

BETTER ON-LINE TICKET SALES ACT OF 2016

SEPTEMBER 9, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 5104]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5104) to prohibit, as an unfair and deceptive act or practice in commerce, the sale or use of certain software to circumvent control measures used by Internet ticket sellers to ensure equitable consumer access to tickets for any given event, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Better On-line Ticket Sales Act of 2016” or the “BOTS Act”.

SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RELATING TO USE OF TICKET ACCESS CIRCUMVENTION SOFTWARE.

(a) **SALE OF SOFTWARE.**—It shall be unlawful for any person to sell or offer to sell, in commerce, any computer software, or part thereof, that—

(1) is primarily designed or produced for the purpose of circumventing a technological measure that limits purchases made via a computerized event ticketing system;

(2) has only limited commercially significant purpose or use other than to circumvent a technological measure that limits purchases made via a computerized event ticketing system; or

(3) is marketed by that person for use in circumventing a technological measure that limits purchases made via a computerized event ticketing system.

(b) **USE OF SOFTWARE.**—It shall be unlawful for any person to use any computer software, or part thereof, described in subsection (a) of this section, to purchase an event ticket via a computerized event ticketing system in violation of the system operator’s posted limits on the sequence or number of transactions, frequency of transactions, or quantity of tickets purchased by a single user of the system, or on the geographic location of any transactions.

(c) **RESALE OF TICKETS.**—It shall be unlawful for any person to engage in the practice of reselling in commerce, event tickets acquired in violation of subsection (b) of this section if the person either—

(1) participated directly in or had the ability to control the conduct in violation of subsection (b); or

(2) knew or should have known that the event tickets were acquired in violation of subsection (b).

(d) **DEFINITIONS.**—As used in this section—

(1) the term “computerized event ticketing system” means a system of selling event tickets, in commerce, via an online interactive computer system that effectively limits the sequence or number of ticket purchase transactions, frequency of ticket purchase transactions, quantity of tickets purchased, or geographic location of any ticket purchase transactions;

(2) the term “event ticket” means a ticket entitling one or more individuals to attend, in person, one or more events to occur on specific dates, times, and geographic locations; and

(3) to “circumvent a technological measure” means to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the computerized event ticketing system operator.

(e) **RULE OF CONSTRUCTION.**—Notwithstanding the prohibitions set forth in subsections (a) and (b), it shall not be unlawful under this section to create or use any computer software, or part thereof, to—

(1) investigate or further the enforcement or defense of any alleged violation of this section; or

(2) engage in research necessary to identify and analyze flaws and vulnerabilities of a computerized event ticketing system, if these research activities are conducted to advance the state of knowledge in the field of computer system security or to assist in the development of computer security products.

(f) **ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.**—A violation of subsection (a), (b), or (c) shall be treated as an unfair and deceptive act or practice in violation of a regulation issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(g) **ENFORCEMENT BY STATES.**—

(1) **AUTHORIZATION.**—Subject to paragraph (2), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by a violation of subsection (a), (b), or (c), the attorney general of the State may, as *parens patriae*, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

(2) **RIGHTS OF FEDERAL TRADE COMMISSION.**—

(A) **NOTICE TO FTC.**—

(i) **IN GENERAL.**—Except as provided in clause (iii), the attorney general of a State shall notify the Federal Trade Commission in writing that the attorney general intends to bring a civil action under paragraph (1) before initiating the civil action against a person for a violation of subsection (a), (b), or (c).

(ii) CONTENTS.—The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

(iii) EXCEPTION.—If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

(B) INTERVENTION BY THE FTC.—The Federal Trade Commission may—

(i) intervene in any civil action brought by the attorney general of a State under paragraph (1); and

(ii) upon intervening, be heard on all matters arising in the civil action, and file petitions for appeal of a decision in the civil action.

(3) PENDING ACTION BY THE FEDERAL TRADE COMMISSION.—If the Federal Trade Commission institutes a civil action or an administrative action with respect to a violation of subsection (a), (b), or (c), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

PURPOSE AND SUMMARY

The purpose of the Better On-line Ticket Sales (BOTS) Act of 2016 (H.R. 5104) is to prevent any person from selling or using software that circumvents the safeguards event ticket sellers put in place to ensure equitable access to tickets.

H.R. 5104 would prohibit the sale or use of any computer software that (1) is primarily designed to circumvent measures to limit event ticket purchases, (2) has only limited commercial purposes aside from such circumvention, or (3) is marketed for use in such circumvention. The legislation also prohibits the purchase of any event ticket in violation of the ticket seller's posted ticket sale limits. Finally, H.R. 5104 prohibits the resale of tickets purchased initially in violation of H.R. 5104, where the reseller knew or should have known that the tickets were acquired in violation of H.R. 5104 or where the reseller participated directly in or had the ability to control such acquisition.

H.R. 5104 contains a rule of construction clarifying that the prohibitions in the legislation do not render investigations of a violation of H.R. 5104 or certain research activities unlawful.

