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## PRIVACY AND CONSUMER PROTECTION AND ARTS, ENTERTAINMENT, SPORTS, AND TOURISM

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### JOINT INFORMATIONAL HEARING PRIVACY AND CONSUMER PROTECTION COMMITTEE AND ARTS, ENTERTAINMENT, SPORTS, AND TOURISM COMMITTEE

### ONLINE TICKETING AND ACCESS TO LIVE ENTERTAINMENT

February 13, 2024  
1:30 p.m.  
Capitol, Room 444

### BACKGROUND PAPER

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## I. INTRODUCTION

Beyoncé and Taylor Swift have dominated entertainment news over the last year. Both have been on world tours that have been so popular that they have single-handedly boosted the economy by billions of dollars.<sup>12</sup> However, the popularity of their tours has also brought to the forefront the fact that public frustration with the online ticket-buying experience continues to grow. Difficulties in the online sales of tickets for each performer's concerts drew significant press attention.<sup>3</sup> In addition, the U.S. Department of Justice has since opened an antitrust probe into Live Nation Entertainment, which is simultaneously

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<sup>1</sup> Janna Smialek. "Make the Whole Place Shimmer: America Spends Big for Beyoncé and Taylor Swift," *The New York Times* (Aug. 11, 2023) available at <https://www.nytimes.com/2023/08/11/business/beyonce-taylor-swift-tour-spending.html>.

<sup>2</sup> The New York Times reported in August that both tours were expected to generate over \$4.5 billion each

<sup>3</sup> For example see <https://www.npr.org/2023/01/24/1150942804/taylor-swift-ticketmaster-senate-hearing-live-nation> and <https://fortune.com/2022/12/05/taylor-swift-fans-sue-ticketmaster/>.

the country's largest online ticket retailer, an owner of many live entertainment venues, and a manager for numerous touring musicians.<sup>4</sup> Finally, on January 24, 2023, the U.S. Senate Judiciary Committee held a hearing entitled, "That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment." Clearly, government officials are hearing the public's frustration.

Questions of whether Live Nation Entertainment holds a monopoly on the live entertainment market, and whether or not meaningful antitrust action is taken against the company, are under the purview of the federal government. But there is much that can be done at the state level to improve the ticket buying experience for Californians. The purpose of this hearing is to better understand the current ticket buying ecosystem and hear directly from consumers, academic experts, and businesses working within that system to provide a foundation for the Legislature to continue considering appropriate policy changes. Toward that end, the hearing includes representatives from on-sale and resale ticket platforms, a venue operator and a booking agent, all of whom have spent years working successfully in the entertainment industry.<sup>5</sup>

*Primary questions.* Is the current live entertainment ticket ecosystem working for Californians who want to purchase a ticket to live entertainment at a reasonable price? Does it offer sufficient protection against deceptive ticket selling practices and counterfeit tickets? Finally, is there sufficient flexibility afforded individual ticket holders to transfer or resell their tickets in the event that they are unable to use them?

## II. THE IMPORTANCE OF ACCESS TO LIVE PERFORMING ARTS AND SPORTS

Access to live concerts, entertainment, and professional sporting events brings a great deal of value to Californians. According to research from Oxford Economics, the live music and entertainment industry generated a total economic impact of \$12.3 billion in the state in 2019, which supported 83,456 total jobs and generated \$675 million in total state and local tax revenues.<sup>6</sup> Since the tapering off of the most severe lockdowns and restrictions imposed during the COVID-19 pandemic, the demand for live entertainment has been massive, and cities within the state have reaped the economic benefits. For example, the July 2023 Taylor Swift concerts in Santa Clara are estimated to have had 60,000 attendees who together spent an estimated \$19 million on lodging, food, and other entertainment. Over the course of two night event, the area's economy was boosted by \$33.4 million.<sup>7</sup> Ms. Swift's Eras Tour included six sold-out concerts in Los Angeles a month later, and was estimated to have brought \$320 million to the area's gross domestic product through direct, indirect, and induced impacts.<sup>8</sup> Additionally, eight of

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<sup>4</sup> Sisco, "DOJ probing Live Nation and Ticketmaster for antitrust violations", *Politico* (Nov. 18, 2022), available at <https://www.politico.com/news/2022/11/18/live-nation-ticketmaster-antitrust-violations-taylor-swift-00069564>.

<sup>5</sup> Missing from the hearing, but nevertheless critical components of the ecosystem, are professional sports teams and ticket brokers. Despite the efforts of the committee to find representatives from these sectors, all that were invited declined to participate in today's discussion.

<sup>6</sup> Oxford Economics, *The Concerts and Live Entertainment Industry: A Significant Economic Engine* (Jul. 26, 2021) available at <https://www.oxfordeconomics.com/resource/livemusic/>.

<sup>7</sup> Ben Irwin, "Taylor Swift boosted Silicon Valley economy by \$33 million" *Fox KTVU2* (Aug. 14, 2023) available at <https://www.ktvu.com/news/taylor-swift-boosted-silicon-valley-economy-by-33-million>.

<sup>8</sup> Center for Jobs and the Economy. *Special Report: Taylor Swift's Impact on the Economy in Los Angeles County*, available at <https://centerforjobs.org/ca/special-reports/special-report-taylor-swifts-impact-on-the-economy-in-los-angeles-county#:~:text=Based%20on%20the%20assumptions%20below,local%20earnings%20by%20%24160%20million.>

the world's top 50 most valuable sports teams call California home, and those teams attract fans from areas all around the world.<sup>9</sup>

Some of the economic benefits of live concerts and sporting events include:

- *Ticket Sales and Merchandise.* Revenue generated from ticket sales, luxury suites, concessions, stadium advertising, and sales of artist and team merchandise directly benefits the state's economy.
- *Tourism and Hospitality.* Larger events can attract tourists from both within the United States and around the world. These visitors spend money on accommodations, dining, transportation, and other related expenses. California has hosted major sporting events, such as the Super Bowl, World Series, the NBA Finals, and will host the upcoming 2026 FIFA World Cup, the 2027 Super Bowl, and the 2028 Olympics and Paralympics Games in Los Angeles.
- *Local Businesses.* Concert venues often support local businesses by providing them with opportunities to sell food, beverages, merchandise, and by increasing foot traffic for nearby retail stores.
- *Job Creation.* These events create job opportunities, both directly at stadiums with personnel and event staff, and indirectly by increasing business for restaurants, hotels, and transportation services.

In addition to the economic benefits, there are many social and emotional upsides for individuals who are able to experience live events and sports, including positive impacts to well-being and happiness.

Social and emotional benefits include:

- *Building Communities.* Live events often serve as a focal point for communities to come together, by creating a shared sense of identity, belonging, and social cohesion among attendees with similar interests.
- *Fostering Inclusivity.* Fans of popular artists and sports teams can have very diverse backgrounds. By fostering a sense of inclusivity and breaking down societal barriers, people of various ages, ethnicities, and backgrounds can share in the enjoyment of these events.
- *Entertainment and Relaxation.* Emotional engagement with musical performances and sports can reduce stress and promote mental well-being. The exciting and positive experiences at sporting events or concerts can trigger the release of endorphins, which are often associated with increased happiness and a positive emotional state.
- *Health Benefits.* Listening to music lowers the hormone cortisol, which causes feelings of stress and anxiety, and can lead to decreases in heart rate, blood pressure and respiratory rate.<sup>10</sup> According to one study, "It is of note that none of these biological changes were associated with age, musical experience or familiarity with the music being performed. This suggests there is a universal

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<sup>9</sup>Mike Ozanian. "The NFL remains the most dominant league financially, but it's not the fastest-growing sport in terms of value." *Forbes* (Sep. 8, 2023) available at <https://www.forbes.com/sites/mikeozanian/2023/09/08/the-worlds-50-most-valuable-sports-teams-2023/?sh=52ca533d2b44>.

<sup>10</sup>Fancourt D, Williamon A, "Attending a concert reduces glucocorticoids, progesterone and the cortisol/DHEA ratio", *Public Health* (2016) available at <http://dx.doi.org/10.1016/j.puhe.2015.12.005>.

response to concert attendance among audience members.” Also, in addition to directly contributing to more restful and consistent sleep patterns, music is used to treat a range of mental illnesses, including depression.<sup>11</sup>

- *Lasting Memories.* Attending live events often leads to cherished memories, which can have a positive impact on an individual's emotional well-being and provide a source of nostalgia in the future.

People are very passionate about their fandom and the events that they want to attend, and devote significant time and resources to see their favorite performers or sports teams. Although it can be argued that it is a luxury to have access to these types of events, and that they are not as essential as access to amenities such as food, water, housing, and education, there is no question that live entertainment can have a huge, positive impact on people and the communities they live in.

Access to live entertainment also has value for inspiring the next generations of artists, athletes, and performers in the state. It encourages creativity and self-expression not only for the performers and athletes, but for the audience and fans as well. Witnessing talented individuals in person can ignite artistic aspirations and may influence the audience to explore their own musical or athletic abilities. This inspiration empowers individuals and can become a catalyst for personal growth, exploring potential, and fosters a sense of empowerment. For youth, exposure to live entertainment could lead to participation in extracurricular activities, which promotes greater levels of academic achievement, self-esteem, and resiliency.<sup>12</sup>

### III. THE TICKET BUYING EXPERIENCE

Gone are the days of camping out overnight in line at a box office hoping to get tickets to a Van Halen, Madonna, or Michael Jackson concert. In that pre-internet era, if overnight camping was not an option, a person could try calling the box office over and over hoping to break through the busy signal to get an actual person who can sell tickets over the phone, in the hopes that the tickets have not sold out already. If those efforts failed, a fan could listen to their favorite radio station for hours at a time hoping to score free tickets through a call-in giveaway contest. Finally, if nothing else worked and the day of the concert arrived, they could take the chance of going to the concert venue in the hopes of finding a scalper standing in the parking lot, or near the entrance to the venue, holding up a couple of tickets for sale at a premium cash price. Of course, this last-ditch effort meant that fans ran the risk of being ripped off by a scalper selling fake tickets. But diehard fans often considered it a chance worth taking.

