player and, therefore, demand for the ticket will go way up, the pricing systems will allow for people to set those prices at different times, so we don't know what the face value is, because it changes. And it will change throughout the seasons in sports. As tickets become more valuable, as we get closer to a pennant race, you'll see ticket prices increase. So face value at a point in time is not necessarily representative. It's not a defined issue and it just needs more legislation around it.

Senator BLUMENTHAL. Mr. Bowsby, speaking about sports, as I'm sure you know, a number of professional sports leagues have established exclusive deals with certain secondary ticket brokers, and they, in effect, force upon buyers nontransferable tickets that can be resold only on that exclusive resale platform. Just to give you an example, some NFL teams require ticket holders to use Ticketmaster's NFL ticket exchange platform, which imposes price floors on the resale of tickets, and that makes it more difficult for sellers to sell tickets to a game they can no longer attend, and for some fans, they are, in effect, prevented from seeing the game in person. I understand major baseball leagues have a similar kind of policy.

You discuss in your testimony your interest in preserving a school's long-term relationship with its alumni and fans. I'm wondering if you have any observation about this practice as it is done by professional sports leagues.

Mr. BOWLSBY. Well, I think it certainly calls into question if you actually own the tickets once you purchase them if there are restrictions on where they can go and how you can dispose of them. It certainly calls into question as to whether those are yours or if they remain the prerogative of the ticket supplier.

You know, as part of our research for this session, we called one of the venue operators in the Dallas-Fort Worth area, and he very quickly went online and identified a broker that had tickets on sale 2 weeks ahead of time for a show that they weren't going to put on sale for 2 weeks. And it really is illustrative of the extent to which there is great confidence in the systems. The bots can get as many tickets as they need to any event they have.

I suppose that the NFL and major league baseball have done this for good and appropriate reasons. But the question I have is do you really own the tickets if you can't do with them what you want.

Senator BLUMENTHAL. Do you own the tickets, and what do fans think about their teams if they engage in these kinds of practices. Thank you.

Again, thank you to our witnesses and thank you, Mr. Chairman.

Senator MORAN. Mr. Blumenthal, thank you very much. We are joined by the Full Committee Chairman, and we're honored by that. But if you hadn't asked that final question, we would have been done.

[Laughter.]

Senator MORAN. But he has arrived, and I recognize my colleague from South Dakota.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

The CHAIRMAN. Darn. Just missed it by a minute. Well, thank you, Mr. Chairman.

Senator BLUMENTHAL. I withdraw my previous question.

[Laughter.]

The CHAIRMAN. I appreciate you holding this hearing on an important topic, and as an avid fan of live music events and sporting events, I certainly appreciate the frustration that many Americans experience when faced with having to spend an exorbitant amount of money on tickets to see their favorite artist live in concert or when they come to town on tour.

We have a new venue in Sioux Falls, South Dakota, so all the big acts are coming through, and I've had a chance to see a lot of them and a lot of sporting events as well. So I appreciate how important this issue is to people all across this country. And I'm pleased, too, because one of the things I haven't seen yet is Hamilton, so I'm glad you were able to bring them to us with your gavel.

But I would like to thank all the witnesses—

Senator BLUMENTHAL. There were tickets available here for \$10 and you missed them. You were late.

The CHAIRMAN. Really? Oh, my gosh. OK.

Senator MORAN. Excuse me just one moment. Mr. Seller is making a note. Now, when I complained that I was unable to see the show, nothing occurred between a pen and paper.

Mr. Chairman, we're delighted you're here. But if you get more than one, please let me know.

[Laughter.]

The CHAIRMAN. I'm sure there's a gift violation in there somewhere, anyway. But I do want to thank all the witnesses for being here, and I really do welcome your views on the phenomenon of ticket bots, and more, I guess, broadly, the health of the live events industry, and would welcome your recommendations with respect to Federal legislation that would protect consumers in this marketplace who seek to purchase tickets.

The bill Senator Moran is sponsoring along with many others is important bipartisan legislation, and I think it will ensure that everyone has a fair shot at seeing their favorite act or team without having to pay an arm and a leg to do so. So it's my hope that this hearing will provide the kind of feedback that will enable us to include this bill on the agenda for the Committee's upcoming markup.

Just a couple of quick questions. Mr. Seller, can you give us an example of the face value of a *Hamilton* ticket as compared to a price on the secondary market?

Mr. SELLER. Yes, Senator. A face value for *Hamilton* is currently \$199 in New York City. In Chicago, it's somewhat less. And if you go right now to StubHub and try to get a ticket for this coming weekend, you will see tickets ranging anywhere from \$650 to \$2,000 each.

The CHAIRMAN. Commissioner, how do ticket bots affect fans' access to collegiate sporting events, and would you say that all sports are affected, or does the phenomena generally affect just basketball and football games?

Mr. BOWLSBY. I think, Senator, it's predominately basketball and football, although we see it somewhat in the college world series and other high-demand ticket situations. But it's primarily in football and men's basketball and to a lesser extent in some of the other sports where culminating activities at the end of the season are hard to get tickets to. And I think we also see it in our bowl environment and in the college football playoff.

The CHAIRMAN. This would be for Mr. Cohen and Mr. Liegl. I'd like to explore the reasoning behind why companies like StubHub and Ticketfly oppose ticket bots. As leading companies in the live events industry representing primary and secondary ticket sellers respectively, it would seem that ticket bots might actually help your bottom lines. For primary ticket issues, for instance, bots move tickets quickly, and in the secondary market, they help create inventory. And, of course, in both cases, they do so at the expense of the ticket buying public, which, again, as we pointed out earlier, makes the consumer experience both more frustrating and expensive.

But in an age where consumers have a variety of entertainment options, at what point does the expense and frustration that ticket bots cause drive consumers away from live entertainment?

Mr. LIEGL. That's a great question. I think that the connection between the fan and the artist—that the artist may be trying to price their tickets below that short-term price maximizing point to really create—establish a connection with their fans and turn them into avid fans of them as a live act.

But I think as bots—as quickly as they might get tickets into certain people's hands, I do think that they frustrate the purpose that the artist might set the tickets below that profit maximizing point in order to really foster that relationship with the fan. That frustration, their inability to get tickets at a reasonable price, really puts at risk that relationship over time.