The Federal Trade Commission (FTC) is the primary enforcer of H.R. 5104. Subject to certain restraints outlined in the legislation, a State attorney general may also enforce the provisions of H.R. 5104 if the State attorney general has reason to believe that an interest of the residents of the State has been threatened or adversely affected by a violation of H.R. 5104. State attorneys general would be required to notify the FTC in writing when they bring civil actions under the statute, unless it is infeasible to do so, and are precluded from State enforcement actions during the pendency of an FTC enforcement action involving the same violation and a common defendant.

BACKGROUND AND NEED FOR LEGISLATION

The market for live event tickets has encountered challenges from ticket brokers who use software to circumvent the safeguards primary ticket sellers use to limit ticket purchases. This software is commonly referred to as “ticket bots.” Ticket bots perform different functions, but generally operate by (1) automatically and continuously checking ticket seller websites for ticket releases; (2) automatically reserving and displaying available tickets for the

human operator; (3) automatically buying tickets using as many names, addresses, and credit card numbers as necessary to appear to be individual ticket buyers; and (4) defeating anti-ticket bot security measures such as Completely Automated Public Turing (CAPTCHA) tests.¹

In many cases, primary ticket sellers limit purchases by buyers. For example, ticket sellers often make tickets available to the general public on a set date and time² and may limit the number of tickets to four or six per purchasing party.³ These measures are to ensure that ticket buyers have an equitable chance of acquiring tickets to the live event, which are necessarily finite in number. Ticket sellers also generally prohibit the use of automated software to purchase bulk tickets, which would defeat the technical safeguards to ticket purchase limitations. For example, Ticketmaster prohibits the “[u]se of any automated software or computer system to search for, reserve, buy or otherwise obtain tickets . . . available on the Site. . . .”⁴

Ticket brokers’ use of ticket bots has frustrated the intentions of performers⁵ and other ticket sellers⁶ to make tickets available equitably and at reasonable prices. Primary ticket sellers have estimated that 60 percent of the most desirable tickets for some shows are obtained by ticket bots.⁷ Ticket bots have also enabled brokers to purchase and then sell large swaths of event tickets on the secondary market at exorbitant prices. One study finds that, on average, brokers mark up the price of tickets on the secondary market by 49 percent of the primary ticket seller’s price.⁸ The ability to buy massive amounts of tickets against primary ticket sellers’ terms and technical controls, however, has enabled them to mark up the price by over 1,000 percent.⁹

Several States have enacted laws to combat ticket bots.¹⁰ In addition, New York and Connecticut have each conducted reports of

¹Eric T. Schneidermann, New York State Attorney Gen., Obstructed View: What’s Blocking New Yorkers From Getting Tickets 15–16 (Jan. 2016), available at http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf [New York Study].

²Letter from William M. Rubenstein, Commissioner of Consumer Protection, State of Connecticut, to Hon. Paul Doyle, State Senator, Co-Chair, General Law Committee, State of Connecticut, et al. 4 (Feb. 22, 2012), available at http://www.ct.gov/dcp/lib/dcp/pdf/publications/final_ticket_letter.pdf (“The date on which tickets will be available to all members of the public is known as the “public on-sale date.”) [Connecticut Report].

³*Legislative Hearing on 17 FTC Bills Before the Subcomm. on Commerce, Manufacturing, and Trade of the H. Comm. on Energy and Commerce*, 114th Cong. 2 (2016) (statement of Gil Genn, Maryland Sports & Entertainment Industry Coalition) (“ . . . for most live entertainment events there is a restriction on the number of seats one purchaser can buy—usually between 4 and 8 tickets.”) [Genn Testimony].

⁴Ticketmaster, Terms of Use, <http://www.ticketmaster.com/h/terms.html> (last visited Aug. 17, 2016).

⁵See, e.g., Lin-Manuel Miranda, “Stop the Bots From Killing Broadway,” N.Y. Times (June 7, 2016), available at <http://www.nytimes.com/2016/06/07/opinion/stop-the-bots-from-killing-broadway.html>; Patrick Doyle, “Eric Church on Scalpers, Bro-Country and Blake Shelton Scandal,” Rolling Stone (June 11, 2014), available at <http://www.rollingstone.com/music/news/eric-church-on-scalpers-bro-country-and-blake-shelton-scandal-20140611>.

⁶Genn Testimony, at 2 (“It is unfair to the younger fans who have discovered these legends to have to pay exorbitant prices to secondary ticket sellers when they are also concerned about their first job salary, saving for college or even paying-off student loans, and real-life expenses.”).

⁷Ben Sisario, “Concert Industry Struggles With ‘Bots’ That Siphon Off Tickets,” N.Y. Times (May 26, 2013), available at <http://www.nytimes.com/2013/05/27/business/media/bots-that-siphon-off-tickets-frustrate-concert-promoters.html>.

⁸New York Study at 4.

⁹*Id.*

¹⁰Shawntaye Hopkins, *Blame it on the Bots: States Act to Ban Ticket-Buying Software*, The Current State (Council of State Gov’ts), Jul.–Aug. 2016 available at http://www.csg.org/pubs/capitolideas/eneus/cs53_1.aspx (“about a dozen states have laws that ban ticket bots. . . .”).

the market for event tickets in those States.¹¹ These reports focus more broadly on the ticket market as a whole, but include some data on ticket bots. H.R. 5104 would encourage the FTC to put its resources toward combating the problem of ticket bots and provide an enforcement tool for States by authorizing State attorneys general to enforce the Federal statute.