*Buying tickets online.* While some things remain unchanged for the music fan, technology and the internet have profoundly changed the experience of ticket buying. The live entertainment ticket ecosystem is now simultaneously much more complicated and much more convenient. Largely gone are the days of box offices and paper tickets. Now, in theory, when tickets go on sale for a concert, fans go to the online ticket platform that is selling those tickets (often Ticketmaster) to purchase them and

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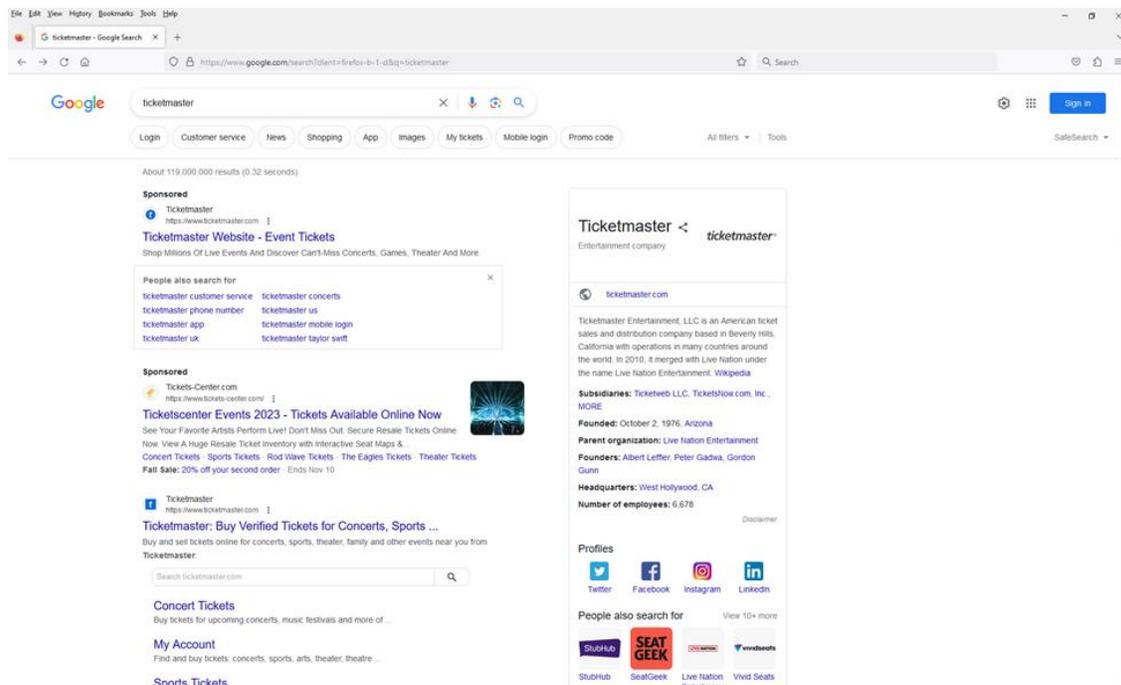
<sup>11</sup> Leubner D, Hinterberger T. Reviewing the Effectiveness of Music Interventions in Treating Depression. *Front Psychol.* 2017 Jul 7;8:1109. doi: 10.3389/fpsyg.2017.01109. PMID: 28736539; PMCID: PMC5500733.

<sup>12</sup> Marion Terry, Editor. *Brandon University Journal of Graduate Studies in Education, Volume 5, Issue 2, 2013* available at <https://www.brandonu.ca/master-education/files/2023/06/BU-Journal-of-Graduate-Studies-in-Education-2013-vol-5-issue-2.pdf>.

then have them delivered electronically. However, the reality is more complicated, depending how the consumer enters the online market place.

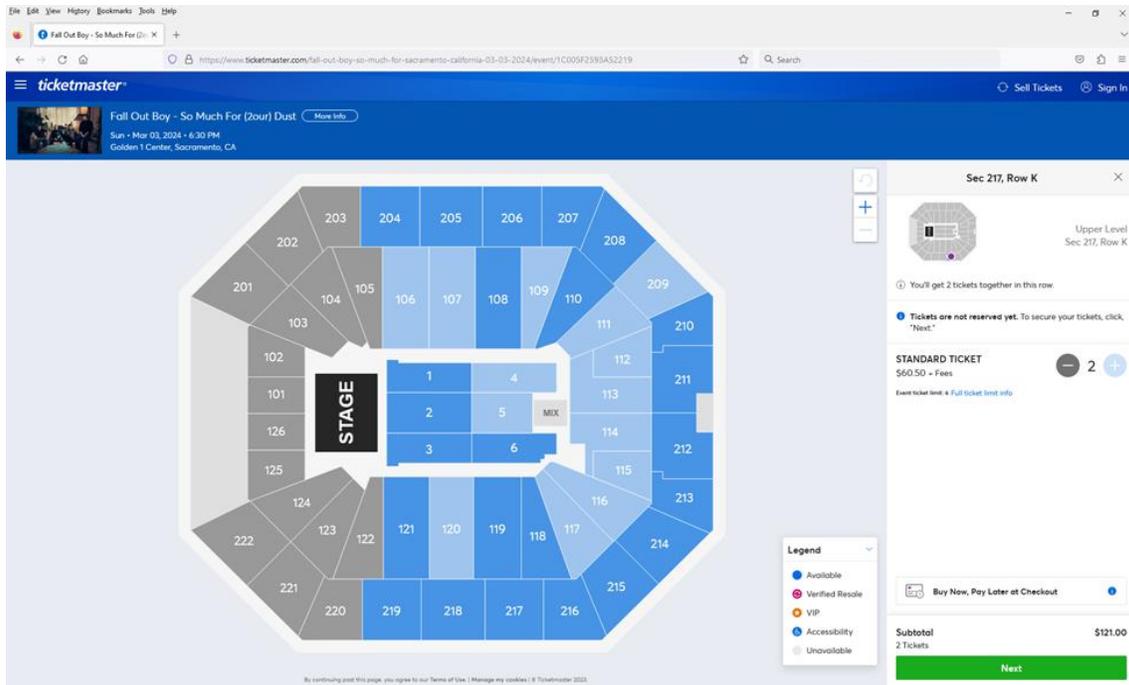
Today, the ticket market is broken down into on-sale primary vendors, comprised of venues and online primary ticket platforms, and the secondary (or resale) market, made up of ticket brokers and resale marketplace platforms, such as StubHub, SeatGeek, and Vivid Seats. Adding to the confusion, there is significant crossover between the two markets. For example, Ticketmaster operates a resale platform and SeatGeek operates as both a primary and secondary platform. When multiple secondary platforms and the on-sale primary vendor are all competing for ticket buyers, it can be very difficult for consumers to know where to buy tickets in order to get the lowest price for the best seats. As an example, here are the various ways and prices a person might find when searching for a ticket to the Fall Out Boys concert in Sacramento on March 3, 2024:<sup>13</sup>

1. If the consumer starts a Google search looking for Ticketmaster, the primary seller of the tickets, the search results lead directly to a link to the Ticketmaster website:

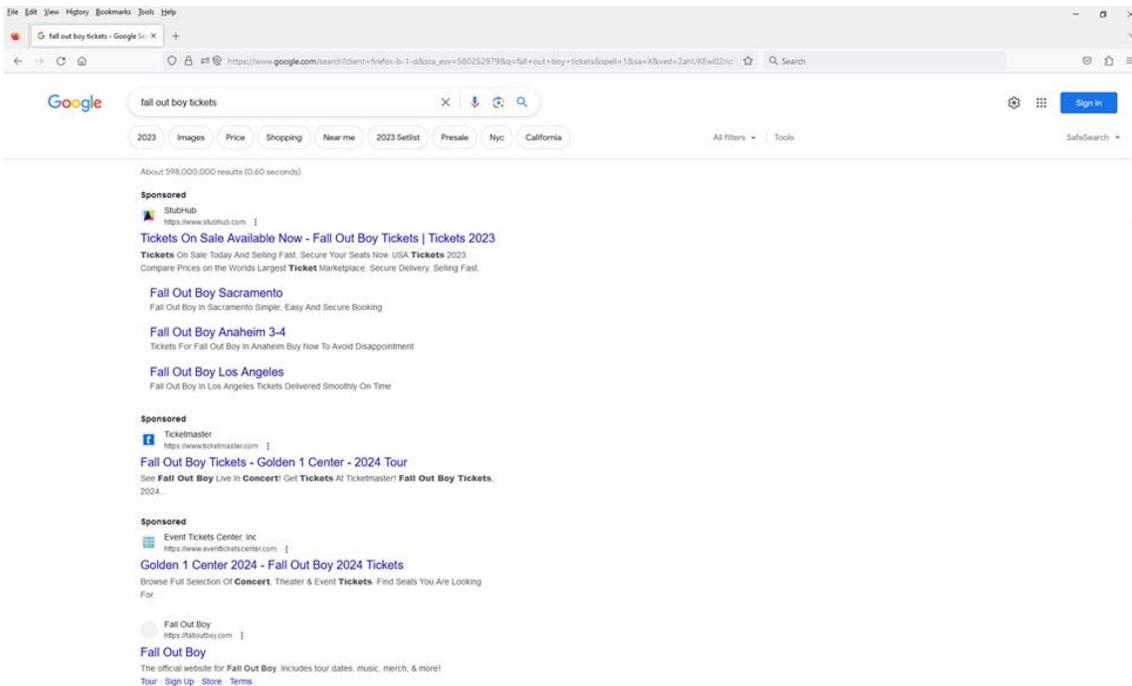


From that point it is relatively easy to find two tickets in Row K of Section 217 in the upper level for \$60.50 each (plus additional taxes and fees).

<sup>13</sup> These examples are from a search conducted on November 7, 2023.

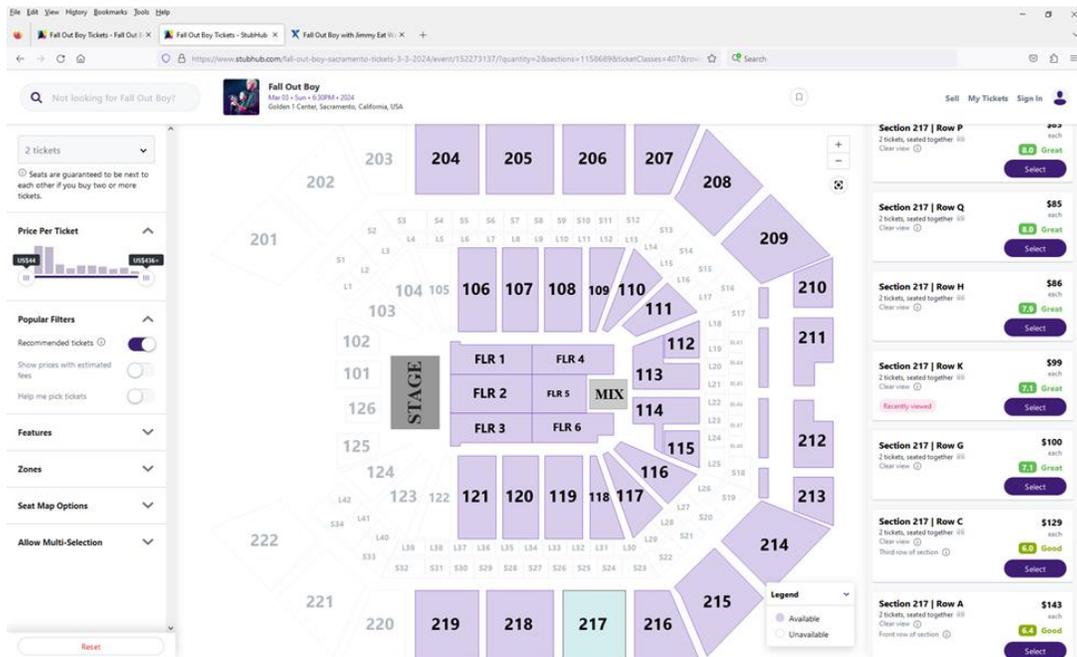


2. If the consumer starts an internet search for “Fall Out Boys tickets” and simply clicks on the first link that appears in the search, they will be purchasing tickets from StubHub, the leading platform in the resale market. The consumer could easily not realize that there are two separate markets, with multiple sellers in the resale market, all hoping to sell them tickets at varying prices.