The CHAIRMAN. Mr. Cohen?

Mr. COHEN. There are two major concerns we have. One is we're in a market where tickets become more and more just tickets, rather than primary tickets or secondary tickets, and the ability for people to buy and sell tickets becomes more generic. And as such, we have more and more bots hitting our own sites and systems and costing us server space cost and it costs us extra funds that we don't need to spend.

The second reason is that it does drive markets in a way in which you've described. Most of the time, nobody cares about bots because they sell through more tickets. One of the great concerns we have on the criminalization piece is the ability for a private actor to make a determination as to whether or not something crossed the line to criminal bot behavior versus just an automated system in which somebody was gathering up the tickets for them.

So there's an identification and a determination made by a private actor that this is an illegal act by somebody else. That's a question as to—there are some actual constitutionality questions around whether you like having private actors make those calls. But, the Senate bill does not have criminalized measures in it, and, therefore, we don't think it would harm any of the potential good uses for bots in which one private actor made a determination that they didn't want to have any resale or any sale to a specific set of people. But, in general, we're for it.

The CHAIRMAN. OK.

Mr. Chairman, I think that covers it. My time has expired. But I appreciate your leadership on this issue, and, hopefully, we can get the bill moving.

But thank you so much to the panel for your observations and insights today. It will be very helpful as we move forward.

Senator MORAN. Mr. Chairman, thank you very much for joining us. I think we really are now ready to conclude the hearing.

Let me ask just briefly, Mr. Cohen—you implied, I think, that there's a difference between the House bill and the Senate bill, and you are satisfied with the Senate bill but not so with the House bill. Is that an accurate—

Mr. COHEN. And I'm not certain of this, but I believe the House bill still has the criminal provision in there, and we would ask the Senate to look at that and make a determination as to whether that's appropriate.

Senator MORAN. Which the Senate bill does not have.

Mr. COHEN. Does not have. Correct.

Senator MORAN. And that, to your knowledge, is the extent of your concerns between the two versions?

Mr. COHEN. That's the primary reason—if there's addition, may I submit that to the record?

Senator MORAN. Please do, yes. Please let us know.

Commissioner, my final question. What teams are you going to add to the Big 12, and I would keep it to myself.

[Laughter.]

Senator BLUMENTHAL. You have a right to remain silent.

Mr. BOWLSBY. Do I cease to be under oath at this point?

Senator MORAN. I've detected that you have a great—I don't mean this in an offensive way—a great political skill, and I have no doubt that you will answer this question without providing me any information.

[Laughter.]

Mr. BOWLSBY. Let me just say that we have the aircraft flying, and we're going to try and land it.

Senator MORAN. We're glad to hear that. Thank you very much. We would like the Big 12 to be the 12.

We are now ready to conclude this hearing. Thank you very much to the panel for their testimony and to my colleagues for joining us.

The hearing record will remain open for 2 weeks. During this time, the Senators are asked to submit any questions for the record. Upon receipt, the witnesses are requested to submit the written answers—you all are requested to submit your written answers to the Committee as soon as possible thereafter.

We conclude this hearing and thank the witnesses. We are adjourned.

[Whereupon, at 3:59 p.m., the hearing was adjourned.]

A P P E N D I X

NETCHOICE

Washington, DC, September 12, 2016

Senator JERRY MORAN, Chairman,
Senator BILL NELSON, Ranking Member,
U.S. Senate Committee on Commerce, Science, and Transportation,
Subcommittee on Consumer Protection, Product Safety, Insurance, and Data
Security,
Washington, DC.

RE: Support for S. 3183—Better Online Ticket Sales Act of 2016 (*BOTS Act of 2016*)

Dear Chairman Moran, Ranking Member Nelson, and members of the Subcommittee:

NetChoice enthusiastically *supports* S. 3183—Better Online Ticket Sales Act of 2016 (BOTS Act) which protects fans and primary and secondary ticket marketplaces from the scourge of unscrupulous ticket brokers using automated ticket buying programs.

While more than a dozen states enacted laws similar to the BOTS Act¹ now is the time for a national standard. The BOTS Act creates reasonable prohibitions that can stop unscrupulous ticket brokers from circumventing online security measures.

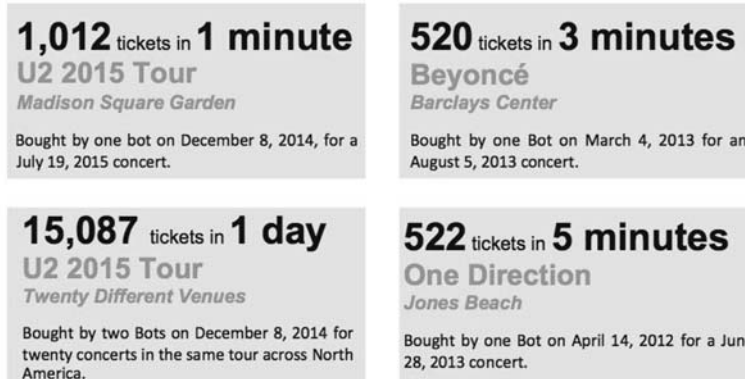
The problem with bots

Usually when a fan purchases a ticket through an online marketplace or primary ticket seller, those websites use access control systems to ensure that the purchaser is a “human being” and not a computer program. That is because these “bots” (a term for the algorithm used to automatically purchase tickets) have enabled unscrupulous ticket brokers to buy thousands of tickets and shutting fans out of shows and events.

A report by the New York Attorney General² found that these bots allowed brokers to grab hundreds of tickets in the first few seconds after tickets go on sale, as seen in the documented examples.

¹For example, California, Florida, Indiana, Maryland, Minnesota, Oregon, Pennsylvania, New Jersey, New York, North Carolina, Tennessee, Vermont, Virginia, and Washington have all passed laws making illegal the practice of intentionally using or selling software to circumvent a security measure, access control system, or other control or measure on a ticket seller’s Internet website that is used by the seller to ensure equitable consumer access to tickets for any given event.

²New York Attorney General Eric T Schneiderman, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*



This has led to just twelve brokers capturing more than \$60-million in tickets as seen in the NY AG report.

