

April 22, 2021

The Honorable Anna Kaplan
Chair, Commerce, Economic Development &
Business Committee
New York State Senate
Legislative Office Building, Room 805
Albany, NY 12247

The Honorable James Skoufis
Chair, Investigations and Government Small
Operations Committee
New York State Senate
Legislative Office Building, Room 815
Albany, NY 12247

RE: Joint Public Hearing on New York State's Live Event Ticketing Industry

Dear Chairs Kaplan and Skoufis:

Thank you for the opportunity to participate in today's joint hearing of the Investigations and Government Operations and Commerce, Economic Development, and Small Business Committees on New York State's live events ticketing industry. StubHub shares the Committee's commitment to the consumer interest and applauds the effort to look at the industry holistically on behalf of fans.

Founded in 2000, StubHub revolutionized secondary ticket sales by providing fans a safe, transparent, and trusted marketplace to buy and sell tickets. Today, StubHub is the world's most trusted ticket marketplace, operating in more than 40 countries and giving our customers access to the highest standards of consumer protection in the industry.

StubHub has been active over the last several years in engaging with policymakers and regulators to better understand the live event ticketing industry and identify areas where enforcement of existing laws, or regulatory or legislative efforts could benefit consumers.

New York has consistently led the nation by instituting public policies that empower consumers in the live event ticketing industry. StubHub is proud to have supported the state's most recent legislative initiatives in 2018, which included critical consumer protections such as prohibiting the use of bots to unfairly procure tickets, regulating the sale of speculative tickets, prohibiting deceptive websites, enhancing disclosures, and renewing the state's critical transferability requirements.

StubHub believes that a fair, secure, and competitive ticket marketplace unequivocally supports the interests of fans. It drives industry players to compete on user experience, fees, consumer protections, and service. It also provides fans greater access to the events they want to experience and the ability to purchase tickets at a market-driven price.

As the instance of anticompetitive and anti-consumer practices in the ticket industry increases, it is critical that New York renew and strongly enforce its existing statute. Restrictive and anti-consumer practices witnessed in today's marketplace include obscurity around ticket allocations, particularly the lack of transparency around the



number of tickets available for sale to the general public, as well as restrictions on the transfer or resale of tickets that limit fans' ability to transfer, give away, or resell the tickets they have rightfully purchased.

Transparency & Accessibility

Bots are often singularly blamed as the reason fans have difficulty accessing tickets. However, it is important to note that another major contributor is that large percentages of tickets are actually never put on sale to the general public. Ticket issuers, artists, promoters, venues, and others involved in primary ticket sales frequently hold back large percentages of tickets for industry insiders and various pre-sales.

According to a 2016 report by the New York Attorney General's office, an average of 46% of tickets go on sale to the general public during the general on-sale. The remaining 54% are held back for industry insiders, artists, fan clubs, credit card pre-sales, and other sources. The number of tickets made available to the public frequently falls to 25% for top concerts and was noted to be as low as 12% for one concert in New York City.¹

In some instances, tickets that have been held back from the general on-sale are gradually released over time leading up to the event. These tickets are often priced higher than those originally sold and often reflect the market rates established on secondary marketplaces.² Ticketmaster categorizes this ticket-sale model as "Official Platinum Tickets," and it utilizes market-based dynamic pricing.

StubHub respects the rights of artists and teams to price and sell their tickets as they deem appropriate. We also respect the rights of fans who have purchased those tickets to resell them at a mutually agreed upon price to a subsequent buyer.

It should be noted that the need for transparency increases exponentially as ticket issuers embrace the use of dynamic pricing. The controlled distribution of supply can have a profound effect on pricing, and consumers should be aware of how many tickets have been released versus held back in order to gauge those dynamics and make informed purchasing decisions.

Providing fans information on the number of tickets available for sale, when these tickets will be offered, and at what price will create a clearer picture of event accessibility and help to inform fans' decisions on if, and when, to buy tickets.

Consumer Choice & Restrictions on Transferability

A competitive ticket marketplace provides fans greater access to the events they want to experience and the ability to purchase tickets at a fair and market-driven price.

Unfortunately, as a condition of initial sale, ticket issuers, sports teams, artists, theatres, and venues are increasingly using terms and conditions, technology, and ticket delivery techniques to place restrictions on the tickets that fans have rightfully purchased.

¹ Office of the New York State Attorney General, "Obstructed View: What's Blocking New Yorkers from Getting Tickets," (January 2016), available at: https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

² Marco Chown Oved & Robert Cribb, "Got tickets to Saturday's Bruno Mars show? The guy sitting beside you may have paid hundreds of dollars less," *Toronto Star* (September 18, 2018), available at: <https://www.thestar.com/news/investigations/2018/09/18/got-tickets-to-this-weekends-bruno-mars-show-heres-why-the-guy-sitting-beside-you-may-have-paid-hundreds-of-dollars-less.html>

In some instances, these restrictions may prevent fans from transferring, giving away, or reselling their tickets altogether. In other instances, these restrictions dictate that any transfer or resale must occur on a secondary ticket platform that is owned, operated, or officially partnered with the primary ticket seller. This type of behavior unfairly limits choice and forecloses competition in the market.