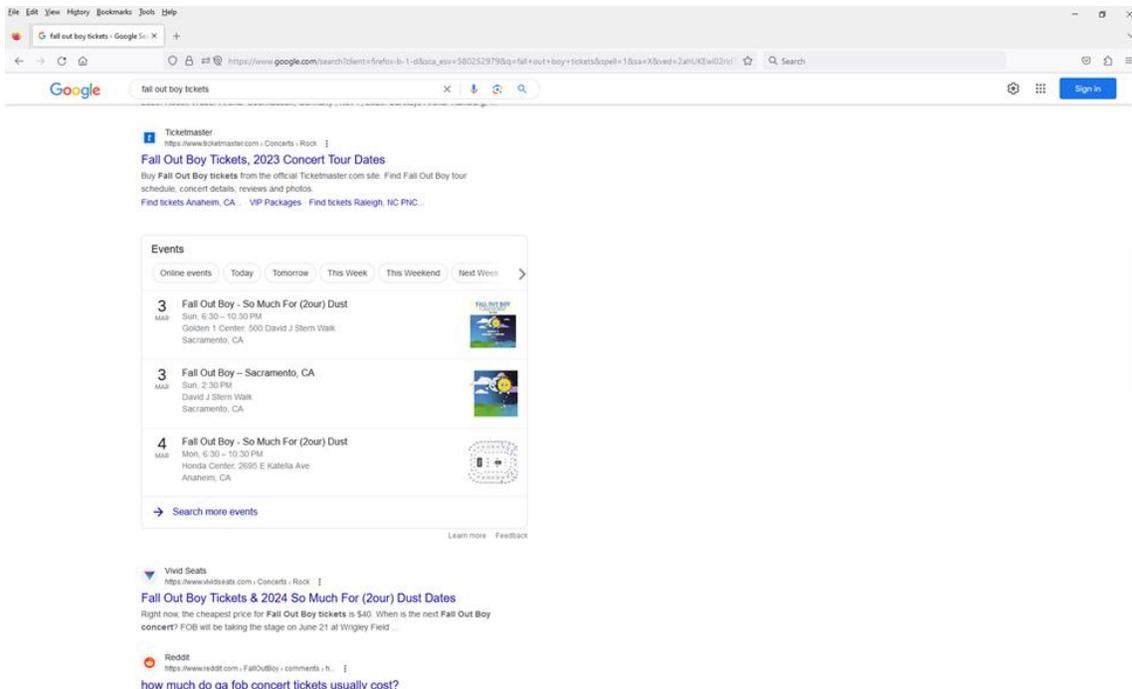


If the consumer purchases tickets from StubHub in the same Section K, Row 17 at the venue as the \$60.50 tickets being sold by the primary ticket seller, they will be purchasing the tickets for \$99 each.

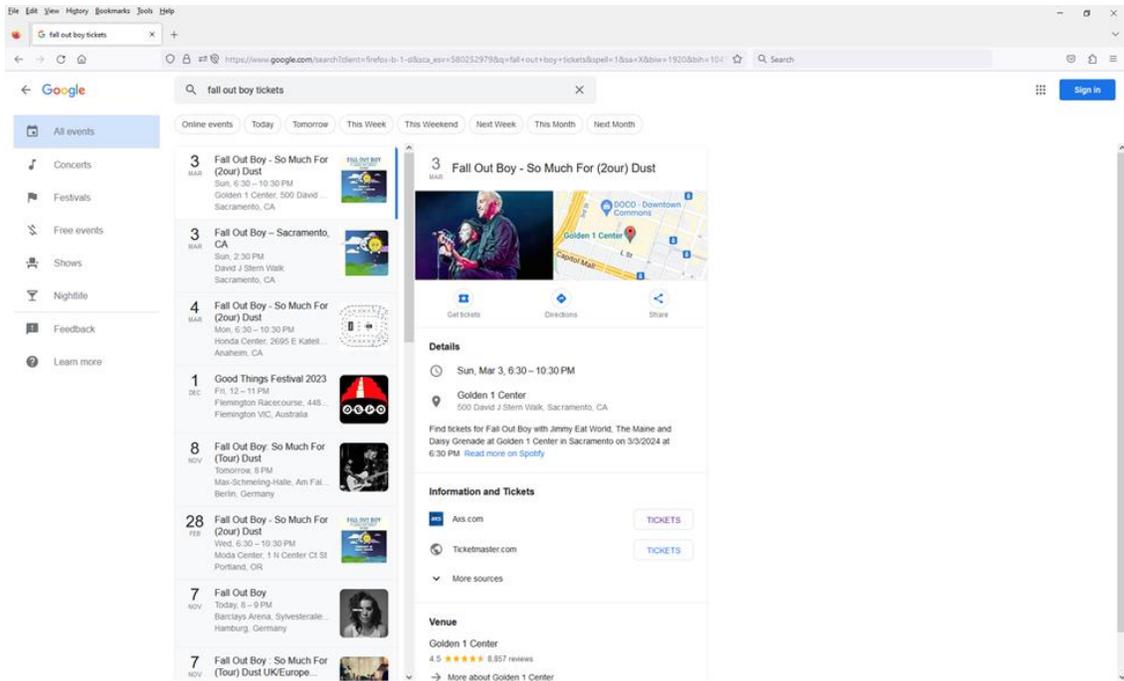
This will result in paying a face value price that is \$38.50 more per ticket for tickets in the same section and row as those being sold by the primary seller.



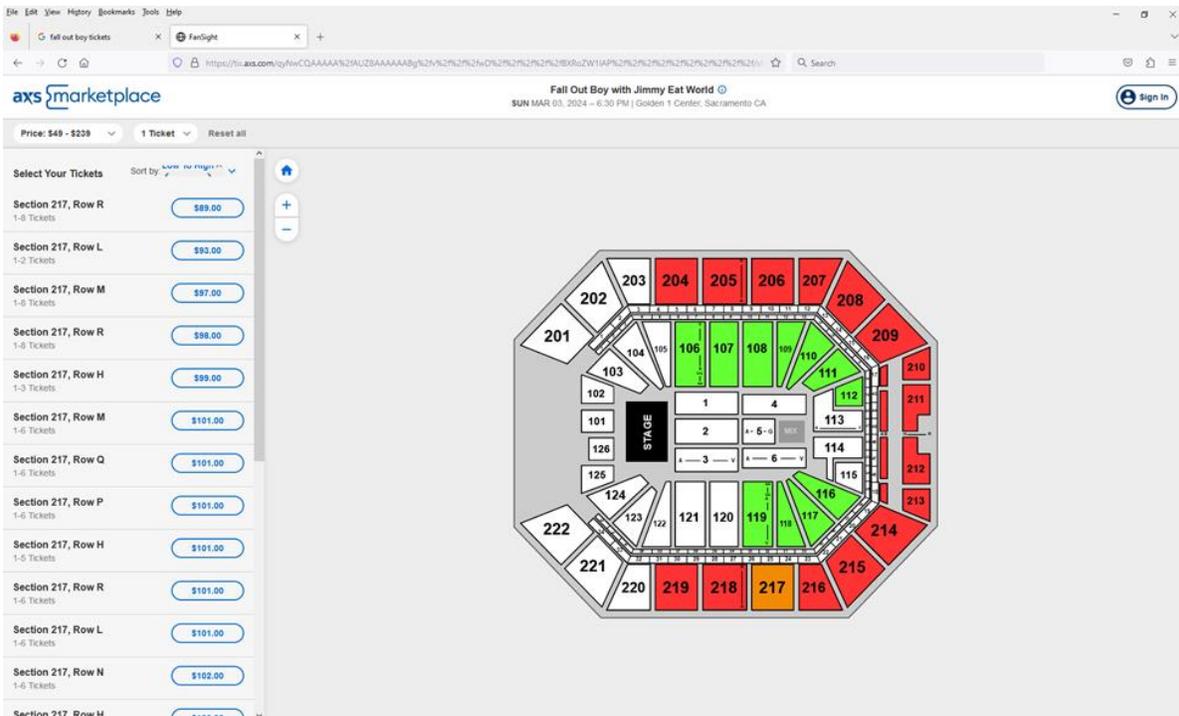
3. Similarly, if using Google as a search engine, the consumer has the option of clicking on the Google Events link for the Sacramento concert:



That link leads the consumer to the events page for the concert:



If the consumer clicks the first choice presented for tickets they will again not be purchasing from the primary ticket seller, Ticketmaster, instead they are searching for tickets in the secondary marketplace for AXS, another large ticket company. If the consumer then searches for tickets in the same section as those on-sale by the primary seller for \$60.50 they will be offered tickets for \$106, a \$45.50 increase over the original face value of the ticket. For two tickets to an additional \$91.



Very quickly, what could be a relatively simple process of purchasing tickets for a concert from a virtual box office could become much more expensive if the consumer does not know in advance who

is under contract to sell the initial tickets. These are only the first of several complications that someone trying to purchase a ticket to a concert may encounter.

#### IV. THE TICKET BUYING MARKETPLACE

Generally, there are two distinctly different online marketplaces where tickets are bought and sold, the primary and the secondary markets:

*The primary market.* The primary market is one in which event organizers control the ticket price, the sharing of the revenue between the artist, venue operator, and ticket company, and which platform will sell the tickets. The prices set in the primary market heavily affect the volume and value of tickets in the secondary market. In general, it is most common to find underpriced tickets—tickets that sell on the primary market with a face value that is below their market value—so that event organizers can maximize the attendance of their target audience in order to increase customer loyalty, and merchandise sales.<sup>14</sup> To complicate ticket selling in the primary market, some artists have been known to hold back a certain number of tickets to sell on the resale market in order to take advantage of the higher prices while still maintaining fan loyalty by offering the initial tickets at a low price.<sup>15</sup>

*The secondary market.* The secondary market is where tickets purchased on the primary market are resold. Ticket prices are usually significantly higher when purchased from someone in the secondary market. A study conducted by the National Independent Talent Organizations (NITO) analyzed data from 65 different shows around the country in 2023 where artists represented by NITO members performed. According to their findings, on average, ticket buyers were charged twice as much when buying tickets in the secondary market.<sup>16</sup> Secondary market platforms not only serve as a way for professional ticket brokers (i.e. businesses that purchase event tickets solely for the purpose of reselling them for a profit) to sell tickets, they also play an important role by allowing consumers who can no longer use their tickets a relatively simple way of recouping their money and perhaps making a profit by reselling them to someone else.

The platforms, for a fee, simply provide the infrastructure and technology that make up the marketplace for brokers and individuals to resell their tickets. Professional ticket brokers either enter into agreements with sports teams and promoters to have access to tickets for resale or they compete with consumers in the primary marketplace to purchase tickets that they intend to resell at a profit on the platforms. These secondary market platforms, such as StubHub, Vivid Seats, TickPicks, SeatGeek, and the secondary platforms run by Ticketmaster and their main competitor AXS, generally speaking, are similar to eBay (the former parent company for StubHub) or Etsy.

Largely invisible in the world of ticketing are the ticket brokers themselves. The United States Government Accountability Office (GAO), found in their research that it is ticket brokers, offering large numbers of tickets at inflated prices, who are dominating the resale marketplaces. According to their 2018 report:

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<sup>14</sup> *The Event Ticketing Industry is Broken and in Need of Disruption*, Aventus Network (May 19, 2017).

<sup>15</sup> Tyler Jenke, “Ed Sheeran’s manager has admitted to selling tickets to resale services,” *The Music Network* (Jun 3, 2018) available at <https://themusicnetwork.com/ed-sheeran-manager-sold-tickets-resale/>.