This has led the New York AG to call for legislation similar to the BOTS Act.³ Washington Attorney General Bob Ferguson said, “Outlawing ticket bots will keep more fans’ hard-earned money in their pockets, instead of fattening the wallets of scalpers trying to game the system.”⁴

The Washington AG’s bill later passed both Washington houses unanimously and is now law.⁵

Clearly bots prevent consumers from having a fair chance to obtain tickets.

By prohibiting these circumvention techniques, the BOTS Act helps ensure that unscrupulous brokers don’t use “bots” to grab hundreds of tickets the minute they go on sale and help ensure fans have a fair chance to buy tickets.

Fans also face challenges from ticket holdbacks and restricted tickets

While bots are a problem, fans face other challenges when buying, giving-away, selling, and using their tickets.

For example, the NY Attorney General report found that the nearly *half of all tickets are never made available for public purchase*. The report shows that around 54 percent of tickets are withheld from public purchase—with most going to VIPs and fan club insiders.⁶

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

Another challenge that fans face is the growing practice of restricting tickets to prevent fans from giving away or selling their tickets however they may want. Under TicketMaster’s restricted ticket program, fans are required to present their driver’s license and credit cards in order to use their ticket. Fans cannot simply hand a purchased ticket to a friend or family member. Likewise, parents are forced to accompany their teenagers to the event’s doors to show identification of the ticket purchaser, rather than allowing the teen to hand their ticket to the usher.

When forced to use a restricted ticket, fans lose the choice and convenience of easy ticket transferability. And fans can’t use competing secondary markets to buy and sell tickets—sometimes being forced into just one platform for ticket exchange—when competition among exchanges is in the best interests of fans.

We support passage of the BOTS Act. However, bots are just one part in a much larger conversation about ensuring that consumers enjoy the choice and convenience of an open tickets marketplace.

Sincerely,

STEVE DELBIANCO,
Executive Director,
 NetChoice.

³*Id.* at p35.

⁴Press Statement from Washington Attorney General, *Attorney General Seeks to Outlaw Malicious Ticket Bots* (Ja. 23, 2015).

⁵*Id.*

⁶New York Attorney General Eric T Schneiderman, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*

⁷*Id.*

PREPARED STATEMENT OF ANDREW M. SHORE, EXECUTIVE DIRECTOR,
OWNERS' RIGHTS INITIATIVE

The Owners' Rights Initiative (ORI) submits the following statement for the record.

ORI was founded in 2012 by over 20 companies and trade associations in the run-up to the Supreme Court's hearing of *Wiley v. Kirtsaeng* (Kirtsaeng). Kirtsaeng was a foreign national studying in the United States. He began to import and resell legitimate graduate level textbooks to his peers. The First Sale Doctrine is an exception to the Copyright Act that allows the free alienability of goods that, as the title indicates, have gone through a legitimate first sale. It's what allows Goodwill to take donations and sell them in their stores. It enables the local library to lend books. It ensures that anyone can use an e-commerce platform to engage in the robust global free markets.

Wiley sued Kirtsaeng arguing that the First Sale exception to the Copyright Act did not apply extraterritorially and that such goods should be subject to downstream control by the original rights holder, in this case the book's publisher. The Court held that such a rule would create a perverse incentive to produce even more goods overseas as these goods, and not U.S. made goods, would be exempted from the First Sale Doctrine.

ORI supports the legislation before the Committee because it will enable more consumers to access tickets which are becoming more expensive and more difficult to obtain. The use of Bots to purchase tickets has reduced the market of available tickets to sporting events, concerts, and the theater for consumers across the board. Tickets to in-demand events are largely consumed and controlled by the venue, a promoter, the sports league or record label, or those who hold a credit card that provides advance purchase opportunities. For the average person with a few dollars to spare, who wants to take his or her family to an arena event, obtaining tickets is increasingly difficult. Bots make it that much harder.

To be very clear the BOTS Act addresses a very small portion of the ticket ecosystem. It does not address the underlying issue of who owns the ticket and the right to resell it, give it to charity or simply pass it along to a friend. While many of these issues arguably reside in the jurisdiction of other committees, we believe that limiting access to e-commerce platforms alone is enough to bring it within your purview. We encourage the Committee to investigate this and other issues outlined below.

ORI believes that a ticket should be treated like any other good under the First Sale Doctrine. However, ticket sellers insist that the consumer does not have ownership rights, but merely a license to a seat at the event. We find this to be abusive of the licensing exception to the First Sale Doctrine. The exception was designed to protect software where an unauthorized copy could easily be made to look authorized. The secondary buyer might have no knowledge that the software was an unauthorized copy. Tickets do not have that problem because only one person can occupy the seat connected to the ticket at a given event.

There is no legitimate reason for a team, venue or promoter to limit the resale of a ticket. We've heard the argument that piratical tickets are a reason to limit the secondary markets because the purchaser of that ticket is defrauded. But piracy exists across the spectrum of goods and shutting down all secondary markets, libraries and charities would harm tens of millions of Americans who rely on channels that can result in lower costs. Indeed, the secondary market for tickets can, in fact, result in lower costs. Anecdotally there are countless situations where a ticket holder is unable to attend an event at the last minute and may have to sell the ticket below the list price. Some venues actually have a prohibition on those types of sales. In our opinion there is no logic to support this policy. The team was paid precisely the price it demanded and the ticketholder may be unable to sell that ticket at the market price. How does the team benefit by having one less person in the stands, one fewer hot dog purchased, a t-shirt that didn't get sold, parking that wasn't paid for and all of the other purchases a fan makes to support the team and its vast network of employees. We're confident that the hot dog vendor, who walks the aisles carrying a hot, heavy case, relies on full seats to maximize his selling opportunities.

ORI is also concerned that there is limited access to resale platforms for consumers. When reselling tickets to some events there is a requirement that a single platform, such as Ticketmaster, must be used by the seller in order to affect a legitimate transfer. Because we believe that a ticket is "owned" and not "licensed" you should be able to resell that ticket on a platform of your choosing. As long as the ticket is real, it should make no difference what platform the seller uses. The only reason these companies will seek to limit resale to their platform is to capture even more fees from the seller.