As the dominant player in primary ticket sales, Ticketmaster is uniquely positioned to control secondary ticket sales and eliminate consumer choice and competition through ticket restrictions. As a major player in secondary ticket sales through products such as TM+, NFL Ticket Exchange, NBATickets.com, etc. – Ticketmaster’s use of restrictive ticketing is on the rise.

For example, Ticketmaster’s SafeTix technology (at times referred to as “rolling barcodes”), enables them to completely control and dictate if, and how, ticket purchasers may transfer or resell their tickets to subsequent users. Through this technology, tickets can be made completely non-transferable, or a more likely outcome, transferability can be limited solely to Ticketmaster’s platforms. This is particularly concerning in a world where Ticketmaster tickets 79 of 93 NFL, NHL, and NBA teams and controls approximately 70-80% of every ticket initially sold. Further, it has been reported that Ticketmaster intends to move all tickets to the SafeTix platform by 2021.³

With ticket restrictions, Ticketmaster can single-handedly eliminate consumer choice and foreclose competition. This situation occurred last year at a concert for The Black Keys in California where hundreds of ticket-holding fans were denied entry when Ticketmaster employed its SafeTix technology and removed the ability for customers to transfer their tickets.⁴

Short of completely eliminating a consumers’ ability to transfer a ticket, Ticketmaster is increasingly requiring consumers who purchase resale tickets on non-Ticketmaster sites (such as StubHub) to complete this transaction on Ticketmaster’s own website or app in order for the user to obtain the purchased tickets.

Fortunately, New York recognized the importance of empowering ticket purchasers by requiring the option to buy a freely transferable ticket at the initial point of sale is always available. Section 25.30 of the New York State Arts & Cultural Affairs law passed in 2010 and was affirmatively renewed on an annual basis through 2018 when the General Assembly added several new consumer protection provisions to the statute and renewed it through June 2021. This provision is critical to ensure consumer choice and competition remain in the live event ticketing industry. Several states have enacted similar provisions, including Connecticut, Virginia, and Utah. Two more states – Illinois and Colorado– have laws in place that prohibit any restriction on the resale of a ticket.

StubHub believes that fans should always have the option to purchase a transferable ticket at the initial point of sale that they can use, transfer, or resell freely to preserve competition in the market. Further, consumers who have purchased legitimate tickets should not be denied entry to an event based on a ticket issuer’s attempt to control the entire ticket marketplace and shut down competition.

³ Dave Brooks, “Black Keys Ticketing Blame Game Overshadows Larger Issues Ahead for Concert Business,” *billboard* (September. 24, 2019), available at: <https://www.billboard.com/articles/business/touring/8530801/black-keys-ticketing-ticketmaster-safetix>

⁴ Chris Willman, “Black Keys’ Anti-Reseller Policy Debated as Hundreds of L.A. Ticketholders Are Barred,” *Variety* (September. 21, 2019), available at: <https://variety.com/2019/music/news/black-keys-hundreds-turned-away-wilern-ticketmaster-1203344146/>

We understand that opponents to transferability requirements will argue that restrictions on transferability are necessary to enhance security, limit fraud, and more recently, to safely re-open venues in the wake of the COVID-19 pandemic. StubHub welcomes technological advancements to improve security, decrease fraud, and promote public health, however these advancements should not result in limited consumer choice or foreclosing competition. Further, we do not believe these arguments are fully informed.

While Ticketmaster claims to use digital ticketing and transferability restrictions to enhance security and understand who is attending events, those claims fall short with the acknowledgement that Ticketmaster does not conduct background checks on ticket purchasers in advance of the event. Similarly, the primary seller is typically only aware of the purchaser, not the guests of the purchasers (i.e. someone buys four tickets and brings three guests).

With respect to fraud, StubHub's own experience shows that the incidence of fraud is incredibly low. While digital ticketing may further enhance the industry's efforts to combat certain types of fraud, it cannot eradicate fraud altogether, and we can achieve these same outcomes without limiting consumer choice or foreclosing competition. The sincerity of the fraud argument must be questioned when the capability to create freely transferable digital tickets exists today but is not being broadly utilized. For example, the National Football League's (NFL) use of Ticketmaster's SafeTix technology has been widely reported. It is an example of digital ticketing that has been coupled with interoperability across multiple ticket platforms to ensure consumer choice.

