BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON INVESTIGATIONS AND GOVERNMENT OPERATIONS
AND
STANDING COMMITTEE ON COMMERCE, ECONOMIC DEVELOPMENT, AND SMALL BUSINESS

JOINT PUBLIC HEARING:

TO EXAMINE POTENTIALLY UNFAIR AND DECEPTIVE PRACTICES OCCURRING IN NEW YORK STATE'S PRIMARY AND SECONDARY TICKET MARKETPLACES FOR LIVE EVENTS IN ORDER TO IDENTIFY ANY LEGISLATIVE AND POLICY REFORMS

Zoom Remote Hearing

Date: April 22, 2021
Time: 10:00 a.m.

PRESIDING:

Senator James Skoufis, Chairman
NYS Senate Standing Committee on Investigations and Government Operations

Senator Anna Kaplan, Chairman
NYS Senate Standing Committee on Commerce, Economic Development, and Small Business

PRESENT:

Senator James Gaughran

Senator Pam Helming

Senator Brad Hoylman

Senator Todd Kaminsky

Senator Mike Martucci

Senator Thomas O'Mara

Senator Anthony Palumbo

Senator Elijah Reichlin-Melnick

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SENATOR SKOUFIS: Okay. Good morning, everyone.

Thank you for joining us today.

Welcome to today's New York State Senate hearing on event ticketing and consumer issues related to the COVID-19 pandemic.

This hearing is part of the Committee on Investigations and Government Operations' ongoing investigation into event-ticketing practices.

And we're delighted to partner on today's hearing with Senator Anna Kaplan, and the Committee on Commerce, Economic Development, and Small Business.

We hold today's hearing in the context of the soon-to-sunset ticketing laws.

Approximately 95 percent of the state's ticketing statute is due to expire this July; a statute that governs transferability, rules within the primary and secondary markets, transparency in the marketplace, and much more.

My firm belief, that two fundamental considerations exist as we contemplate our response to the forthcoming sunset.

First is the state of the live-event industry, which has obviously been devastated by the

pandemic.

In particular, the venues, and all the artists, performers, and employees, that create the very entertainment around which ticketing is made possible, must be supported and top of mind as we move ahead with possible reforms.

There is ample evidence that consumers are anxious to return to concerts, sporting events, and theater, and, thus, the ticketing markets will naturally rebuild, but only if the entertainment itself is available and continues to thrive.

Our second fundamental consideration must be on behalf of the consumer.

Much like the industry, millions of New York State consumers have been financially devastated by this pandemic, and we must double-down on our efforts to create a fair marketplace for them to engage with, one in which average New Yorkers are not sucker-punched with outrageous fees, or locked out of events, because thousands of tickets were pre-sold, held back, speculated, or resold at enormous markups.

These two considerations, fortunately, are not mutually exclusive.

While we hear from some industry stakeholders

today that insist on the need to do a straight extension of the existing laws under the guise of COVID uncertainty, make no mistake, these very same stakeholders have advocated for straight extenders in previous years when the laws were due to sunset, and would be doing the same this year, pandemic or not.

I believe we can, and should, update our ticketing laws in the coming months in such a way that fosters a supportive environment for the state's live events, all while leveling the playing field for consumers.

I look forward to our hearing today, and gathering input to that end.

Thank you.

And now I want to turn it over to my partner today, and that's Chairwoman Anna Kaplan.

SENATOR KAPLAN: Thank you, Senator Skoufis.

First, I want to say good morning to everybody. Thank you for joining us this morning.

I also want to thank Senator Skoufis for partnering with me on this important joint hearing today.

Senator Skoufis has been at the forefront of examining this industry, and I'm appreciative of his

partnership.

I would also like to welcome all of my other colleagues that are joining us this morning.

This joint hearing is being held as a collaborative effort between the Senate Committee on Commerce, Economic Development, and Small Business, and the Senate Committee on Investigation and Government Operations, with the goal of receiving constructive testimony from the stakeholders here before us today.