The trend towards electronic tickets (e-tickets) also lends itself towards making ticket holders captive of these entities. E-tickets can create convenience for event-goers. No more searching your pockets for a paper ticket. No more worries you left it at home. However, e-tickets whose resale is limited to the platform chosen by the promoter destroys this convenience for the consumer. Imagine a perfect storm where you've purchased expensive concert electronic tickets. Suddenly a child is sick and the babysitter has cancelled just hours before the start of the show. You're limited to resale on the platform where you made the original purchase but there's a glut of tickets waiting to be bought. You can't sell them at a loss and recoup some of your purchase price, nor can you look for another e-commerce platform. In short, because of the simple fact that a ticket is a license and not a good, you cannot avail yourself of the great American free market.

ORI unequivocally supports the BOTS Act. We also believe that the Committee has an obligation to investigate the anti-competitive practices instituted by the various entities that promote events and sell tickets. The practices abuse the statutory term "license" to limit consumer choice and move ticketing completely outside the free market. We appreciate the opportunity to submit our statement for the record.

PREPARED STATEMENT OF GARY ADLER, EXECUTIVE, DIRECTOR AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF TICKET BROKERS

Senator Moran and other esteemed members of the Subcommittee, my name is Gary Adler and I am Executive Director and General Counsel of the National Association of Ticket Brokers ("NATB"). The NATB was formed in 1994 by a group of concerned ticket brokers who desired to establish an industry-wide standard of conduct and to create ethical rules and procedures to protect the public and foster a positive perception of the industry. NATB is comprised of over 200 member companies based primarily in the United States. I commend you for looking at ways to protect consumers, and I thank you for offering me this opportunity to present the NATB's views on the subject.

The use of computer software commonly known as "bots" to rapidly buy up event tickets before fans have a fair chance to do so is detrimental to consumers and the overall ticketing industry. NATB members oppose the use of bots and support efforts to crack down on their use including the BOTS Act of 2016 (S. 3183).

While the goals of the NATB are many, our primary objective is to represent the interests of legitimate ticket brokers by promoting consumer protection and educating the public about the secondary market. One of the foundations of the NATB is assuring the public that when dealing with an NATB member they are working with an honest, reliable broker that will deliver what is promised.

Through self-governance, the NATB provides enhanced protections for ticket-buying consumers. The NATB forbids the use of automated devices that purchase large blocks of tickets and bump average consumers out of virtual waiting lines. Specifically, the NATB Code of Ethics, which is the foundation of the NATB's consumer protection measures and provides a 200 percent guarantee if tickets are not delivered, directly addresses this issue. It provides that each NATB Member shall: "Refrain from acting in a manner that is detrimental to the ticket brokerage industry or the NATB including the use of automated devices/programs for the purchase of tickets or creating the false perception of an affiliation with any promoter, team, theater, venue or box office." A copy of the NATB Code of Ethics is attached hereto.

Having said that, the NATB does not believe that the use of automatic devices can be solely blamed for limited public access to tickets. In fact, NATB launched Protect Ticket Rights initiative (www.ProtectTicketRights.org) in August 2016 to draw attention to efforts underway in many different forms that restrict the purchase, sale and transfer of tickets. For example, the primary seller's practice of holding back tickets is often the cause, or at very least exacerbates the problem. There exists within the entertainment industry a customary practice of withholding a percentage of tickets from public sale. Most of the public is unaware that this practice diminishes the likelihood of obtaining a ticket. A recent report by New York Attorney General Eric Schneiderman revealed only 46 percent of tickets become available when tickets go on sale, leaving less than half to meet demand—which is the reason events sell out too quickly and lead to frustration over supply and market price. (Source: *Obstructed View: New York State*)

In other instances, some performers, promoters and venues use "paperless tickets." The implementers of this practice claim this is to reduce fraud, when in reality it simply restricts the ability for ticketholders to sell or transfer their tickets. In practice, paperless ticketing means showing up in person and waiting in line with the credit card and corresponding ID used to purchase the tickets. Meanwhile recent

experience shows arenas are not equipped to handle paperless tickets resulting in fans being unable to enter events with their tickets only to seek refunds. This exact scenario played out in late July at the T-Mobile Arena in Las Vegas. USA Basketball is refunding some 500 tickets because the paperless system failed and so many fans were unable to get inside for the game. Clearly, this is not about convenience, nor is it about fraud prevention. Fans who do not have access to credit face another challenge altogether under this scheme.

Some sports leagues, teams and primary ticket platforms are requiring ticket buyers to use a single designated resale ticket platform should they wish to resell their tickets with terms (such as minimum resale prices regardless of actual market value) set and controlled by the team. These price minimums regardless of actual market value and charge more fees despite fees already being paid in the initial sale.

These practices serve only to prevent consumers from giving away or selling tickets as they wish, at the price or on the exchange website of their choosing.

In yet another example, some sports teams are cancelling, threatening to cancel, or choosing not to renew accounts of season ticket holders that they believe are reselling tickets, punishing the most vested fans in an effort to have even more control over the primary and secondary ticket markets. This should not be tolerated. Few season ticket holders can attend every game, so it's reasonable they may want to give away or sell some of their tickets. Others may need to resell a portion of their tickets as a means to afford their full ticket package. Whether it's one game's worth of tickets, or every game, the team was paid full price for the season ticket package. Imagine if car dealerships suddenly required car owners to only resell their cars back at the dealership and at minimum prices the dealer sets—it wouldn't take long for the public to demand change. The same goes for buying and reselling real estate. In an open market, if you purchase a ticket, you can do whatever you would like with it. It is the height of hypocrisy that these very teams play in publicly-financed arenas and stadiums yet restrict taxpayers' choice to buy, sell and transfer their tickets as they wish (the way it has always been and should continue to be). NATB believes such restrictions should not be permitted at venues financed in part or whole with public monies.

Even if the primary seller's intent is well meaning, the simple truth is that allowing the primary seller to limit the transferability of tickets denies consumers of any choice, and competition for prices is stifled. If the issuer of a ticket stands in the way of the ticketholder reselling or transferring the ticket as he or she wishes, then perhaps the issuer should be required to offer a full, no strings attached, refund.