The NFL required Ticketmaster to integrate its SafeTix system with multiple ticketing platforms that entered into a partnership with the NFL to enable the free transferability of digital tickets across multiple platforms. This arrangement is unique in the live event ticketing industry and arguably the result of government intervention. The NFL moved in this direction after reaching a settlement with six Attorneys General, including New York, where they agreed not to, "promote or require that its member clubs implement ticketing technologies or practices that are designed or intended to substantially impede or preclude the ability of consumers to buy or sell tickets on secondary ticket exchanges unless permissible under applicable law."⁵ Unfortunately, we do not see the broader industry moving in this direction without additional direction from the government.

Despite Section 25.30's requirement that an operator or operator's agent may only employ a non-transferable paperless ticketing system if the customer is "offered an option at the time of initial sale to purchase the same tickets in some other form that is ***transferrable independent of the operator or operator's agent***," we've seen recent examples of New York events offering mobile-only tickets that cannot be transferred independently of the operator or operator's agent. For example, Ticketmaster partnered with Pearl Jam to offer mobile-only tickets to their now postponed 2020 show in New York City that cannot be transferred independently of Ticketmaster's TM+ resale platform. Sellers can elect to sell these tickets on StubHub, however fulfillment must occur through the Ticketmaster app.

⁵ Offices of the Attorneys General of the States and Commonwealths of New York, Ohio Massachusetts, Florida, and Pennsylvania and the District of Columbia, and the National Football League, "Settlement Agreement in the Matter of NFL Ticketing Investigation," (November 15, 2016), available at: [http://myfloridalegal.com/webfiles.nsf/WF/JMAR-AFQQEM/\\$file/NFL+Settlement+Agreement.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JMAR-AFQQEM/$file/NFL+Settlement+Agreement.pdf)

The Impact of COVID-19 on the Live Events Industry

The impact of COVID-19 on the ticketing industry has been severe. In an effort to stop the spread of the virus, protect consumers, and comply with government prohibitions on mass gatherings, StubHub has had more than 150,000 events impacted by COVID-19 in North America this past year.

StubHub believes that collaboration across our industry is critical to facilitating the safe return of fans to live events.

Again, StubHub welcomes technological advancements and processes that help achieve this goal, however, it is imperative that these technologies and processes not limit consumer choice or foreclose competition in the sector. For example, in the wake of the COVID-19 pandemic we have seen an increased use of non-transferable digital tickets that eliminate the customer's ability to transfer or resell that ticket, or eliminate the ability to transfer or resell the ticket independently of the platform through which they were purchased it – including in New York. Restricting ticket transferability is not necessary to meet established re-opening requirements, yet it is increasingly employed. Solutions to get fans back into stadiums should advance the consumer experience and create more flexibility in the marketplace, not limit consumer choice and stifle competition.

Similar concerns were recently noted by Congressional leaders including Chairman Jerry Nadler, Chairman Frank Pallone, Jr., Chairwoman Jan Schakowsky, Chairman David Cicilline, and Congressmen Bill Pascrell, Jr. in a letter to Attorney General Merrick Garland and Acting Federal Trade Commission Chair Rebecca Slaughter:

“Throughout the coronavirus disease of 2019 (COVID-19) pandemic, LNE [Live Nation Entertainment] has rebranded its anticompetitive ways under the guise of protecting the public health. As reported in *Billboard Magazine*, ‘Ticket transfer technology used to restrict fans from reselling tickets to high demand shows will now be used to make ‘entry safer’ by requiring most person[s] entering a concert venue to register an account with Ticketmaster.’⁶ While local governments should work with local venues to ensure common sense public health protections for fans, such as mask-wearing and social distancing, we cannot allow Ticketmaster to leverage the pandemic to choke off competition by eliminating ticket transfer.”

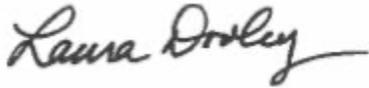
We believe COVID-19 has highlighted the importance of empowering consumers across sectors, including the live events industry. Transferability and flexibility should be key principles moving forward, allowing consumers to engage in our sector at their own comfort level and handle their ticket purchases as they see fit. The ability to transfer, give away, or resell tickets across multiple platforms will provide flexibility for consumers who no longer feel comfortable attending an event or elect to stay home when they find themselves feeling ill. This is even more important to consider when trying to get fans back into live events following COVID-19.

⁶ Dave Brooks, “Ticketmaster Tech Used to Fight Scalpers Will Now Be Deployed Against Covid19”, *Billboard* (Oct. 29, 2020), available at: <https://www.billboard.com/articles/news/9474791/ticketmaster-tech-deployed-against-covid-19/>.

Conclusion

Thank you for your consideration of StubHub's comments and the opportunity to participate in today's discussion. The New York Arts & Cultural Affairs Law provides a comprehensive set of policies that promote a safe, transparent, and competitive live event ticketing industry. StubHub encourages the renewal of this statute to ensure New York fans maintain these critical protections.

Sincerely,



Laura Dooley
Head of Global Government Relations