Both committees are focused on hearing testimony on a host of issues, which include:

Concerns around any potential ticketing practices that negatively impact consumers;

As well as receiving testimony on how this industry is moving towards economic recovery following the devastating effects of the COVID-19 pandemic;

And what New York State can do to support this industry that brings New Yorkers and visitors from all over the world to our renowned entertainment and sports venues.

From baseball to Broadway, from Buffalo to Belmont, the ticketing industry is a gatekeeper for so many people seeking to access the world-class

entertainment that this great state has to offer.

It is my hope that the testimony presented today will help us get more ticket holders in seats quickly, safely, and more affordably, and bring back our vibrant tourist economy, and the thousands of jobs for New Yorkers that are supported by this industry.

With that, I'm grateful to have this opportunity to hear from the stakeholders, and I'm eager to hear all of your testimonies.

Thank you.

SENATOR SKOUFIS: Thank you, Senator Kaplan.

And now we'll hear some remarks from your ranker, Senator Mike Martucci.

SENATOR MARTUCCI: Thanks, Senator Skoufis, and thank you, Senator Kaplan.

Great to see everyone this morning.

First, I want to start by thanking both of you, our chair people, for having this event today.

Certainly, tremendously beneficial for me, as the new member, to come up to speed on this issue, and have an opportunity to hear from the industry.

You know, Senator Skoufis really touched on the important points that I wanted to touch on in my opening, which is, you know, certainly, it has been

a tough year for businesses around New York; a particularly tough year for the ticketing industry, and, effectively, sales in 2020 were zero dollars.

So, you know, while I completely understand the struggle that this industry faces today, you know, I think that, certainly, you know, the sentiment that I want to start off with is, you know, I think that we need to be very focused on testimony today, in terms of the struggles of the industry; on how the industry feels like we can best help recovery, as we move forward, as population becomes more and more vaccinated.

Certainly, I know my big concern is that any changes that we make to this law, which could be beneficial to both consumers, the industry, potentially, and hopefully, both, are done in a way that makes sure that we protect an industry that clearly is very fragile at this time.

And, you know, I think, you know, really, just lastly, the last thing I'll touch on before I turn it back over you to, Chairman, so that we can get on with the testimony and the questions, is, you know, I think that allowing this law to expire, simply expire, would be a big mistake.

So it is important that something happens,

because there clearly is a need for us to act, whether it is a straight extender, which, you know, going into this, frankly, my intuition tells me makes sense.

But I do look forward to the testimony today, and hearing from the industry, and hearing the concerns, because, certainly, there are, you know, components of this that we could all collectively look at.

So I look forward to the testimony today.

I look forward to some questions that I have.

And, again, I thank my colleagues for hosting this event so that we can get some important information.

SENATOR SKOUFIS: All right. Thank you, Senator Martucci.

And before we move on, I want to acknowledge members/colleagues who have joined us so far.

They include Senator Kaminsky, Senator Reichlin-Melnick, Senator Gaughran, Senator Palumbo, Senator O'Mara.

And I think that's what we've got so far.

I suspect one or two others may join us.

And just some ground rules, heading in:

Each witness will be provided three minutes

to provide testimony.

And those of you who have submitted written testimony that may well be longer than three minutes, we just ask you to summarize to the extent practicable.

Then, following testimony for each panel, there will be questions and answers. Each -- each member, both chair and rank-and-file of the two committees hosting today's hearing, will be given five-minute allotments for questions.

Subsequent rounds/second rounds will be permitted.

And, if we are joined by members of the Senate that are not on these two committees, they'll be provided three minutes for a single round of questions.

So, with that, I would like to introduce, and welcome, our first witness, which is, David Marcus -- or, who is David Marcus. He's the executive vice president, head of global music, at Ticketmaster.

Welcome.

DAVID MARCUS: Thank you very much.

Chairs Skoufis and Kaplan, Senators O'Mara and Martucci, and other distinguished Senators,

thanks for the opportunity to testify today at this important hearing.

My name is David Marcus. I am the executive vice president of global music for Ticketmaster.

I spent my career at the intersection of music and technology, and I'm privileged to be part of an industry that brings people together to share in their common enjoyment of music and the artists they love.