In closing, when tickets go on sale, people should be competing with one another, and not ticket-hoarding software, to make a purchase. We commend Senator Moran and the Subcommittee for taking an interest in stopping practices that harm consumers and we hope today's hearing on bots is just the beginning of a broader effort to examine the full set of harmful, anticompetitive issues at play in the overall ticketing system. Bots have gained lots of attention and lawmakers should work to crack down on them. We support this action, but it is important to appreciate that bots are merely one part of a bigger set of problems that begin in the primary ticket market controlled by teams, artists, box offices, and large ticket issuers.

To truly protect consumers, legislation should go beyond just addressing bots, and require greater transparency to protect the secondary resale system where ticket-holders can buy, sell and transfer their tickets free of restrictions. The momentum behind the BOTS Act presents a unique opportunity for Congress to consider more fulsome and needed protections in the ticketing system, and we hope Congress does not limit this opportunity.

Again, thank you for holding this hearing and allowing me to submit the NATB's views on these important issues.

NATIONAL ASSOCIATION OF TICKET BROKERS

CODE OF ETHICS

WHEREAS, the NATIONAL ASSOCIATION OF TICKET BROKERS is a national organization representing firms engaged in the reselling of tickets to entertainment and sporting events;

WHEREAS, the NATIONAL ASSOCIATION OF TICKET BROKERS requires its Members to maintain the highest level of ethics in the marketplace;

WHEREAS, the NATIONAL ASSOCIATION OF TICKET BROKERS has adopted a set of standards and procedures that govern the conduct of Members; and

WHEREAS, the NATIONAL ASSOCIATION OF TICKET BROKERS has memorialized those standards in this document.

IT IS HEREBY AGREED that the following principles are adopted and shall be known as the NATIONAL ASSOCIATION OF TICKET BROKERS CODE OF ETHICS.

EACH MEMBER OF THE NATIONAL ASSOCIATION OF TICKET BROKERS ("NATB") SHALL:

1. Maintain regular business hours from a permanent business address, excluding a post office box or similar address, within the United States or Canada, at which site the resale of tickets will be a principal business activity;
2. Maintain a business telephone, with a published number, at such location;
3. Maintain good character and reputation in the community;
4. Disclose to the purchaser, prior to purchase, the location of the seats represented by the tickets, either orally or by reference to a seating chart; and, if the tickets are not available for immediate access to the purchaser, disclose when the tickets will ship or be available for pick up;
5. Not deceive, mislead, misinform or otherwise misrepresent any information related to the location of the seats represented; including offering or listing for sale any ticket by exact section and row that the member does not have guaranteed assurance of obtaining and delivering of that precise section and row unless the customer agrees at the time of sale, after full disclosure, that he or she will accept comparable or better seats;
6. Not alter tickets sold in any detrimental way;
7. To the best of its ability, ensure the tickets with obstructed or limited view are marked as such, and that purchasers are advised of this fact prior to purchase;
8. Maintain complete and accurate records of all purchases, sales and refunds;
9. At the time an order is taken, the customer must be informed if the order is not guaranteed;
10. If a ticket is guaranteed, and the ticket is not delivered, the Member shall provide a refund equal to 200 percent of the contracted price for each guaranteed ticket not delivered, unless non-delivery is due to causes beyond the reasonable control of the Member including a shipping error, natural disaster, Act of God, labor controversy, civil disturbance, or armed conflict. If a problem occurs and delivery of an exact ticket location becomes impossible, no penalty shall apply if the Member offers the buyer a comparable ticket at the same or lower price as the contracted ticket. In the rare instance that a ticket purchased by a Member for a client is later found to have been stolen, counterfeited or reported lost by the original purchaser, and the Member purchased these tickets in good faith, then the Member shall be responsible only to refund the full contracted price;
11. Maintain a refund, rescheduling and cancellation policy which shall be conspicuously posted at each location where the Member does business;
12. Advise all purchasers of its refund, rescheduling and cancellation policy upon request;
13. Include, at a minimum, the following conditions in its refund and cancellation policy:
 - i. All deposits for tickets not delivered must be refunded within 30 days of the event; and
 - ii. If an event is cancelled, the Member will follow the refund policy of the original seller. This refund may be monetary, a store credit, or a mutually agreed upon ticket exchange.
14. Any refund or other provision set forth herein shall not limit the right of the NATB to enforce any other sanction it deems fit;
15. Conduct business professionally and ethically with customers in compliance with the policies set out above;
16. Act honestly with all other members of the industry, and not deceive, mislead, misinform or otherwise misrepresent to another broker information concerning the availability of tickets or the location of seats;
17. Refrain from acting in a manner that is detrimental to the ticket brokerage industry or the NATB including the use of automated devices/programs for

- the purchase of tickets or creating the false perception of an affiliation with any promoter, team, theater, venue or box office;
18. Display the logo of the NATB, if permitted, on all forms of advertisements, including stationery, business cards, flyers, whether buying or selling tickets;
 19. Pay all undisputed invoices to fellow brokers in the agreed upon time. If after 30 days from the date of the purchase, funds have not been received by the seller, the total amount due must be forwarded to the seller within five calendar days of written notice ("Notice Period") either by bank wire or any form of shipping for which a tracking number for the package is given. After the Notice Period has elapsed a request via telephone and facsimile must be made from the seller to the buyer with a copy to the NATB. At that time a call will be made and a facsimile will be sent to the buyer by the NATB serving notification that the outstanding undisputed invoice must be paid within five days. If the five day period elapses without payment, the Member who has not paid their outstanding invoice will be warned and assessed a \$100 penalty payable to the NATB. More than one violation in any NATB Membership year and the Member in question will be removed from Membership and lose all privileges. If full payment has not been made within two months the Member in question will also be removed from Membership. A one-year period must elapse before a Member removed for violating this policy can seek a new Membership; and
 20. Disclose to the purchaser that the tickets are being purchased in the secondary market and, unless accurate, the broker is not affiliated with Ticketmaster, any promoter, team, theater, venue or box office.

This Code of Ethics for Members of the NATB has been adopted to promote and maintain the highest standards of conduct among its Members. Adherence to the standards cited herein is required for Membership in the NATB and serves to assure public confidence in the integrity and service of ticket brokers.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DEB FISCHER TO
BOB BOWLSBY

Question. Mr. Bowsby, what tools are currently available to universities to try and combat scalping conducted through bots? Have your member institutions been able to take any steps to curtail this activity?