<sup>16</sup> *NITO Ticket Resale Study*. National Independent Talent Organization (Jul 2023)

Brokers whose business is to purchase and resell tickets have a competitive advantage over individual consumers because they have the technology and resources to purchase large numbers of tickets as soon as they go on sale. Some consumer advocates, state officials, and event organizers believe that brokers unfairly use this advantage to obtain tickets from the primary market, which restricts ordinary consumers from buying tickets at face value. As a result, consumers may pay higher prices than they would if tickets were available on the primary market. In addition, some event organizers and primary ticket sellers have expressed frustration that the profits from the higher resale price accrue to brokers who have not played a role in creating or producing the event.<sup>17</sup>

## V. TICKET PRICING PRACTICES

*Drip pricing.* One factor that impacts the price of tickets are the numerous fees and charges added to the initial face value. Different terms have been developed to describe these fees and charges, including “hidden fees,” “drip pricing,” “surprise charges,” and “undisclosed fees.” The Federal Trade Commission (FTC) defines drip pricing as a “pricing technique in which firms advertise only part of a product’s price and reveal other charges later as the customer goes through the buying process. The additional charges can be mandatory charges, such as hotel resort fees, or fees for optional upgrades and add-ons.”<sup>18</sup> It has become commonplace to encounter unexpected or unexplained fees while purchasing live entertainment tickets. You carefully select tickets to a concert or a sporting event, ones that allow you and your friends to sit together; then in the process of checking out of the online box-office, a convenience charge is added on one page, then a venue fee is added on the next page, and by the time you get to the final payment page, three or four charges and fees have been added on—often increasing the price of the tickets by twenty percent or more, and blowing the group’s budget.<sup>19</sup>

In 2023, the FTC initiated a rulemaking to address junk and hidden fees throughout the economy. Per the FTC:

American consumers, workers, and small businesses today are swamped with junk fees that frustrate consumers, erode trust, impair comparison shopping, and facilitate inflation. [...]he term “junk fees” refers to unfair or deceptive fees that are charged for goods or services that have little or no added value to the consumer, including goods or services that consumers would reasonably assume to be included within the overall advertised price; the term also encompasses “hidden fees,” which are fees for goods or services that are deceptive or unfair, including because they are disclosed only at a later stage in the consumer's purchasing process or not at all, whether or not the fees are described as corresponding to goods or services that have independent value to the

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<sup>17</sup> GAO, *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, GAO-18-347 (May 14, 2023) available at <https://www.gao.gov/products/gao-18-347>.

<sup>18</sup> FTC, *The Economics of Drip Pricing*, (May 21, 2012) <https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing>.

<sup>19</sup> Tiffany, Kaitlyn. “How ticket fees got so bad, and why they won’t get better.” *Vox* (Jun. 12, 2019), available at <https://www.vox.com/the-goods/2019/6/12/18662992/ticket-fees-ticketmaster-stubhub-ftc-regulation>.

consumer. These terms may overlap—a junk fee can be a hidden fee, but not all junk fees are hidden fees.<sup>20</sup>

While the FTC’s proposed rule would address junk and hidden fees in a wide variety of contexts beyond live entertainment ticketing, it is undeniable that such fees are an endemic problem in online ticket sales.

Recognizing this fact, in 2022, New York passed a targeted piece of legislation, S.9461 (Skoufis, 2022), which amended an existing statute to require increased price transparency and disclosures in both primary and secondary ticket sales. The amended statute now provides:

Every operator or operator’s agent of a place of entertainment, any licensee or other ticket reseller, or platform that facilitates the sale or resale of tickets shall disclose the total cost of the ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket, and disclose in a clear and conspicuous manner the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge to the purchaser. **Such disclosure of the total cost and fees shall be displayed in the ticket listing prior to the ticket being selected for purchase.** Disclosures of subtotals, fees, charges, and any other component of the total price shall not be false or misleading, and may not be presented more prominently or in the same or larger size as the total price. The price of the ticket shall not increase during the purchase process, excluding reasonable fees for the delivery of non-electronic tickets based on the delivery method selected by the purchaser, which shall be disclosed prior to accepting payment therefor. Nothing in this subdivision shall be construed to nullify, expand, restrict, or otherwise amend or modify now existing laws or regulations outside of this article, and nothing in this subdivision shall be construed as making lawful any fraudulent, deceptive, or illegal act or practice that is unlawful pursuant to now existing laws or regulations. (N.Y. Arts & Cult. Aff. Law § 25.07 [emphasis added].)

These price transparency requirements are framed as affirmative disclosures: that is, the seller is required to make certain disclosures during the purchase process. Unfortunately, the meaning of the phrase “prior to the ticket being selected for purchase” is ambiguous, so it is unclear whether disclosure is required upon initial display of the ticket’s price or else is legally sufficient if disclosure simply precedes the time at which the ticket is selected by the purchaser. As a result, compliance with the New York law has been spotty. As described in *Rolling Stone* a few months after the law’s enactment:

Rolling Stone went through the purchasing processes across Ticketmaster, AXS, StubHub, Vivid Seats and SeatGeek, finding that most of the ticketing companies at minimum employ policies that don’t reflect the spirit of what the lawmakers intended and at worst may have defied some of the new statutes. [...] StubHub and Vivid Seats, for instance, initially list a lower price when buying tickets to events, but only show the cost with fees when a user clicks on the tickets before heading to check out. For some of AXS’s New York events, all-in prices are shown right away, while at others like for

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<sup>20</sup> FTC, *Unfair or Deceptive Fees Trade Regulation Rule, Commission Matter No. R207011*, 87 FR 67413 (Nov. 8, 2022), available at <https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011>.

multiple shows at Terminal 5, customers initially see a cheaper price before seeing the price with fees at the next window. While SeatGeek immediately shows the all-in price on its website, on its mobile app, the company only shows fees immediately if customers turn the filter on, but that filter button isn't visible without scrolling. Ticketmaster appears to tack on a nominal fee on some orders that adds a couple dollars more to the price listed before checkout.<sup>21</sup>

In 2023, California took a different approach to the issue of price transparency when it enacted SB 478 (Dodds, Chap. 400, Stats. 2023). The bill requires no affirmative disclosures. Instead, SB 478 merely states that it is a violation of the Consumers Legal Remedies Act to “[a]dvertis[e], display[], or offer[] a price for a good or service that does not include all mandatory fees or charges....” (Civ. Code § 1770(a)(29)(A).) This requirement applies to any advertised, displayed, or offered price, regardless of what stage of the purchase process the price is shown. In other words, the ambiguity in the New York law is not found in the California law.

And, as should be obvious, SB 478's scope of coverage is much broader than New York's S.9461. SB 478 applies to all goods and services—including ticketing.<sup>22</sup> S.9461, on the other hand, applies only to ticketing.

SB 478 takes effect on July 1, 2024.

*Dynamic pricing.* Another practice that impacts the price of a ticket is the use of dynamic pricing, a tool that automatically increases or decreases the cost of the ticket, in real time, based upon ticket demand. In the days of paper tickets and box offices, a person interested in attending live entertainment would call or visit a box office and pick a seat based upon the set face value of that ticket. As remains the case today, tickets closer to the stage would cost more than tickets farther away. However, unlike today, the price of that ticket would not change between when the tickets went on sale and the date of the performance. Professional sports teams in many leagues now regularly use “dynamic pricing” for individual game tickets. They adjust prices as the game approaches, based on changing demand factors such as team performance and the weather forecast. Other types of entertainment also use this approach. Artists, promoters, and venues all want to come as close as possible to selling out their games or shows, so if an artist's tickets are not selling quickly, the price may be reduced as the show gets closer. Similarly, if an artist's tickets are selling more quickly than anticipated, prices may be increased accordingly.

For his 2023 tour, Bruce Springsteen decided to use Ticketmaster's dynamic pricing tool to establish prices for a portion of his tickets. As the demand for tickets rose, buyers discovered that the price of the tickets also rose dramatically, with some fans paying more than \$5,000 per ticket from the primary ticket seller. As *The New York Times* reported at the time:

For in-the-know fans who wanted to buy Bruce Springsteen tickets this month, applying for a special Ticketmaster access code seemed the best way to beat long odds. If they

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<sup>21</sup> Ethan Millman, *Ticket-Scalping Sites Are Shirking New York's Ticket Laws, Claims New York Lawmaker*, Rolling Stone (Nov. 7, 2022), available at <https://www.rollingstone.com/music/music-news/stubhub-seatgeek-vividseats-new-york-ticket-law-1234622885/>.

<sup>22</sup> *N.b.*, as enacted, the bill exempts taxes, government-imposed fees, actual shipping charges, and certain transactions which are regulated by other disclosure laws.

got one, they would have an opportunity to try to make it to the front of the service’s virtual queues on the days when batches of shows were up for sale.

Only then, however, did countless numbers of them discover that the normally priced tickets they had been hoping to buy were nowhere to be found. Instead, a demand-driven dynamic pricing system had taken hold — with someone, somewhere having decided that remaining seats should cost many times the normal price, up to \$5,500 or so. . . .

Michael Rapino, the chief executive of Ticketmaster’s parent company, Live Nation Entertainment, noted that many tickets for the best concerts and other events had a much higher street value the moment Ticketmaster sold them. Why shouldn’t an artist capture most of that excess? Prices that are too low open the door for scalpers to make more money — via the profit they gain from selling at the true market price — than performers make themselves.<sup>23</sup>

This decision to use dynamic pricing for his tour, outraged Springsteen fans. However, despite the high price tag for some of the tickets, the concerts largely sold out, demonstrating that the tickets were not priced above what the consumers were willing to pay. In response to critics, Mr. Springsteen noted:

Ticket buying has gotten very confusing, not just for the fans, but for the artists also, and the bottom line is that most of our tickets are totally affordable. . . . They’re in that affordable range. We have those tickets that are going to go for that [higher] price somewhere anyway.

The ticket broker or someone is going to be taking that money. . . . I’m going, “Hey, why shouldn’t that money go to the guys that are going to be up there sweating three hours a night for it?” It created an opportunity for that to occur. And so at that point, we went for it. I know it was unpopular with some fans, but if there’s any complaints on the way out, you can have your money back.<sup>24</sup>

## VI. WHY IS IT SO HARD TO FIND TICKETS IN THE PRIMARY MARKET?

One widespread complaint from consumers trying to purchase tickets to popular shows or sporting events is that they are poised on their web browsers to buy tickets the moment they go on sale but the available tickets are sold out within seconds or minutes of the initial sale. So consumers are unable to buy them, no matter how quickly they move the moment the tickets are available. Adding to their frustration is the fact that, almost immediately, they find tickets that they were unable to purchase at the on-sale site being advertised for sale on other websites, for much higher prices.

*Using bots to buy tickets.* In the context of the internet, a “bot” is simply a software application that runs automated tasks. Bots can be used for tasks as simple as automatically filling in forms to complex tasks like scraping websites to gather data. Bots are neither inherently good nor bad; they are simply a tool. Cybersecurity firm, Imperva, studies what it has termed “bad bots,” which are “software applications that run automated tasks with malicious intent.” In its 2023 report, Imperva found that bad bots make

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<sup>23</sup> Ron Lieber, “The Case of the \$5,000 Springsteen Tickets,” *The New York Times* (Jul 26, 2022) available at <https://www.nytimes.com/2022/07/26/your-money/bruce-springsteen-tickets.html>.