As you noted, the COVID-19 pandemic, and the corresponding local- and state government-mandated shutdowns across the nation, have significantly impacted the live-event industry.

Our company, our employees, and the thousands of workers in small businesses depend on live events.

By mid-March 2020 the pandemic forced Live Nation to cease all tours, and close its venues, to help mitigate the spread of the virus.

Live music in the United States generated $10.9 billion in 2019 in revenue, that all but disappeared in 2020.

And, now, many fear losing a second year of live entertainment to this pandemic.

The impact of these closures has been

staggering.

At the onset of the pandemic, Ticketmaster reacted quickly, to adjust operations, and focus on reversing the flow of money to get refunds in the hands of fans.

This was no simple task, as it required us to clawback revenue from event organizers in order to process refunds for canceled and postponed events.

Over the course of 2020, Ticketmaster refunded over 27.4 million tickets, amounting to almost $3 billion in gross transaction value.

No vendor, venue, or artist has been immune from the impact of this crisis.

95 percent of all events in 2020 were canceled or postponed, and 77 percent of the millions of live-event workers lost 100 percent of their income.

97 percent of contract workers -- that's backup musicians, sound mixers, bus drivers, lighting companies, et cetera -- have been out of work since March of 2020.

This impact has been felt hard in New York State, the global epicenter of live entertainment, which also plays a significant role in local communities around the state and throughout

the country.

As an industry, we're all hurting.

Venues and promoters around the country saw revenue evaporate.

The federal Shuttered Venue Operator Grant program, which secured over 16 billion in federal grants, in what was supposed to a boon for independent venues and talent managers, has yet to issue, or even accept, a single grant, and that program will only benefit a minority of live-event workers.

Most of the businesses on today's panel are going around 13 months without revenue, and we are still without a clear road map to reopening.

Until state and local governments provide us with that road map, live entertainment will remain shuttered.

Unlike restaurants or airlines that can operate at reduced capacity, live entertainment is largely an all-or-nothing proposition.

Tours and concerts, in general, operate under thin profit margins and require more than just partial openings.

We need enough capacity to make live economics -- live events economically feasible.

Live music, in particular, is very seasonal, and requires months of coordination to align resources, production, talent, along with effective tour routes spanning dozens of cities.

Current reopening requirements vary greatly across cities, counties, and states.

That pathwork of approaches includes prohibitive capacity limitations, different rules around food and beverage, and highly politicalized views of health verification, with some jurisdictions requiring it for events, while others ban such tactics.

We can begin the lengthy process of booking artists, reopening venues, and mapping out tours only after there is a clear, consistent guidance from state and local governments.

However, in recent weeks, states like California and Connecticut have announced complete road maps and timelines for reopening, enabling us to begin the process of reigniting the economic engine that is live entertainment.

We recognize our future is not a return to business as it was before the pandemic, but a new normal as far as safety precautions and protocols are concerned.

We have engaged medical and sanitation experts to advise us on best practices for establishing a new normal for the health and safety of fans, workers, and artists.

Recent fan surveys indicate that the demand will be there when the shows return, with 95 percent of fans expected to -- expecting to attend concerts again once the pandemic is over.

While the focus of today's hearing is on ticketing, on behalf of the live-entertain industry, we ask for your help in advocating for consistent, reasonable reopening guidance across the state for all types of venues and events.

As we approach this new safer normal, and our industry gets back on its feet, we look forward to engaging with you and other policymakers on how to better protect fans from fraudulent and deceptive practices in ticketing live events that undermine the fan experience and their enjoyment of live events.

With regard to ticketing, Ticketmaster remains committed to developing products and processes that provide transparency, and create a safe and reliable ticket marketplace, that gets tickets into the hands of real fans.

Despite the --

SENATOR SKOUFIS: I'd like to ask you to, please, if you can, wrap up. Your time is up.

DAVID MARCUS: Oh.

Well, thank you for the opportunity to participate in this hearing.

We look forward to working with you to get the live-event industry back on its feet.

SENATOR SKOUFIS: Great.

Thank you.