Answer. Senator Fischer, thank you for the question. Let me begin by stating the obvious—the issue of online scalping is notably different when discussing season ticket sales versus the sale of tickets to individual sporting events. Each member institution in the Big 12 Conference employs its own policy for the sale of season tickets and those ticket purchases are not as susceptible to online scalping through bots.

That said, there is considerable interest in longstanding rivalry contests between schools in our conference and end-of-season championship games. The Big 12 Conference, in conjunction with its member institutions, local sports commissions and Convention and Visitors Bureaus, hosts 16 championship events each year. Tickets for most Big 12 Championships are available through the hosting school, with the exception of basketball, baseball and—commencing in 2017—football.

Universities currently have very few tools available to combat online ticket scalping through bots to these high profile games. Some member institutions attempt to curtail unauthorized online ticket sales by partnering with reputable secondary ticket sellers. Others attempt to protect legitimate fans by employing measures like CAPTCHA codes during the online purchase. But, as we have learned during this hearing, these technologies are easily thwarted by today's sophisticated online scalpers and our fans are the ones adversely affected.

I am aware that individual states are attempting to address the issue of bulk purchasing by banning ticket bots. However, this is an issue that goes beyond a State's geographical borders and I believe a Federal solution is in order. I fully support S. 3183, The Better On-line Ticket Sales (BOTS) Act, and I applaud those individuals—such as yourself, Senator Fischer—for taking a leadership role in this matter.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
BOB BOWLSBY

Question 1. I know that there are a number of state laws already on the books that prohibit the use of ticket bots. Could you provide a sense of the efficacy of state laws and elaborate on why we also need a Federal law?

Answer. Senator Nelson, I am aware that a number of individual states—including your home State of Florida—have enacted laws outlawing the use of computer bot software. I applaud each state’s efforts to level the playing field for the sports fan or concertgoer. However, there are a number of challenges to this state-by-state effort as I see it:

1. Consistency in enactment—One state’s laws prohibiting bots may not be consistent with a similar law in a neighboring state. For instance, it is my understanding that the law passed in California authorizes criminal penalties, including possible jail time, while a violator of the law in the State of Washington can “only” face civil sanctions. There is a further issue with states that have no statutes on the books addressing online ticket scalping.
2. Consistency in enforcement—The effectiveness of each state’s laws depends upon aggressive, consistent enforcement by the appropriate state agency.
3. Interstate commerce—Online ticket scalping is an issue that goes beyond a state’s geographical borders and I believe a Federal solution is in order.

Question 2. Are there other ticket-selling or -reselling practices that should be illegal, in addition to the use of ticket bots?

Answer. I am not aware of other ticket-selling or reselling practices that should be addressed by Congress. As I mentioned in my oral testimony, I fully support a robust secondary market for the sale of tickets between willing buyers and sellers which includes the ability of individual ticket holders to profit from market forces if they so choose.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
BOB BOWLSBY

Question. In 2008, Minnesota passed one of the first anti-bot laws. This law takes important steps to restrict the use of ticket bots and several other states have since enacted similar legislation.

Mr. Bowlsby, in your testimony you discuss the need for a Federal solution to address the ticket bot problem. How would the BOTS Act build upon existing state laws to combat ticket bots?

Answer. Senator, the State of Minnesota is to be commended for its aggressive approach in dealing with the issue of bulk purchasing of tickets by computer bots. Online ticket scalping is an unsavory, lucrative business and our fans are the ones who are exploited.

But I believe a Federal solution is needed to supplement the work of individual states. It is wholly appropriate to make the use of bots an unfair and deceptive practice if used to circumvent an Internet website’s ticket access control measures. I also support the provision in the BOTS Act that allows the Federal Trade Commission or state attorneys general to take civil enforcement actions against individuals who employ deceptive practices to thwart the integrity of online ticket purchases. In summary, this legislation complements existing state laws and is a necessary measure to ensure that our country’s college sports fans have access to good tickets at face value.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
JEFFREY SELLER

Question 1. I know that there are a number of state laws already on the books that prohibit the use of ticket bots. Could you provide a sense of the efficacy of state laws and elaborate on why we also need a Federal law?

Answer. State laws are helpful for highlighting the problem but enforcement remains problematic. A number of brokers who employ BOTS operate from states in which the practice is legal and state attorney generals have not yet been effective in prosecuting those breaking individual state laws. Because ticketing crosses so many state lines, a Federal law outlawing BOTS will make it harder for brokers to “go around” individual state laws.

Question 2. Are there other ticket-selling or -reselling practices that should be illegal, in addition to the use of ticket bots?

Answer. “Ticket scalping,” which now hides behind the more professional term, “the secondary market,” is a usurious practice that feeds off artists, producers and consumers. While I idealistically wish it would cease to exist, I don’t think it’s practical or doable through legislation.

Question 3. At the time of the hearing, StubHub had side orchestra tickets for “Hamilton” for that coming Friday for \$2,069 each. That would be a total of \$4,138 for two tickets. Obviously, a main concern about ticket bots is that they squeeze out consumers from getting tickets directly from the primary issuer at face value. Could you describe how the use of ticket bots affects the rest of the “ecosystem”—the artists, the venues, producers, etc.?

Answer. The “ecosystem” of theatre is harmed by usurious prices on the secondary market. First, the revenue above the face value of the ticket does not go to the artists who create the show, the employees who perform the show every night, or the producers and investors who raise the capital to mount the show. These constituencies have an ethical, moral and economic “right” to this revenue that would enable them to reap the rewards for their work. Second, consumers who are forced to buy tickets at such an inflated rate are diverting funds to the secondary market that they could perhaps employ buying tickets to other arts events. Thus, it’s possible that the secondary market for “Hamilton” has resulted in consumers buying fewer tickets to other Broadway shows, hurting the larger theatre business. Theatre profits help to finance more theatre. If those profits are diverted to parasitic brokers, then less dollars are available to producers for the creation of new shows.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
JEFFREY SELLER

Question.

How does a Great-Laked, north state, home of a Prince and some
Gophers, nice, in that we’re always so
Polite, the might of good Midwesterners, by watchfulness
So populous with fanfare
Get Hamilton the musical to tour there?
Mr. Seller, do not throw away Minnesota’s shot.