<sup>24</sup> Tina Benitez-Eves, “Bruce Springsteen Responds to \$5,000 Ticket Prices: ‘Any Complaints on the Way Out, You Can Have Your Money Back.’” *American Songwriter* (2023), available at <https://americansongwriter.com/bruce-springsteen-responds-to-5000-ticket-prices-any-complaints-on-the-way-out-you-can-have-your-money-back/>.

up 30 percent of all automated internet traffic and that bots generally made up 47.7 of all internet traffic in 2022.<sup>25</sup>

In the context of ticketing, bots are widely used to purchase high-demand tickets very quickly. According to the 2016 report by the New York Office of the Attorney General, “When tickets first go on sale, bots can complete multiple simultaneous searches of the primary ticket seller’s website and reserve or purchase hundreds of tickets.” During its investigation of the ticketing industry, the New York Attorney General identified an instance in which a bot bought more than 1,000 tickets to a single event in 1 minute. Seats reserved by a bot, even if ultimately not purchased, appear online to a consumer as unavailable.<sup>26</sup> This, in turn, can make inventory appear artificially low during the first minutes of the sale and lead consumers to the secondary market to seek available seats, according to event organizers interviewed in 2018 by the GAO.<sup>27</sup>

Despite laws outlawing their use, the practice of using bots to rapidly buy up tickets to in-demand events (that the person deploying the bots turns around and sells at a hefty markup) is one of the main reasons consumers are unable to purchase tickets on the primary market. Bots are able to not only automate the ticket-buying process, they can also be used to identify when additional tickets are released and available for purchase. In its 2019 report, Imperva found that the ticket industry has a uniquely bad bot problem. Nearly 40 percent of activity on ticketing websites could be attributed to bad bots. Imperva noted, “Interestingly, the proportion of human traffic on ticketing websites is similar to the average seen across all industries. . . . The major difference is within the composition of bot traffic. There are far more bad bots than good bots on ticketing domains.”<sup>28</sup>

The Center for Investigative Journalism describes the problem of bots this way:

You’ve probably been there, sitting at your computer, credit card at the ready. You refresh your browser as the seconds tick down to a team or artist’s official sale time. Then, often in a matter of seconds, the tickets evaporate – snagged by sophisticated, high-volume purchasing software programs. . . . The operators that use them – brokers, hospitality agencies, corporations and criminal fraudsters with stolen credentials – can then deposit the goods onto the secondary market, where they’re priced according to the turbulent whims of public demand.

Bot operators began their full-scale assault on the industry more than a decade ago. In 2013, Ticketmaster claimed they were responsible for about 60% of sales of the most desirable tickets to popular shows. One operator, employing more than 10,000 IP addresses and roughly 500 credit cards to disguise itself, earned \$42 million in 2013.

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<sup>25</sup> Imperva 2023 Bad Bot Report available at <https://www.imperva.com/resources/resource-library/reports/2023-imperva-bad-bot-report/>.

<sup>26</sup> New York State Attorney General’s Office. *Obstructed View: What’s Blocking New Yorkers from Getting Tickets* (Jan. 28, 2016) available at [https://ag.ny.gov/sites/default/files/reports/Ticket\\_Sales\\_Report.pdf](https://ag.ny.gov/sites/default/files/reports/Ticket_Sales_Report.pdf).

<sup>27</sup> GAO, *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, GAO-18-347 (May 14, 2023) available at <https://www.gao.gov/products/gao-18-347>.

<sup>28</sup> Imperva, *How Bots Affect Ticketing*, (2019) available at <https://www.imperva.com/resources/resource-library/reports/how-bots-affect-ticketing/>.

Ahead of a July 2015 U2 concert in New York, a single bot purchased 1,012 tickets from vendors in one minute.<sup>29</sup>

The use of bots has been so widespread that the federal government passed a law in 2016 to stop people from employing this scheme, the Better Online Ticket Sales Act (BOTS Act) (Pub. L. No. 114-274 (Dec. 4, 2016) 130 Stat. 1401). The BOTS Act prohibits the circumvention of a security measure, access control system, or other technological control measure used online by a ticket issuer. The Act also prohibits selling or offering to sell an event ticket obtained through such a circumvention violation, if the seller participated in, had the ability to control, or should have known about the violation. The Act applies to event tickets for public concerts, theater performances, sporting events, and similar activities at venues with seating capacity of over 200.

A chief complaint by critics of the BOTS Act is that it lacks a consumer enforcement mechanism and is rarely enforced. In fact, the first enforcement took place in 2021 when the FTC brought an enforcement action against three New Yorkers who collectively made over \$26 million in revenue over the matter of a few years:

The defendants pulled off the scheme by using bots on the Ticketmaster website. The programs—which went by the names Automatick, Tixman and Tixdrop—were capable of repeatedly searching web pages for available tickets and then automatically reserving them.

In addition, the defendants used hundreds of credit cards belonging to fake people, and routed their internet activity to the Ticketmaster page through spoofed IP addresses. “In many instances, Defendants also did not use their address as the primary address, shipping address, or billing address for their Ticketmaster accounts. Instead, they used over 550 addresses that were either fake or unrelated to their business,” the FTC alleged in a court complaint.<sup>30</sup>

Despite the passage of the BOTS Act and recent FTC enforcement efforts, the use of bots continues to overwhelm the primary marketplace and frustrate consumers. And, as demonstrated by Imperva, the use of bad bots in ticketing has continued to increase.

*White-label sites.* A company providing white-label support allows other businesses to connect its software to their own, using uniquely branded websites. For event ticketing, a ticket platform offering white-label support provides the affiliate company with access to its ticket inventory and services, such as order processing and customer service. However, the contracting business uses its own URL (website address), sets the ticket prices and fees, and conducts its own marketing and advertising.<sup>31</sup> It is not unusual for brokers to set up white-label sites that employ deceptive marketing practices, including by using the names and logos of venues on their webpages to appear as official event venue websites. As a result, consumers believe they are browsing an official venue website, when in fact they are using

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<sup>29</sup> Duncan, Byard. “How is this Legal?” *The Center for Investigative Reporting*, March 8, 2021, available at <https://revealnews.org/article/how-is-this-legal/>.

<sup>30</sup> Michael Kan, *3 Scalpers Fined for Using Bots to Scoop Up Tickets on Ticketmaster* (Jan. 22, 2021) PCMag, <https://www.pcmag.com/news/3-scalpers-fined-for-using-bots-to-scoop-up-tickets-on-ticketmaster>.

<sup>31</sup> GAO. *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, GAO-18-347 (May 14, 2023) available at <https://www.gao.gov/products/gao-18-347>.

websites unaffiliated with the venue. Research suggests that white-label websites typically charge higher prices and fees than official venue websites or other resale sites.<sup>32</sup>

These websites use names and URLs that closely mirror legitimate sites. They also use copycat fonts, venue photos and other tools to trick consumers into believing they've reached an official box office site. As an example, one resale marketplace that has repeatedly found itself in trouble with the FTC and various state attorneys general, TicketNetwork, has regularly created white-label websites that closely mirror the official box office websites. In their report, the Center for Investigative Reporting noted about TicketNetwork:

The FTC sued the reseller and two of its partners in 2014 for knowingly profiting from “deceptive venue-mimicking tactics.” The partners named in the suit had employed audacious methods to fool consumers into believing they'd arrived at an official venue box office, according to the complaint. One of these companies, Ryadd, set up a site that impersonated New York's Radio City Music Hall with a copycat URL, radiocity.musichall-ny.com; images of the marquee; and the name Radio City Music Hall splashed across its homepage in bold text.

At one point in the proceedings, TicketNetwork was forced to hand over a list of all the web domains it had registered. A 74-page spreadsheet the company produced included more than 4,000 of them: chittychittybangbangonbroadway.com, jerryseinfeldtickets.com, foofightertickets.info, chicagowhitesoxtickets.org and more.<sup>33</sup>

*Speculative ticket sales.* A speculative ticket refers to instances in which a seller offers a ticket for sale on a secondary ticket exchange before the seller has the ticket in hand. In some cases, secondary sellers may not disclose the fact that they are selling speculative tickets. These practices harm consumers who either do not receive the tickets they purchased or receive tickets that differ from the ticket or seat advertised. Even if consumers receive refunds for the ticket price, they may have already incurred nonrefundable costs to attend the event, such as travel or hotel expenses.<sup>34</sup>

For over a decade, secondary resale markets have allowed the sale of tickets that sellers do not actually possess. Specifically, speculative ticket sales work as follows, according to the Center for Investigative Reporting:

Brokers advertise inventory – sometimes a specific seat, sometimes a seating area – on a resale site, often at a price significantly higher than face value. When a customer selects tickets and checks out, [the site] prompts the broker to then attempt to acquire those tickets elsewhere at a lower price. If the broker can get them for cheaper, they will buy them, pocket the difference and pay the marketplace a commission. If they can't,

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<sup>32</sup> Congressional hearing on “*In the Dark: Lack of Transparency in the Live Event Ticketing Industry*” briefing memo, U.S. House of Representatives Committee on Energy and Commerce, February 21, 2020, available at <https://www.congress.gov/116/meeting/house/110588/documents/HHRG-116-IF02-20200226-SD002.pdf>.

<sup>33</sup> Duncan, Byard. “How is this Legal?” *The Center for Investigative Reporting*, March 8, 2021, available at <https://revealnews.org/article/how-is-this-legal/>.

<sup>34</sup> Ibid.

the broker will either have to make good on the initial offer and take a loss or renege on the sale.<sup>35</sup>

Ticket brokers often refer to this practice as the equivalent of agreeing to stand in line for someone at the box office. They will buy tickets when they go on sale, so that the consumer does not have to wait in front of their computer constantly refreshing their web browser. However, the consumer is often not aware that they are buying a ticket that the seller does not possess, nor do they realize they are paying a premium price, significantly above the face value, for a ticket that they may or may not receive.

This practice creates considerable confusion for consumers who cannot purchase tickets from the primary box office because they have not gone on sale yet, but appear to be able to purchase tickets for a premium price on the secondary market. As a recent example, tickets for a Justin Timberlake concert scheduled for May in San Jose were not yet on sale through Ticketmaster at the time this paper was written. However, when searching for “Justin Timberlake San Jose tickets” committee staff could easily find them for the San Jose concert on StubHub and other secondary platforms. In fact, the first three websites at the top of the internet search were already selling tickets. The first website, StubHub, offered tickets for sale and nothing easily identifiable on the platform suggested that the tickets were speculative. The next website, VividSeats, indicated in the “notes” section that the tickets being purchased were a “seat saver” listing and that the purchaser will either receive the tickets or a full refund. The third website, “TicketsOffice.org” also did not advertise the tickets as speculative.

*Creating a sense of scarcity and gaming the secondary market.* In a 2016 report, the New York Attorney General’s Office noted that their investigation of the ticketing industry found that the majority of tickets for the most popular concerts are not reserved for the general public, at least in the first instance. Rather, before a member of the public can buy a single ticket for a major entertainment event, over half of the available tickets are either put on “hold” and reserved for a variety of industry insiders, including the venues, artists, or promoters, or are reserved for “pre-sale” events and made available to non-public groups, such as those who carry particular credit cards. As noted previously, another reason tickets are held back is because artists decide to sell them on the secondary market in order to receive a share of the premium price, while also appearing loyal to their fans by pricing the initial on-sale tickets released in the primary market below their market value.

*Lack of competition in the primary market.* The lack of healthy competition in the primary market is a concern for consumer advocates. Over the last two decades (at least), Live Nation Entertainment, which acquired Ticketmaster in 2010, has grown to control between 60 to 80 percent of the ticketing and live event venues market.<sup>36</sup> The merged entity was responsible for the infamous Taylor Swift Ticketmaster platform meltdown in 2022 when tickets for her Eras tour went on sale:

It’s no secret that Taylor Swift fans were outraged in November 2022 when millions flocked to Ticketmaster.com to grab tickets to see the heartbreak queen for the first time

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<sup>35</sup> Duncan, Byard. “How is this Legal?” *The Center for Investigative Reporting*, March 8, 2021, available at <https://revealnews.org/article/how-is-this-legal/>.