I'll -- before I kick it off with some questions, I wanted to acknowledge, we've been joined by Senator Hoylman, as well as Senator Pam Helming.

So, thank you, Mr. Marcus, and I appreciate your attendance today.

You're obviously a major player, Ticketmaster; Live Nation is a major player, in this process.

Just, for the record, what -- what is your market share within the primary market?

I've read it's about 80 percent.

Does that sound right?

DAVID MARCUS: I --

SENATOR SKOUFIS: Within the United States.

DAVID MARCUS: I'm sorry?

SENATOR SKOUFIS: Within the United States.

DAVID MARCUS: I think that maybe sounds right.

I think it varies dramatically, depending on the venue size. Right?

SENATOR SKOUFIS: Okay.

DAVID MARCUS: The club's business, we don't have nearly that share.

SENATOR SKOUFIS: Okay.

Can you explain what your relationship -- or, how your relationship works with venues?

So my understanding is that there is a contract that's developed between Ticketmaster and venues for the purpose of selling tickets at that venue.

Without going into specifics, obviously, and into, you know, the details of contracts, which I know you neither want to or perhaps can do, can you just broadly speak to, are there -- do you get a cut from the venue for tickets that are sold for an event?

Can you just speak in very broad terms what those contracts look like?

DAVID MARCUS: Ticketmaster acts as an agent

for its clients -- its venue clients. We act as the exclusive ticketing agent.

We contract, usually, a multi-year agreement, to provide software, service, customer service, a ticketing marketplace, and access to all of our technology platforms.

And, in return, we negotiate the service fees that will be charged for providing that, on top of the tickets. And we typically --

SENATOR SKOUFIS: Are those -- sorry.

Are those service fees you're talking about the service fees that the consumers ultimately wind up paying?

DAVID MARCUS: Yes.

SENATOR SKOUFIS: Or are you talking about separate fees that the venue is going to pay to you?

DAVID MARCUS: No. Typically, we share the minority portion of the service fees that are charged to the consumer.

SENATOR SKOUFIS: Okay. So --

DAVID MARCUS: That's how --

SENATOR SKOUFIS: So the venue does not ultimately write a check to Ticketmaster in any way, shape, or form?

DAVID MARCUS: Correct.

SENATOR SKOUFIS: Got it.

DAVID MARCUS: (Simultaneous speakers; indiscernible.)

SENATOR SKOUFIS: Okay.

So if I may then turn to the primary marketplace that you're engaged in, and some of those fees.

So just this morning, for the sake of, you know, fresh information, I picked a random ballgame. I -- and I -- at this particular game, I think it's for this coming Saturday, I looked at cheap seats.

$19, two tickets; so $38.

And, on those $38, for two tickets, Ticketmaster was looking to charge $11 in a convenience fee, and $4.10 on a per-order fee; so a little over $15 in fees on $38 in tickets, which make up 40 percent of the actual ticket price.

At that very same ballgame, we looked at some more expensive seats.

$89 for two tickets; so $178 for the two.

And on those two tickets was a, very modestly increased over those this cheap seats, $15 convenience fee, as opposed to the $11, and the same $4.10 per-order fee.

So, in that case, where the consumer was

going to pay $19.10 on $178 worth of tickets, which works out to 11 percent of the total ticket price.

Do you see a problem with the regress -- regressivity of these fees, whereby, if you're, effectively, a wealthier family, looking to take, you know, a spouse or some kids, a family, out to a ballgame, you only pay 11 percent in fees on the total ticket price, versus, if you're a working-class or lower-income family, just looking to get to the stadium, trying to get the cheapest seats, you wind up footing a bill of 40 percent of the ticket prices in fees?

Is there an issue with that?

DAVID MARCUS: You know, fees are negotiated with the venue, and typically set at the venue's direction.

The venues understand and know their communities better than we do. And we look to them for guidance on what the fee schedule should look like.

There is a cost to serve every customer in a matter that -- that the value of the ticket price.

And I think the dollars that are paid, irrespective of the percent of face value, that is, reflect the cost to serve.

SENATOR SKOUFIS: Okay.

And so, to that end --

And this is my last question before I turn it over.