Thank you. (Mic drop.)

Answer.

(To the tune of “Alexander Hamilton”)

“Minneapolis-St. Paul.

I sure love Minneapolis-St. Paul.

There’s a million fans who’ll see the show.

But you’ll have to wait,

Just you wait. . .”

Or to quote one more Lin-Manuel Miranda song: “Paciencia y Fe.”

We have a plan for Minneapolis that we will be announcing in the coming months.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEB FISCHER TO
TOD COHEN

Question. Mr. Cohen, in your written testimony you talk about the difference between bots that are “critical to the Internet,” and those that are used for anti-competitive behavior such as ticket bots.

a. Can you elaborate on the difference between these types of bots—do they operate differently, or is the difference based on the operator’s intent?

Answer. An inherent characteristic of all bots—regardless of function—is automation; in that sense, they do not operate differently. Rather, the distinguishing characteristic is the function itself. For lack of more precise terminology, there are “good” bots and there are “bad” bots. The former perform functions that are critical to today’s Internet infrastructure, including support for search engines, e-commerce, and news and weather; the latter are malicious and perform functions like steal data, produce spam, and, of course, circumvent ticket purchasing limits.

b. Do you believe the BOTS Act addresses the problem of using bots in an anti-competitive way to purchase tickets, without negatively affecting other consumer-friendly functions of the internet?

Answer. StubHub believes that ticket bots legislation should be highly targeted. We agree with the FTC that liability should only apply with respect to the use of specialized software designed specifically for circumventing ticket controls. Liability should not apply to the use of general purpose software or software that was not designed for such circumvention. We think the BOTS Act, as currently drafted, is sufficiently targeted.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
TOD COHEN

Question 1. I know that there are a number of state laws already on the books that prohibit the use of ticket bots. Could you provide a sense of the efficacy of state laws and elaborate on why we also need a Federal law?

Answer. The use of bots provides an unfair advantage in securing tickets over the average fan. StubHub has supported, and will continue to support, legislation prohibiting the use of bots that is substantive, comprehensive, and inclusive of the range of issues impacting fans' access to tickets.

In the jurisdictions where bots are prohibited (California, Florida, Indiana, Maryland, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Vermont, Virginia and Washington), the laws should be strongly enforced by the appropriate agencies and entities who abuse the law should be penalized.

Question 2. Are there other ticket-selling or -reselling practices that should be illegal, in addition to the use of ticket bots?

Answer. As stated in my testimony, ticket bots are just a single component in a suite of anticompetitive and anti-consumer ticketing practices that operate as restraints of trade in the ticketing market. If Congress wants to fully address inequities in this market, it should do so comprehensively, which includes examining these other issues.

To start, the lack of transparency in the market creates inventory problems, confusion, and frustration for consumers. Ticket holdbacks, which are generally reserved for presales and for industry insiders, mean that a substantial number of tickets are never even available for purchase by the general public. Understanding the primary market's allocation and distribution practices would be helpful.

Second, ticket cancellations, whereby primary ticket providers, venues, and teams cancel—or threaten to cancel—tickets that are sold outside of their preferred or affiliated secondary market platform, are intended to stifle choice and lock consumers into a single ecosystem. This discourages competition in the secondary ticketing market and prohibits consumers from shopping around for lower fees and better service.

Finally, primary ticketing partners will often impose conditions that make it difficult, if not impossible, for the original purchaser to easily transfer the ticket. These non-transferability restrictions are an inconvenience for fans. They prohibit fans from buying tickets as a gift, giving tickets away to friends, family or as donations, and from reselling those tickets on the platform of their choosing if they can no longer attend the event.

Question 3. Given the relative lack of cases brought against ticket bots under existing state laws, I am curious about whether relevant law enforcement agencies aren't getting the information they need to prosecute cases. What are your company's policies for reporting potentially illegal activity? How proactively do you relay suspicious ticket bot activity to relevant law enforcement and state attorneys general?

Answer. Our user agreement states: "If we believe you are abusing StubHub in any way (including, by way of example only, suspected violations of the User Agreement or applicable law, and actions that fail to comply with the letter or spirit of our policies (e.g., by deliberately exploiting any policy loopholes)), we may investigate and you are obligated to cooperate. We may take any action that we deem appropriate in our sole discretion for such abuse. These actions may include, but are not limited to: temporarily or permanently suspending you from using or accessing the Site or Services, removing a listing, requiring you to edit a listing, cancelling a sale, requiring you to send the ticket(s) to the Buyer within a specified time, withholding a payment to you, or charging the payment method on file for amounts you owe us or costs we incur due to your misconduct (including, without limitation, any costs associated with collection of delinquent accounts or chargebacks and any replacement costs). *We reserve the right to report any activity that we believe to be ille-*

gal and we will respond to all inquiries initiated by governmental agencies or as otherwise legally required. In addition, we reserve the right to refuse or terminate our Services to anyone for any reason at our discretion.”

Question 4. What else can be done to ensure that all those involved—primary ticket sellers, secondary marketplaces, venues, artists, and sports teams—are more forthcoming with evidence of potentially illegal ticket bot usage?

Answer. As a representative of the secondary market, I will limit my response to StubHub’s policy above. If we believe that there is illegal activity on our site, we will fully cooperate with the relevant authorities.

Question 5. At the time of the hearing, StubHub had side orchestra tickets for “Hamilton” for that coming Friday for \$2,069 each. That would be a total of \$4,138 for two tickets. Mr. Cohen, does StubHub do anything about this when you see these types of huge price mark-ups?

Answer. StubHub believes that the market should control prices, without interference from any government-imposed restriction. Face value is an arbitrary price agreed upon by just a few parties, including the artist and venue; it typically does not reflect market value. Many entities use the market rate established on the secondary market to adjust prices on the primary market when new tickets are released. In fact, the producers of “Hamilton” have acknowledged market value by raising prices for some of their premium seating to \$849 per ticket.