HEARINGS

The Subcommittee on Commerce, Manufacturing, and Trade held a hearing on H.R. 5104, along with several other bills, on May 24, 2016. The Subcommittee received testimony from:

- Edith Ramirez, Chairwoman, Federal Trade Commission;
- Joshua D. Wright, University Professor, Antonin Scalia Law School at George Mason University;
- Geoffrey Manne, Founder and Executive Director, International Center for Law and Economics;
- Daniel Castro, Vice President, Information Technology and Innovation Foundation;
- Abigail Slater, General Counsel, Internet Association;
- Michael Best, Senior Policy Advocate, Consumer Federation of America;
- David Vladeck, Professor of Law, Georgetown Law;
- Richard Hendrickson, President and CEO, Lifetime Products;
- Greg O'Shanick, President and Medical Director, Center for Neurorehabilitation Services;
- Stephen Shur, President, Travel Technology Association;
- Robert Arrington, President, National Funeral Directors Association;
- John Breyault, Vice President of Public Policy, Telecommunications and Fraud, National Consumers League;
- Gil Genn, Maryland Sports and Entertainment Industry Coalition; and
- Jamie Pena, Vice President, Revenue Strategy and Global Distribution, Omni Hotels and Resorts.

COMMITTEE CONSIDERATION

On June 8 and 9, 2016, the Subcommittee on Commerce, Manufacturing, and Trade met in open markup session and forwarded H.R. 5104, as amended, to the full Committee by a voice vote. On July 12, 13, and 14, 2016, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 5104 reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No other recorded votes were requested. The following reflects the record votes taken during the Committee consideration:

¹¹See New York Study; Connecticut Report.

**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 72**

BILL: H.R. 5104, "Better On-line Tickets Sales Act" or the "BOTS Act"

AMENDMENT: An amendment offered by Ms. Schakowsky, No. 3, to provide that any person who suffers injury as a result of another person's violation of subsection (a) (Sale of Software), (b) (Use of Software), or (c) (Resale of Tickets), may bring a civil action against such person in a United States district court and may recover from such person damages for such injury plus \$1,000 for each distinct sale or use of software in violation of subsection (a) or (b) or each sale of a ticket sold in violation of subsection (c) that caused such injury, and reasonable attorneys' fees and costs.

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas and 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield				Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel			
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers		X		Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo				Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bucshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					

07/13/2016

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 5104 is to prevent any person from selling or using software that circumvents the safeguards event ticket sellers put in place to ensure equitable access to tickets.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5104 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 5104 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 9, 2016.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5104, the Better On-line Ticket Sales Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

MARK P. HADLEY,
(For Keith Hall, *Director*).

Enclosure.

H.R. 5104—Better On-line Ticket Sales Act of 2016

H.R. 5104 would prohibit the sale or use of software that circumvents technology used by ticket sellers to prevent mass ticket purchases online. The bill also would prohibit the resale of tickets obtained in that manner. The Federal Trade Commission (FTC) would enforce the proposed prohibition.

Based on information from the FTC about its current enforcement capabilities, CBO estimates that increased costs related to

monitoring and enforcing the new prohibitions established by H.R. 5104 would total less than \$500,000 per year; such spending would be subject to the availability of appropriated funds.

In addition, CBO estimates that enacting H.R. 5104 would increase federal revenues from civil penalties imposed to enforce the new prohibition; therefore, pay-as-you-go procedures apply. However, CBO estimates that those collections would be insignificant because of the small number of cases that the agency would probably pursue. Enacting the bill would not affect direct spending.

CBO estimates that enacting H.R. 5104 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5104 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 5104 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 5104 specifically directs to be completed no rulemakings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the “Better Online Ticket Sales Act of 2016” or the “BOTS Act.”

Section 2. Unfair and deceptive acts and practices relating to use of ticket access circumvention software

This section makes it unlawful for any person to sell or offer to sell software that (1) is primarily designed or produced to circumvent technological measures limiting purchases made via computerized event ticketing system; (2) has only limited commercially significant purpose or use other than for such circumvention; or (3) is marketed by a person as software intended for such circumvention. The section further makes it unlawful to use such software in violation of a ticket seller's posted ticket purchasing rules regarding the sequence, number, or frequency of transactions, quantity of tickets purchased by a single user, or on the geographic location of transactions. The section also renders it unlawful for any person to sell any ticket that has been obtained by that person, or another, using circumvention software, if the secondary seller either participated directly or had the ability to control the unlawful conduct or knew or should have known that the tickets were obtained in violation of the section.

This section further provides a rule of construction clarifying that it is not unlawful to use circumvention software to investigate or further the enforcement or defense of any alleged violation of this section; or engage in research necessary to identify and analyze flaws and vulnerabilities. This section sets forth that a violation of this Act will be treated as an unfair or deceptive act or practice under the Federal Trade Commission Act and authorizes State attorneys general to enforce its provisions.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