-- so these are convenience fees.

I actually, separately, looked up a Rangers game, and there weren't convenience fee there. There were service charges.

Is it all the same?

You know, whether they're convenience fees, per-order fees, service charges, is there a distinction between any of these, or is this just what you're calling "a fee" to make money?

DAVID MARCUS: Yeah, it's what the client -- how -- what the -- yes, that's the way we make the money -- we make our money. And it's what the client wants to call "the fees" on the pages we host for them.

SENATOR SKOUFIS: Okay.

Okay. I'll come back and continue with more, but I'll turn it over.

Senator Kaplan, do you have anything right now?

SENATOR KAPLAN: Yes.

SENATOR SKOUFIS: Okay.

SENATOR KAPLAN: Mr. Marcus, if you could tell me, what is the long-term outlook for your industry? And how long do you think it will before you're fully recovered?

DAVID MARCUS: Well, that's a great question.

I -- I can tell you that it has been an extraordinarily difficult 13 months.

We are starting to see events go on sale for shows in 2022.

We're not yet seeing any real clarity on shows performing in 2021.

There's some hope that the fall will start to see a return of live events.

And those two things are related.

As I noted in my opening comments, it takes a significant amount of time for artists to plan a tour.

They have to invest a significant amount of money in, and commit to, production. It's very difficult for artists to get any cancellation insurance.

So if they're going to plan a tour and put it on sale, they have to know it's going to play.

No artist who had any events canceled or rescheduled or postponed in 2020 wants to subject

their fans to that again.

So there's very much a wait-and-see.

We're hopeful that this year provides some relief, at least on the ticket-sales side.

But until we have clarity and guidance on consistent reopening guidelines, across the country, and really globally, because this is a global business, it's going to be very hard to predict what that return looks like.

SENATOR KAPLAN: On another note, on issue of speculative tickets.

Do you, you know, communicate with other companies, identifying these incidences?

And does the Ticketmaster go at it alone, or does it work with other, I guess, brokers, or other venues, in terms of finding the speculative tickets?

DAVID MARCUS: Yeah, so -- so, you know, speculative ticketing is something that happens on other marketplaces; not on ours. Right?

We don't permit the -- the posting of any ticket that has not already been sold out of the primary market.

So we will -- we don't police other sites; we just don't have the resources to police other sites.

We are sometimes aware of when speculative

ticketing is happening, and we can make that information known to our clients and our promoters, but, typically, there's not very much that we or they can do about it.

It is the business practice of other marketplaces to permit the sale of ticket that are not in hand.

It's a practice we think is unfair to consumers.

It leads to bad behavior. It leads to risk of non-fulfillment when the seller can't buy the ticket for the price they sold it at, or for less than the price they sold it at.

And it is just creates all kinds of the wrong incentives, and confusion for consumers.

SENATOR KAPLAN: Okay. I appreciate it.

DAVID MARCUS: Thank you.

SENATOR KAPLAN: I'll come back again later. But [inaudible remote audio] I'm done.

SENATOR SKOUFIS: Okay.

Just as a reminder, any colleagues that would like to ask questions, if you could just use the "raise hand" function within Zoom.

I'll now turn it over to Senator Kaminsky.

SENATOR KAMINSKY: Thank you very much.

Mr. Marcus, are you able to tell us what -- why you are against, or why you might not want to let customers know, how much tickets you are holding back at the beginning of a sale?

Like, I think everyone assumes that all the ticket are on sale. And that when they all go in five minutes, that means 100 percent of tickets were sold out, and, obviously, drives up pricing, going forward.

What is the downside to saying, We're only releasing 15 percent of the tickets?

DAVID MARCUS: Well, I mean -- I appreciate the question.

So, first of all, about 10 or 15 percent of all live events have that kind of sales profile that you just articulated, selling out in 5 minutes.

The vast majority of tickets never sell. Right?

40 percent -- not the vast majority of tickets -- but 40 percent of live-entertainment tickets just never sell.

So the problem is not increasing scarcity.

The problem is, how do we sell more tickets?