<sup>36</sup> Daniel De Vise, “Congress, Ticketmaster and Taylor Swift: How we got here”, *The Hill*, February 8, 2023, available at <https://thehill.com/business/3847966-congress-v-ticketmaster-how-we-got-here/>.

since 2018 and the website crashed. The long wait lines and frozen screens sparked an uproar with fans, blaming Ticketmaster for ruining their chances to see the pop star.

“As the leading player, we have an obligation to do better,” said Joe Berchtold, Live Nation Entertainment president and chief financial officer, at the hearing Tuesday.

This is not the first time consumers have called for the breakup of Ticketmaster and Live Nation. It’s also not the first time the Department of Justice has been reportedly looking into alleged misconduct by the company.

When the Live Nation and Ticketmaster merger was approved in 2010, it was under the condition of a consent decree. Among other things, the purpose of that agreement was to forbid Live Nation from retaliating against a venue for using a ticketer other than Ticketmaster. After an investigation, in 2019 the DOJ made its most significant enforcement action of an antitrust decree in 20 years when it alleged Live Nation Entertainment violated that decree. The company settled with the government.<sup>37</sup>

The company’s outsized power has created concerns among some in the industry that Live Nation will retaliate if an artist or venue goes with a ticketing company other than their Ticketmaster operation. In many cases, exclusivity agreements require Ticketmaster to be used:

“In a world where the promoter and the venue are not affiliated with each other, we can trust that the promoter will look to get the best deal from the venue; however, in this case the promoter and the venue are part of the same corporate entity so the line items are essentially Live Nation negotiating to pay itself,” [one musician from the band Lawrence] said.

The band told CNBC if they want to play a certain size venue in a particular city, they are sometimes left no choice other than to use Live Nation because of the lack of competition in some regions. Then if they would like to use another ticketer other than Ticketmaster, they say that is not an option.

“Ticketmaster has created these exclusive contracts, once you sign that contract, a band is not allowed to come in and say, ‘we want to sell our tickets with X, Y, Z platform,’” said Jordan Cohen, one of the band’s eight members.

They even have a song with the lyric, “Live Nation is a monopoly.” “Due to Live Nation’s control across the industry, we have practically no leverage in negotiating,” Lawrence said.

While the company does have some competition, experts say no other firm currently stands a chance.<sup>38</sup>

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<sup>37</sup> Emily Lorsch, Why Live Nation and Ticketmaster dominate the live entertainment industry (Jan 25, 2023) CNBC, <https://www.cnbc.com/2023/01/25/the-live-nation-and-ticketmaster-monopoly-of-live-entertainment.html>.

<sup>38</sup> *Ibid.*

These concerns are not just expressed by musicians and consumer advocates. The Justice Department is reported to have opened an investigation into Live Nation, focused on whether the company has “abused its power over the multibillion-dollar live music industry”:

Members of the antitrust division’s staff at the Justice Department have in recent months contacted music venues and players in the ticket market, asking about Live Nation’s practices and the wider dynamics of the industry, said the people, who spoke on the condition of anonymity because the investigation is sensitive. The inquiry appears to be broad, looking at whether the company maintains a monopoly over the industry, one of the people said.<sup>39</sup>

The U.S. Senate Judiciary Committee felt the issue pressing enough to hold an oversight hearing to delve into the issue, “Location Change: That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment.”<sup>40</sup> Senator Klobuchar explained the need for the hearing: “For too long, consumers have faced high fees, long waits, and website failures, and Ticketmaster’s dominant market position means the company faces inadequate pressure to innovate and improve.”<sup>41</sup>

The practices above leave consumers in the lurch. They are forced to pay exorbitant service fees and other charges, exacerbated by the fact that the original ticket seller faces little competition. Then, if they are not among the lucky ones who can buy quickly, they are price-gouged on the secondary market. The Center for Investigative Reporting filed public records requests for 10 years’ worth of complaints to every state attorney general’s office in the country and to the FTC. They then reviewed the information from the FTC and the 22 states that responded. They note:

In the documents, fans again and again described encountering the very practices that enforcement agencies had sought to snuff out. They watched tickets sell out in seconds, only to appear immediately thereafter – at higher prices – on resale sites. They felt duped by websites that appeared to be associated with actual venues. Some claimed they’d unwittingly bought a ticket the broker didn’t have. . . . Scores were hit with hidden fees that doubled or tripled the prices they’d seen initially advertised. So many asked variations of the same question: “How is this legal?”

## VII. STATE REGULATION OF TICKET SALES

California has regulated ticket sales for live entertainment events for decades. The Ticket Sellers Law, first codified in 1986, addresses many topics related to live event ticketing, including upfront disclosure of seat locations, refunds for canceled and rescheduled events, and regulation of “bots.” (Bus. & Prof. Code §§ 22500-22511.) However, several portions of the Ticket Sellers Law have not been updated to

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<sup>39</sup> David McCabe & Ben Sisario, *Justice Dept. Is Said to Investigate Ticketmaster’s Parent Company* (Jan 24, 2023) The New York Times, <https://www.nytimes.com/2022/11/18/technology/live-nation-ticketmaster-investigation-taylor-swift.html>.

<sup>40</sup> Video of the hearing available at: <https://www.judiciary.senate.gov/committee-activity/hearings/thats-the-ticket-promoting-competition-and-protecting-consumers-in-live-entertainment>.

<sup>41</sup> News Releases, *Klobuchar, Lee Announce Date of Senate Judiciary Committee Hearing on Problems in America’s Ticketing Markets* (Jan. 17, 2023) Senator Amy Klobuchar website, <https://www.klobuchar.senate.gov/public/index.cfm/2023/1/klobuchar-lee-announce-date-of-senate-judiciary-committee-hearing-on-problems-in-america-s-ticketing-markets>.

reflect the fact that most ticket sales today occur online. As introduced, both AB 8 (Friedman, 2023) and SB 785 (Caballero, 2023) sought to remedy this deficiency, albeit in very different ways.

Altogether, 41 states have passed statutes that regulate live entertainment ticket sales.<sup>42</sup> It is difficult to discern any consistency in the matters that are regulated or the statutory solutions that each state arrived at. New Jersey, for example, appears to be the only state to ban the use of third parties to acquire a ticket. (N.J. Stat. § 56:8-35.4 [“It shall be an unlawful practice for a person to use a digger to acquire any ticket.”].) Different states sometimes take very different approaches to the same question. For example, many states are silent as to whether tickets may be resold and at what markup. But Alabama law explicitly provides that “[a]n admission ticket that was originally issued, sold, or authorized by the organizer or venue to any athletic contest, dance, theater, concert, circus, or other amusement may be resold for an amount in excess of the price printed on the face of the ticket.” (Code of Ala. § 8-19E-2.) By contrast, Georgia law provides that “in the case of [certain once-per-year] athletic contest[s] or entertainment event[s]...a sponsor of such a contest or event may contractually restrict the resale of a ticket to such contest or event by giving notice of such restriction on the back of the ticket.” (O.C.G.A. § 43-4B-25.) In other words, Alabama explicitly allows ticket resale at any price, while its neighboring state allows ticket restrictions (including, presumably, on the resale price) for certain types of events.

Appendix A lists ticketing statutes on a state-by-state basis, along with the categories of topic each statute addresses, current as of December 2023.<sup>43</sup>

### **VIII. FEDERAL REGULATION OF TICKET SALES**

In recent years, live entertainment ticketing has frequently been the subject of proposed federal legislation. In 2023, no fewer than nine bills were introduced in Congress, by members of both parties, on the topic:

- Junk Fee Prevention Act (H.R. No. 2463 / S. 916, 118th Cong., 1st Sess. (2023) [“A bill to limit and eliminate excessive, hidden, and unnecessary fees imposed on consumers, and for other purposes”].)
- Better Oversight of Stub Sales and Strengthening Well Informed and Fair Transactions for Audiences of Concert Ticketing Act of 2023 (BOSS and SWIFT Act of 2023) (H.R. 3360 / S. 2957, 118th Cong., 1st Sess. (2023) [“A bill to protect consumers from unfair and deceptive acts and practices in connection with primary and secondary ticket sales, and for other purposes”].)
- Transparency in Charges for Key Events Ticketing (TICKET Act) (H.R. 3950 / S. 1303, 118th Cong., 1st Sess. (2023) [“A bill to require sellers of event tickets to disclose comprehensive information to consumers about ticket prices and related fees, and for other purposes.”].)
- Unlock Ticketing Markets Act of 2023 (S. 1321 / S. 1326, 118th Cong., 1st Sess. (2023) [“A bill to prohibit exclusive venue ticketing contracts with an excessive duration, and for other purposes.”].)

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<sup>42</sup> The exceptions are Alaska, Idaho, Iowa, Kansas, Montana, Nebraska, South Dakota, West Virginia, and Wyoming, as well as the District of Columbia.

<sup>43</sup> Committee staff deeply appreciates the efforts of the California Research Bureau at the California State Library in helping to compile this list.

- Mitigating Automated Internet Networks for Event Ticketing Act (MAIN Event Ticketing Act) (S. 3191, 118th Cong., 1st Sess. (2023) [“A bill to improve online ticket sales and protect consumers, and for other purposes.”].)

However, despite this interest, the only piece of federal legislation to address ticketing actually enacted in the past decade is 2016’s BOTS Act, discussed above, which had as its stated purpose, “To prohibit the circumvention of control measures used by Internet ticket sellers to ensure equitable consumer access to tickets for any given event, and for other purposes.”

## IX. DETERMINING WHAT IS BEST FOR CALIFORNIA CONSUMERS

The key policy consideration appears to be deciding exactly who is considered a consumer in the live entertainment marketplace and which current practices harm them and which help them. Is the consumer the person who purchases the original ticket when it goes on sale with the intention of attending the event? Or, is the consumer the individual or entity who purchases the ticket regardless of whether they purchase the tickets for their own use or intend to resell it in order to make a profit? Understanding the priorities of the two sides of the debate over the best solution for protecting consumers and concertgoers requires first answering the question of who should be protected.

On one side is a coalition of large and small primary ticket sellers, artists, venues, music labels, and virtually every other part of the music industry that advocate for policies that are intended to get tickets into the hands of individuals who want to attend live events and preserve the right of the artists, promoters, and venues to make decisions regarding the price of the tickets and how those tickets are sold. Interestingly, this coalition involves individual groups that rarely find themselves on the same policy side. For example, artists, independent venue operators, independent ticket operators, and labor groups have found themselves on the same side as Live Nation/Ticketmaster when it comes to regulating ticket sales, despite the fact that many of these groups continue to actively work to break up Live Nation’s domination over live entertainment.<sup>44</sup> They have dubbed their set of policy priorities “Fix the Tix.” According to the Fix the Tix website<sup>45</sup>, their priorities are the following:

1. *Protect Fans from Price Gouging.* Artists and venues should be empowered to keep prices low for fans by restricting predatory resellers’ markup.
2. *Ban Fake Tickets.* No one should be permitted to sell a ticket unless they legally own it and have it in their possession.
3. *End Fraudulent Resale Practices.* Deceptive websites and unauthorized use of artist and venue likenesses by resellers should be banned to prevent fans from paying higher prices and fees for tickets on the resale market.
4. *Ensure Every Fan Has The Full Ticket Price Up-Front.* Consumers and fans should know the full cost of the ticket up-front and throughout their transaction.