Prices on StubHub are controlled by market forces and a competitive secondary market. Additionally, approximately half of the tickets on StubHub are sold below face value. Allowing the market to set prices benefits the widest range of consumers by expanding opportunities and options, whether to grab a late ticket to an entertainment option with lower demand at that moment, or pick exactly the right seats at exactly the right showing of exactly the right event, or anything in between.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DEB FISCHER TO
JEREMY LIEGL

Question. Mr. Liegl, it appears that Ticketfly carries tickets for a lot of smaller venues and events that other platforms may not make available. In your experience, does the use of bots harm small venues and the performers who play there more than bigger artists or venues? Or are bots harmful across the board?

Answer. Bots are harmful to venues across the board regardless of size. When bot operators target small and medium venues they can harm an artist’s ability to build a fan base and harm a venue’s ability to make a profit at that show and sell tickets for future shows. And as small and medium venues often serve as the gateway to larger venues, the harm caused early in an artist’s career or to the venues that cater to up and coming artists can be significant.

Artists go to great lengths to build relationships with fans and encourage them to attend shows and experience the live event. Bands will often choose to tour smaller venues and intentionally keep ticket prices affordable to build their fan bases. When bots are utilized to improperly purchase a large percentage of the available tickets at that affordable price, the strategy for building the artist’s fan base (and the loyalty of that fan base) is undermined. If a fan has spent two or three times the face value of a ticket to get in the door, it is unsurprising that they are less likely to spend money on merchandise, additional concerts by the same or other artists, and song downloads, for which artists are directly compensated.

Similarly, small and medium-size venues often operate on slim margins and the difference between operating in the red or the black is often dependent on the amount that fans spend at the venue (*e.g.*, on alcohol, food, etc.). If fans are forced to spend multiples of face value to purchase a ticket, then many fans will likely have less disposable income for merchandise and concessions, directly impacting a venue’s bottom line.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
JEREMY LIEGL

Question 1. I know that there are a number of state laws already on the books that prohibit the use of ticket bots. Could you provide a sense of the efficacy of state laws and elaborate on why we also need a Federal law?

Answer. While it is true that several states have passed laws making it a crime to use bots to hack ticketing sites, those laws are insufficient in that they only apply to individuals situated in those states or over whom those states may exercise jurisdiction. We are a company that operates in all 50 states and the District of Colum-

bia and we have commercial relations with over 1,600 venues and rising. People from any state can buy tickets for any venue in any state. We believe bots are a unique issue because they can't be effectively handled at the state level—they are interstate in nature—and thus, in our view, are best addressed through Federal legislation.

Since the misuse of bots to subvert the security mechanisms and terms of service ticketing platforms put in place is fundamentally unfair to platform operators, the public, and the broader music industry, the BOTS Act provides an especially appropriate solution to this problem by making the use of bots subject to the prohibition of “unfair or deceptive acts or practices” in Section 5 of the Federal Trade Commission Act.

Question 2. Are there other ticket-selling or -reselling practices that should be illegal, in addition to the use of ticket bots?

Answer. There are other issues in the ticketing world that go beyond bots—many of those are made clear in the New York Attorney General's recent report on ticketing (available here: http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf) or will certainly come up in a conversation with a venue owner. While there is no one legislative “silver bullet” that will solve all problems in the live events space for consumers, we view the BOTS Act as an excellent first step in increasing the fairness in the ticket-purchasing industry and one we can hopefully all agree is a great start.

Question 3. In your testimony, you explained that—even though Pandora-Ticketfly and other primary ticket sellers receive the same fee, regardless of whether a ticket is purchased by a fan or a ticket bot—bots that beat out actual consumers undermine the integrity and long-term health of the music and entertainment industry.

However, given the relative lack of cases brought against ticket bots under existing state laws, I am curious about whether relevant law enforcement agencies aren't getting the information they need to prosecute cases.

What are your company's policies for reporting potentially illegal activity? How proactively do you relay suspicious ticket bot activity to relevant law enforcement and state attorneys general?

Answer. We do whatever we can to fight against bots with the resources available and if asked to report potentially illegal activity we would comply to the best of our ability. Efforts to prevent bot attacks are extremely manual and resource intensive, and we often may not know that we have been the subject of a bot attack at the time of the attack. Ticketfly is also a small company of around 200 employees—only around 50 of whom are engineers. With engineer hours at a premium, making bot activities illegal under Federal law would make it easier for us to end their activities.

Question 4. What else can be done to ensure that all those involved—primary ticket sellers, secondary marketplaces, venues, artists, and sports teams—are more forthcoming with evidence of potentially illegal ticket bot usage?

Answer. If asked to report potentially illegal activity, we would be as forthcoming as we can and comply to the best of our ability and in compliance with applicable law.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
JEREMY LIEGL

Question. I am a cosponsor of the Better Online Tickets Sales (BOTS) Act because it protects consumers from the harmful effects of ticket bots which regularly prevent fans from seeing the teams they cheer for or the artists they love. In Minnesota, we have a strong network of smaller venues that offer an intimate experience and give up-and-coming artists a chance to showcase their acts.

Mr. Liegl, we all know that ticket bots are a problem at major concerts and sporting events, but how do ticket bots make it harder for fans to get tickets to the small- and medium-sized venues that Ticketfly serves?

Answer. Bots are harmful to venues across the board regardless of size. When bot operators target small and medium venues they can harm an artist's ability to build a fan base and harm a venue's ability to make a profit at that show and sell tickets for future shows. And as small and medium venues often serve as the gateway to larger venues, the harm caused early in an artist's career or to the venues that cater to up and coming artists can be significant.

Artists go to great lengths to build relationships with fans and encourage them to attend shows and experience the live event. Bands will often choose to tour smaller venues and intentionally keep ticket prices affordable to build their fan bases. When bots are utilized to improperly purchase a large percentage of the available

tickets at that affordable price, the strategy for building the artist's fan base (and the loyalty of that fan base) is undermined. If a fan has spent two or three times the face value of a ticket to get in the door, it is unsurprising that they are less likely to spend money on merchandise, additional concerts by the same or other artists, and song downloads, for which artists are directly compensated.

Similarly, small and medium size venues operate on slim margins and the difference between operating in the red or the black is often dependent on the amount that fans spend at the venue (*e.g.*, on alcohol, food, etc.). If fans are forced to spend multiples of face value to purchase a ticket, then many fans will likely have less disposable income for merchandise and concessions, directly impacting a venue's bottom line.