Our clients are in the business of selling tickets. They don't hold back tickets.

"Holds," which is an industry term that describes tickets that are not being offered for sale, don't exceed 5 percent of the tickets that we sell.

And --

SENATOR KAMINSKY: Mr. Marcus, just to be clear: I'm being told by people in your industry that there are times, for big concerts, that, like, 90 percent, or 80 or 70 percent, are not on sale right away. That you put like a very limited amount and it drives up demand.

That's not true? That's all BS?

DAVID MARCUS: That's factually not the case. I mean, it's provably not the case.

SENATOR KAMINSKY: So I -- I think that, then, we can get somewhere, if you want to say what that number is, because, if it's not a big one, then why not put it out there, and then that will put this to bed. No?

DAVID MARCUS: No, because that's not -- because there is no number.

The number depends on what -- who -- who -- what audience is being invited into the -- to buy tickets.

Who's the marketing partner?

What commitments have they made about making tickets available to people who hold a particular credit card, or who listen to Spotify?

Or, you know, what were -- what was the trade that was made between the promoter and -- or, the event organizer and the marketing partner?

The argument about there being "a number" that should be put out, it doesn't help consumers know anything.

What it really does, and it -- it's a smoke screen for the broker community, it helps them figure out what the supply-and-demand profile looks like.

And --

SENATOR KAMINSKY: But why can't the average New Yorker know what the supply-and-demand profile is?

I mean, it's just transparency; it's just saying what's out there. No?

DAVID MARCUS: No, because there is no number.

What is -- there's no number that can be given that won't change later.

There are all kinds of holds that happen.

Holds for press.

Holds for friends and family of the artist.

Holds for production kills.

Think about a big artist coming into an arena with brand-new production. They have to fit it in the venue the day before the event. And then they realize that some of the seats that they thought were blocked, that didn't have good line of sight, or the stage was going to occupy it, are now available for sale.

Now, how do we change the number of tickets that are available?

Right?

Those tickets need to be sold for the economics of the show. So now we have a change in -- in the way the production works.

And it's not just the tickets at the front of the stage. It's the tickets on the side of the stage that they thought were going to be blocked by speakers.

It is a real-time changing number.

It is a -- it is -- the argument that it somehow provides transparency is kind of nonsensical, because there's just -- it doesn't give any insight into something that anybody can make a decision on.

The tickets -- our job is to sell as many tickets as we can on behalf of our clients.

They all make money by selling tickets.

Nobody makes money by holding tickets.

SENATOR KAMINSKY: Okay. Let me ask another question.

DAVID MARCUS: I want to clear up about one other thing.

The -- the -- Ticketmaster sells tickets off an interactive seat map.

The profile -- the demand profile of every event is the same: Massive demand when tickets are first made available. Then demand falls off until the show. And then it comes back slightly the week of the show.

It is in everybody's interest to make all the tickets they have for sale available at the beginning of that curve; that's when people come.

That's how marketing dollars are spent in the market.

That's where investment is made in attracting fans.

That's where we invest in systems that sell lots of tickets to people under a massive demand profile.

Holding tickets back for a time when it's impossible to find fans to buy them, doesn't serve anybody.

SENATOR KAMINSKY: Okay.

Can I -- can I ask one more question, please?

DAVID MARCUS: Yes.

SENATOR KAMINSKY: Are there concerts right now that you have customers for, that got canceled due to COVID, who are still out the money and don't know what's going to happen?

DAVID MARCUS: I don't believe so.

SENATOR KAMINSKY: Okay. So that's been -- that's been -- that's been worked on.

Okay. I appreciate it.

Thank you, Senators Skoufis and Kaplan, and for this hearing.

SENATOR SKOUFIS: Thank you.

Senator Hoylman.

SENATOR HOYLMAN: Thank you, Senator Skoufis; thank you, Senator Kaplan, for holding this hearing, especially since we are looking at this law and its potential renewal in terms of the ticket resale.

And I just wanted to ask Mr. Marcus, you have resale -- we had a reselling business.

And I carry a bill, and wanted your opinion

on that it, that would ban the resale of tickets that were offered free to the public.