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<sup>44</sup> For more information see <https://www.latimes.com/entertainment-arts/music/story/2023-01-23/ticketmaster-live-nation-taylor-swift-pearl-jam>

<sup>45</sup> <https://www.nivassoc.org/fixthetix>

5. *Prioritize Privacy and Ensure Fan Safety.* Ensure venues and artists can contact fans with changes to the show or in case of emergency while maintaining fan privacy.
6. *Guarantee Fans The Chance to Recoup Their Costs If They Can't Make The Show.* Genuine fans should be provided the opportunity to exchange their tickets with other fans at face value.
7. *Enforcement to Ensure Fans and Artists Are Protected.* The reforms and protections in this plan should be backed up by enforcement authority at the federal and state levels and fines for bad actors that refuse to comply.
8. *(Actually) Ban Ticket-Buying Bots.* The Better Online Ticket Sales (BOTS) Act should be strengthened to ensure real fans, not predatory resellers using bots, are first in line to buy tickets.
9. *Promote Face Value Fan-to-Fan Exchange & Prevent Primary & Secondary Ticketing Consolidation.* Primary and secondary ticketing platforms should not be able to restrict tickets sold for higher than face value to only be sold on their platforms.<sup>46</sup>

On the other side of the policy debate, a number of companies operating in the secondary market, including ticket brokers and resale platforms and some consumer groups, including the National Consumers League and the Consumer Federation of California, argue that ticket buyers own the tickets they purchase and have a right to dispose of them as they see fit. In addition, this coalition has argued that a free and unfettered secondary ticket market creates competition for the primary market. This coalition has created a “Ticket Buyers’ Bill of Rights” that is primarily focused on protecting the right of consumers to sell tickets that they have purchased.<sup>47</sup> Their bill of rights includes the following five pillars:

1. *The Right to Transferability*, where ticketholders decide how to use, sell or give away their tickets if they wish and not the entity that previously sold the tickets.
2. *The Right to Transparency*, which includes all-in pricing and disclosures of relevant information for the purchasing decision.
3. *The Right to Set the Price*, so that companies who originally sold the tickets cannot dictate to fans for what price they can or cannot resell their purchased tickets.
4. *The Right to a Fair Marketplace*, where fans compete with actual humans, not illegal software bots, for tickets.
5. *The Right to Recourse*, where harmed fans retain the choice to seek remedies through the public court system and are not blocked by terms and conditions that force them into private arbitration.<sup>48</sup>

In the case of this “bill of rights,” if the consumer is defined as someone trying to purchase tickets for their own use, it is unclear how the first and third “right” and the secondary market system as it is

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<sup>46</sup> The Fix the Tix campaign is primarily focused on the passage of federal legislation and also includes a pillar related to making changes at the federal level, rather than having different sets of laws in each state.

<sup>47</sup> <https://www.nivassoc.org/fixthetix>

<sup>48</sup> <https://www.ticketbuyerbillofrights.org/>

currently structured are in the best interest of consumers who are having to compete in the primary marketplace against the brokers and resellers buying large numbers of tickets in order to resell them for a higher price on the secondary market. According to the Center for Investigative Reporting:

[One ticket broker noted,] companies like his, he added in an interview, drive down prices because they provide ticket buyers more options. “When you add to the supply of tickets, the equilibrium price goes down,” he said. “It’s true in every marketplace.”

Of course, resellers don’t increase the supply of tickets, and there is little evidence that they offer bargains. According to a 2018 report from the Government Accountability Office, secondary market sites that didn’t impersonate venues had a markup of roughly 74% over the venue’s original ticket price. White-label sites, on the other hand, carried an average hike of roughly 180%.<sup>49</sup>

In 2018, the GAO released its study<sup>50</sup> on the market characteristics and consumer protection issues in the event ticketing market, which included an assessment of several specific regulatory approaches. The approaches, such as ticket resale restrictions and disclosure requirements, the GAO concluded would have varying effects on consumers and businesses:

- *Nontransferable tickets.* At least three states, Connecticut, New York, and Virginia, restrict nontransferable tickets—that is, tickets whose terms do not allow resale. Nontransferable tickets allow more consumers to access tickets at a face-value price. However, they also limit consumers' ability to sell tickets they cannot use, can create inconvenience by requiring identification at the venue, and according to economists, prevent efficient allocation of tickets.
- *Price caps.* Several states, such as Kentucky, Massachusetts, and New Jersey, cap the price at which tickets can be resold. Price caps are generally intended to protect consumers from high markups and increase the fairness of ticket distribution so that the wealthiest consumers do not have disproportionate access to tickets. In theory, price caps offer consumers the advantages of nontransferable tickets without the disadvantages: they limit high secondary-market prices but still allow consumers to transfer tickets to others or resell tickets they cannot use. However, three government studies the GAO reviewed stated that price caps are difficult to enforce and are rarely complied with.
- *Face-value disclosures on secondary market sites.* This approach requires that tickets being sold on resale sites must disclose the original face value of the ticket. Requiring that ticket resellers disclose the face value can have several advantages. First, it makes the reseller’s markup transparent. Second, disclosure can help consumers assess the quality of the seat location and compare similar seats across resale listings. Third, disclosure might reduce the possibility that consumers mistake a reseller’s website for a venue website, as described earlier. This, in turn, could encourage consumers to recognize they are viewing a secondary market exchange and comparison shop for a better price elsewhere.

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<sup>49</sup> Duncan, Byard. “How is this Legal?” The Center for Investigative Reporting, March 8, 2021, available at <https://revealnews.org/article/how-is-this-legal/>.

<sup>50</sup> *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, GAO-18-347 (May 14, 2023) available at <https://www.gao.gov/products/gao-18-347>.

This approach does present several challenges that must be considered. First, the definition of face value needs to include the total original ticket price at the time the ticket was purchased or acquired, inclusive of fees, in order to provide a true comparison. Beyond that, however, some tickets are sold through VIP packages that do not itemize the price of the ticket and other components, such as backstage access or parking. In addition, season tickets may display a higher face value than the season ticket holder paid because teams usually sell the packages at a discount.

- *Ticket availability disclosures.* This requires primary ticket sellers to disclose how many tickets are available when an event first goes on sale to the general public. For instance, a venue or ticket seller might be required to provide the venue capacity and number of tickets available for sale after accounting for presales and holds. Such disclosure could provide consumers a clearer picture of ticket availability and help them manage expectations and make informed decisions. However, the GAO noted that these disclosures may have limited value, because for many high-demand events, a consumer’s odds of getting a ticket are low regardless of whether they know the number of available tickets.<sup>51</sup>

Critics of this approach, most notably the band Pearl Jam (which has long done battle with Ticketmaster) argue that requiring these disclosures will hurt consumers more than it will help, because consumers don’t make purchasing decisions based on how many tickets are available—bulk purchasers like professional resellers do. In 2020, Pearl Jam wrote the following in an open letter opposing federal ticketing legislation:

We write to you as one of the biggest touring bands of the last three decades. We also write to you as the working musicians and the MUSIC FANS we were for years before that. . . . Many times in final planning, after tickets have gone on-sale, we are able to create additional ticket opportunities. Artists need to retain this flexibility, for example, to open “obstructed view” seats after a concert nears sellout. We have found this to be beneficial to true fan consumers that otherwise would have missed a sold-out show.<sup>52</sup>

## **X. RELATED LEGISLATION**

AB 8 (Friedman, 2023) requires a ticket seller to disclose to a purchaser the total price of the ticket and the portion of that price that represents any fees or surcharges. The seller must also provide a link to an internet web page that includes certain refund requirements, as specified. AB 8 was held under submission on the Senate Appropriations Committee suspense file.

AB 1556 (Friedman, Chap. 180, Stats. 2021) required, for cancelled events, that a refund be made within 30 calendar days of the cancellation. It further required a ticket price at any event which is postponed, rescheduled, or replaced with another event at the same date and time be fully refunded to the purchaser by the ticket seller upon request within 30 calendar days of the refund request.

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<sup>51</sup> The full GAO report is available at <https://www.gao.gov/products/gao-18-347>,

<sup>52</sup> <https://www.politico.com/f/?id=00000170-5860-da1e-a17e-dff3ee0d0000>.

AB 1032 (Quirk, Chap. 105, Stats. 2019) bolstered anti-bot provisions enacted by AB 329, described below, by clarifying that “a control or measure used to ensure an equitable ticket buying process” includes limits on the number of tickets that a person can purchase.

AB 329 (Pan, Chap. 325, Stats. 2013) made it a misdemeanor to intentionally use or sell software to circumvent a security measure, access control system, or other control or measure on a ticket seller’s internet website that is used to ensure an equitable ticket buying process.

SB 478 (Dodd, Chap. 400, Stats. 2023) makes it an unlawful business practice pursuant to the Consumer Legal Remedies Act to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges other than taxes imposed by a government.

SB 785 (Caballero, 2023) would update laws regulating ticket sales by establishing new categories of ticket sellers, establishing requirements for different categories of ticket sellers, and increasing penalties for violations of rules governing ticket seller operations. That bill is currently pending in the Privacy and Consumer Protection Committee.

SB 829 (Wilk, 2023) prohibits the operator of an entertainment facility and a primary ticket seller from entering into a contract that provides for the primary ticket seller to be the exclusive ticket seller for the operator of the entertainment facility. That bill is currently pending in the Arts, Entertainment, Sports, and Tourism Committee.

## Appendix A: State Ticketing Statutes

State	Code Citation	Topic
<b>Alabama</b>	Code of Ala. § 8-19E-1	price display
	Code of Ala. § 8-19E-2	resale; price display
	Code of Ala. § 40-12-167	resale; ticket scalping; ticket broker requirements
	Code of Ala. § 8-19E-4	resale; internet requirements
<b>Alaska</b>	None found	
<b>Arizona</b>	A.R.S. § 13-3718	resale; price cap; ticket scalping; price display
<b>Arkansas</b>	A.C.A. § 4-88-1203	resale; local government restrictions; quantity restrictions; automated ticket purchasing software; ticket scalping
	A.C.A. § 4-88-1204	resale; refunds; ticket scalping
	A.C.A. § 4-70-103	internet requirements
<b>California</b>	Cal. Penal Code § 346	resale; ticket scalping; price cap
	Cal. Bus. & Prof. Code § 22501	ticket broker requirements
	Cal. Bus. & Prof. Code § 22502.1	resale; ticket broker requirements
	Cal. Bus. & Prof. Code § 22502.2	ticket broker requirements
	Cal. Bus. & Prof. Code § 22505.5	automated ticket purchasing software
	Cal. Bus. & Prof. Code § 22506	refunds
	Cal. Bus. & Prof. Code § 22507	refunds
	Cal. Bus. & Prof. Code § 22508	service charges/fees/taxes
<b>Colorado</b>	C.R.S. 6-1-718	resale; refunds
	C.R.S. 6-1-720	resale; automated ticket purchasing software; quantity restrictions
<b>Connecticut</b>	Conn. Gen. Stat. § 53-289a	resale; service charges/fees/taxes; price display
	Conn. Gen. Stat. § 53-289b	resale; refunds
	Conn. Gen. Stat. § 53-289c	resale; ticket scalping
	Conn. Gen. Stat. § 53-289d	ticketing sales systems; resale
	Conn. Gen. Stat. § 53-289e	automated ticket purchasing software
<b>Delaware</b>	11 Del. C. § 918	resale; ticket scalping
<b>District of Columbia</b>	None found	
<b>Florida</b>	Fla. Stat. § 817.36	resale; price cap; refunds; automated ticket purchasing software
	Fla. Stat. § 817.357	resale; quantity restrictions

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	Fla. Stat. § 817.361	service charges/fees/taxes; price display; refunds
<b>Georgia</b>	O.C.G.A. § 43-4B-1	service charges/fees/taxes
	O.C.G.A. § 43-4B-25	resale; price cap; service charges/fees/taxes
	O.C.G.A. § 43-4B-26	ticket broker requirements
	O.C.G.A. § 43-4B-27	ticket broker requirements
	O.C.G.A. § 43-4B-28	resale; refunds; ticket broker requirements
	O.C.G.A. § 43-4B-29	resale; ticket scalping
	O.C.G.A. § 43-4B-29.1	resale
	O.C.G.A. § 43-4B-30	resale; local ordinances
<b>Hawaii</b>	HRS § 481B-15	service charges/fees/taxes; refunds
	HRS § 440-17	price display; price cap
	HRS § 440E-13	price display; price cap
<b>Idaho</b>	None found	
<b>Illinois</b>	815 ILCS 414/1	resale; price cap
	815 ILCS 414/1.5	resale; price cap; ticket broker requirements; refunds; service charges/fees/taxes
	815 ILCS 414/3	refunds
	815 ILCS 414/4	service charges/fees/taxes
<b>Indiana</b>	IC 4-33-22-37	price display
<b>Iowa</b>	None found	
<b>Kansas</b>	None found	
<b>Kentucky</b>	KRS § 518.070	resale; ticket scalping
<b>Louisiana</b>	La. R.S. § 4:1	resale; price display; refunds
	La. R.S. § 17:3390(E)	resale
<b>Maine</b>	8 M.R.S. § 1301	resale; refunds
<b>Maryland</b>	Md. Code, CL § 13-310	seating disclosure
	Md. Code, CL § 13-310.1	resale; refunds; speculative tickets
	MD Bus Reg Code § 4-318	price cap
	MD. Commercial Law Code § 14-4002	automated ticket purchasing software
<b>Massachusetts</b>	ALM GL ch. 140, § 185A	resale
<b>Massachusetts</b>	ALM GL ch. 140, § 185D	resale; price display; price cap
<b>Michigan</b>	MCLS § 750.465	resale; price display; speculative tickets; automated ticket purchasing software
<b>Minnesota</b>	Minn. Stat. § 297A.68 Subd. 43	resale; service charges/fees/taxes; ticket broker requirements
<b>Minnesota</b>	Minn. Stat. § 609.806	automated ticket purchasing software
	Minn. Stat. § 609.807	resale
<b>Mississippi</b>	Miss. Code Ann. § 97-23-97	price display; price cap; ticket scalping
<b>Missouri</b>	§ 67.306 R.S.Mo.	resale; local government restrictions

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<b>Montana</b>	None found	
<b>Nebraska</b>	None found	
<b>Nevada</b>	Nev. Rev. Stat. Ann. § 598.3978	ticket broker requirements
	Nev. Rev. Stat. Ann. § 598.3979	resale; speculative tickets
	Nev. Rev. Stat. Ann. § 598.3975	resale; price display
	Nev. Rev. Stat. § 598.398	automated ticket purchasing software
<b>New Hampshire</b>	RSA 357-F:4	resale; pre-recording disclosure
<b>New Jersey</b>	N.J.A.C. 13:45A-20.2 - 20.4, 20.6	ticket broker requirements
	N.J.A.C. 13:45A-20.5	resale; price display; refunds
	N.J.A.C. 13:45A-20.6	ticket broker requirements
	N.J.A.C. 13:45A-20.7	ticket broker requirements; price display
	N.J. Stat. § 56:8-(27-32)	ticket broker requirements; service charges/fees/taxes; seating disclosure; refunds
	N.J. Stat. § 56:8-33	resale; price display; price cap
	N.J. Stat. § 56:8-34	resale; quantity restrictions; speculative tickets
	N.J. Stat. § 56:8-35.4	third party securing tickets
<b>New Mexico</b>	N.M. Stat. Ann. § 30-46-1	ticket scalping; service charges/fees/taxes
<b>New York</b>	NY CLS Art & Cult Affr § 23.23	ticket broker requirements
	NY CLS Art & Cult Affr § 25.03 [effective July 1, 2025]	ticket broker requirements
	NY CLS Art & Cult Affr § 25.06 [repealed effective July 1, 2025]	resale
	NY CLS Art & Cult Affr § 25.07 [repealed effective July 1, 2025]	price display; resale; refunds
	NY CLS Art & Cult Affr § 25.07 [effective July 1, 2025]	ticket broker requirements
	NY CLS Art & Cult Affr § 25.08 [repealed effective July 1, 2025]	price display; ticket scalping
<b>New York (cont'd)</b>	NY CLS Art & Cult Affr § 25.09 [repealed effective July 1, 2025]	speculative tickets
	NY CLS Art & Cult Affr § 25.09 [effective July 1, 2025]	ticket broker requirements
	NY CLS Art & Cult Affr § 25.10 [repealed effective July 1, 2025]	ticket broker requirements
	NY CLS Art & Cult Affr § 25.11	resale; ticket scalping
	NY CLS Art & Cult Affr § 25.13 [effective until July 1, 2025]	ticket broker requirements

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	NY CLS Art & Cult Affr § 25.13 [effective July 1, 2025]	price display; resale; price cap
	NY CLS Art & Cult Affr §§ 25.15 - 23 [effective July 1, 2025]	ticket broker requirements; price display
	NY CLS Art & Cult Affr § 25.24	automated ticket purchasing software
	NY CLS Art & Cult Affr § 25.25 [effective until July 1, 2025]	ticket broker requirements
	NY CLS Art & Cult Affr § 25.27 [effective until July 1, 2025]	commissions to employees
	NY CLS Art & Cult Affr § 25.27 [effective July 1, 2025]	commissions to employees; price cap
	NY CLS Art & Cult Affr § 25.29 [repealed effective July 1, 2025]	service charges/fees/taxes
	NY CLS Art & Cult Affr § 25.31 [repealed effective July 1, 2025]	ticket broker requirements
	NY CLS Art & Cult Affr § 25.34 [repealed effective July 1, 2025]	internet requirements
<b>North Carolina</b>	N.C. Gen. Stat. § 14-344	resale; service charges/fees/taxes; price cap; price display
	N.C. Gen. Stat. § 14-344.1	resale; refunds; ticket broker requirements; price cap
	N.C. Gen. Stat. § 14-344.2	automated ticket purchasing software
<b>North Dakota</b>	N.D. Admin. Code 72-02.2-02-11	price display
<b>Ohio</b>	ORC Ann. 505.95	local ordinances
	ORC Ann. 715.48	local ordinances
	ORC Ann. 1716.07	ticket broker requirements
	ORC Ann. 3773.49	price display; price cap
<b>Oklahoma</b>	15 Okl. St. § 774.1	automated ticket purchasing software
<b>Oregon</b>	ORS § 646A.115	automated ticket purchasing software
<b>Pennsylvania</b>	4 P.S. § 202	resale; ticket broker requirements; internet requirements; refunds; price display; price cap
	4 P.S. § 203	ticket broker requirements
	4 P.S. § 205	ticket broker requirements
	4 P.S. § 210	ticket broker requirements
	4 P.S. § 211	price display; price cap
	4 P.S. § 212	resale; price cap; automated ticket purchasing software
	4 P.S. § 212.1	automated ticket purchasing software
	5 Pa.C.S. § 1113	refunds

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<b>Rhode Island</b>	R.I. Gen. Laws § 5-22-26	price cap; service charges/fees/taxes
<b>South Carolina</b>	S.C. Code Ann. § 16-17-710	resale; price cap; internet requirements; refunds
	S.C. Code Ann. § 39-5-36	resale; quantity restrictions; price cap
<b>South Dakota</b>	None found	
<b>Tennessee</b>	Tenn. Code Ann. § 47-50-121	price cap; service charges/fees/taxes; price display; ticket broker requirements
	Tenn. Code Ann. § 39-14-127	internet requirements
	Tenn. Code Ann. § 47-18-104	internet requirements
	Tenn. Code Ann. § 47-50-118	refunds
	Tenn. Code Ann. § 47-50-119	speculative tickets
	Tenn. Code Ann. § 39-17-1104	automated ticket purchasing software
<b>Texas</b>	Tex. Bus. & Com. Code § 327.002	internet requirements
	Tex. Bus. & Com. Code § 328.002	automated ticket purchasing software; quantity restrictions
<b>Utah</b>	Utah Code Ann. § 13-54-201	ticket broker requirements; price display; quantity restrictions
	Utah Code Ann. § 13-54-202	automated ticket purchasing software; internet requirements; ticket broker requirements
	Utah Code Ann. § 13-54-203	refunds
	Utah Code Ann. § 13-56-201	resale
<b>Vermont</b>	9 V.S.A. § 4190	automated ticket purchasing software
<b>Virginia</b>	Va. Code Ann. § 59.1-466.6	resale
	Va. Code Ann. § 59.1-466.8	resale; internet requirements
	Va. Code Ann. § 15.2-969	local ordinances; internet requirements
<b>Washington</b>	Rev. Code Wash. (ARCW) § 19.345.005	automated ticket purchasing software
<b>West Virginia</b>	None found	
<b>Wisconsin</b>	Wis. Stat. § 66.0410	resale; local ordinances
	Wis. Stat. § 100.173	refunds
	Wis. Stat. § 42.07	ticket scalping; price cap
<b>Wyoming</b>	None found	

## Appendix B: Definitions for Appendix A

Topics	Definitions
<b>Automated ticket purchasing software</b>	Regulates software, such as bots, that may be used to purchase tickets online or circumvent ticket-purchasing restrictions
<b>Commissions</b>	Regulates payment of commissions in connection with ticketing
<b>Internet requirements</b>	Regulates online ticket sales
<b>Local ordinances</b>	Addresses the powers of local jurisdictions to regulate ticket sales
<b>Pre-recording disclosure</b>	Regulates disclosure of pre-recorded vocals in live performances
<b>Price cap</b>	Regulates prices for the sale or resale of tickets
<b>Price display</b>	Regulates display of prices, including on tickets, at point of sale, and/or at a broker facility
<b>Quantity restrictions</b>	Regulates the quantity of tickets that may be purchased
<b>Refunds</b>	Regulates refunds for live entertainment ticket purchases
<b>Resale</b>	Regulates resale of tickets after initial sale
<b>Seating disclosures</b>	Regulates disclosures of seat location
<b>Service charges/fees/taxes</b>	Regulates charging of service charges, fees, or taxes in addition to the price of the ticket
<b>Speculative tickets</b>	Regulates the sale of tickets that are not in the actual or constructive possession of a reseller at the time of sale; also called tentative tickets
<b>Ticket broker requirements</b>	Regulates documentation, licensing, bonding, and other requirements for those who professionally resell tickets
<b>Third party securing tickets</b>	Regulates use of third parties to purchase tickets
<b>Ticket scalping</b>	Defines and regulates "ticket scalping"