And the most infamous example, I think you're familiar with, is when the Pope appeared at Madison Square Garden, and thousands of tickets were -- were released to the public, to many religious people. And then were scalped on the secondary market, preventing a lot of devoted Catholics from the opportunity to attend that mass.

Do you think that's acceptable?

DAVID MARCUS: No.

You know, interestingly, there's an event taking place here in Los Angeles in the next couple of weeks, the Global Citizen Event. It's a free ticket for vaccinated health-care workers.

And, you know, we're in the process of sending out notices to the other marketplaces, letting them know that, you know, this is a free ticket, it's intended for people who have qualified as a vaccinated health-care worker. Please don't allow these to be posted on your site.

I will say, I think the event that you described was so distasteful to so many in the industry, that there is, for the major marketplaces, generally, a -- an inclination not to offer those

kinds of tickets for sale.

Now, that's the major marketplaces.

And so I appreciate that there are some who may think they fly below the radar and can get away with that.

I do think it's distasteful.

SENATOR HOYLMAN: So you don't -- you don't resell free tickets, such as "Shakespeare in the Park," on -- and -- and -- and you would support legislation, banning the resale of free or charitable tickets?

DAVID MARCUS: Yes.

SENATOR HOYLMAN: Thank you very much.

SENATOR SKOUFIS: Thank you, Senator Hoylman.

Senator Helming.

SENATOR HELMING: Thank you, Senator Skoufis; and thank you, Senator Kaplan, for hosting this hearing.

Mr. Marcus, to continue on the subject of reselling tickets, it's my understanding that most tickets these days are digital tickets that are created by Ticketmaster.

In order for a person to resell them, the seller has to transfer them to the new buyer through the Ticketmaster system, even if the sale occurs on

a competitor's marketplace.

So I'm concerned that, in this way, the personally identifiable information of your competitors' customers is available then to your company.

So I was wondering if you can provide an assurance that you're not marketing to consumers, using that information that's being gained in this manner?

DAVID MARCUS: So our digital ticketing system was developed for a number of reasons.

One, to ensure that all the tickets that are delivered to the end fan, regardless of what the marketplace to which it is delivered, are valid, and that the event organizers know who's coming into their buildings; so, to combat fraud, provide safety.

In a post-pandemic world, the ability of every fan to have their own contactless ticket on their personal device is increasingly important.

We are a global company. We are GDPR-compliant, we're CCPA-compliant, we comply with the privacy laws of every jurisdiction that we operate in, and we take that very seriously.

So we don't market to anybody who doesn't

want to be marketed to. And we provide all kinds of opportunities to opt in to the marketing; not opt out of marketing.

So we take the privacy and security of fans very seriously.

SENATOR HELMING: So to these customers that you glean their information through a competitive marketplace, through this transaction that they're doing, are you saying that you -- Ticketmaster would then reach out to them and ask them if they would like to opt in to Ticketmaster marketing?

DAVID MARCUS: No. They have to opt in. They're (simultaneous speakers; indiscernible) --

SENATOR HELMING: You're asking -- Ticketmaster is asking them if they would like to opt in?

DAVID MARCUS: No.

SENATOR HELMING: So you are -- "no"?

DAVID MARCUS: No.

SENATOR HELMING: Okay.

So you're not using information that you're gleaning through this sort of transaction between the seller and the buyer on a competitive (simultaneous speakers; indiscernible) --

DAVID MARCUS: We use that information to get

the fans safely in the building, so the building knows who's in there; who their fan is, and who their customer is.

That's what that information is used for.

SENATOR HELMING: Okay. Thank you.

SENATOR SKOUFIS: Thank you, Senator Helming.

I'll -- I'll take another turn here.

And, again, if any members want to ask questions, just use the "raise hand" function.

So, just, Mr. Marcus, returning back to our conversation before about fees, you may know, currently, in New York State law, Article 25 allows for, quote/unquote, reasonable service fees in the primary and secondary markets.

How do you determine what qualifies as "reasonable" as you figure out what fees to charge?

DAVID MARCUS: Well, as I noted in my previous response, the fees that we charge are typically set by the client, and the client knows what the market is. And, again, the goal is to sell tickets.

And, you know, in any market, what's reasonable is what buyers and sellers, you know, agree is fair.

And I think that the market dynamics tell the

clients what -- what those fees should be set at.

The goal is not to disincent [sic] purchase; quite the opposite. Right?

We're trying to keep the fees at a level that supports the -- again, the cost to serve, both the fan and the client, and shows that the -- that the buildings can operate, and we can provide them the technology they need to get people in the buildings day after day.

SENATOR SKOUFIS: So your definition of "reasonable" is, according to your words, what the buyer and consumers feel is fair.

And so have -- have you -- and, look, you know, you as a primary, and also a secondary, marketplace at Ticketmaster, you are charged with meeting this letter of the law.

And so have you polled your customers as to whether they think these service fees are fair?

DAVID MARCUS: I'm not aware of any poll of customers, to ask whether the service fees are fair.

And I don't think that that was what I said. I think you mischaracterized my, or misheard my, testimony.

What is fair is what the client venues in the markets believe their consumers are willing to pay

to attend their live events.

That was my -- that's the way I phrased it.

SENATOR SKOUFIS: So you just believe it's whatever the buyers feel their customers are willing to pay?

That is your definition of meeting the "reasonableness" provision within the law?

DAVID MARCUS: I -- I don't have an opinion on what the reasonable provision -- "reasonableness" provision in the law means.

SENATOR SKOUFIS: Okay.

I want to talk a little bit about your platinum tickets that are offered through Ticketmaster.

Are these -- are these the holdback tickets that Senator Kaminsky was talking about, that are, effectively, provided to Ticketmaster, that aren't used by the friends of the artists, the press, et cetera?

Is that where those platinum tickets come from?

DAVID MARCUS: No.

SENATOR SKOUFIS: Where do they come from?

DAVID MARCUS: They're -- they're -- they come from the same tickets that are -- that

I mentioned before are made available for sale at the on-sell.

The point of a platinum ticket is an attempt by the event organizer to get market value for the best tickets in the house.

The existence of the secondary market is just a reflection of pricing inefficiency that event organizers have.

They don't understand the demand, because they can't -- it's very difficult to perceive in advance of making tickets available for sale.

They're trying to maximize sell-through at the on-sale when they've deployed their marketing dollars can.

And in that limited window, which is typically anywhere from, you know, 12 to 24 hours after they first make tickets available, that's where the maximum demand is.

So the platinum are dynamically-priced tickets, that are attempting to adjust prices to match the demand, and allow the event organizer to extract the value that would otherwise be extracted by resellers, who are just (simultaneous speakers; indiscernible) --

SENATOR SKOUFIS: Do you -- do you place a

limit on how many platinum tickets can be picked aside by the event organizer?

DAVID MARCUS: There is no picked aside.

Those tickets are available for sale like any other ticket, and we don't place a limit.

Typically, event organizers ask for dynamic pricing on 5 to 10 percent of their tickets.

But --

SENATOR SKOUFIS: So there's no limit?

I mean, so, in theory, an event organizer can -- can tell you, okay, we're going to put for, you know, face value, public sale, half of our tickets, and we're going to reserve the other half of tickets for your platinum services?

Is that -- is that possible?

DAVID MARCUS: I take issue with the word "reserved" to the extent that you mean that they are not available to the public.

They are just tickets that are priced dynamically. They're -- they are as available as the face-value ticket in the back of the house.

SENATOR SKOUFIS: No, understood.

But, you know, I'm sure you've seen the same reports, and not -- you don't need reports because you're engaged in this -- that, you know, literally,

seconds after an event will sell out, there have been instances where, then, suddenly, hundreds, if not thousands of tickets appear on your platinum services for ten times the face value. And, literally, they are the seat next door to the seat that just sold for, let's say, $100, that you're now selling for $1,000.

You see no problem with that?

DAVID MARCUS: I don't -- I take issue with your characterization and the numbers you're using.

I supervise that division at the company, I'm familiar with the practices.

They're -- seats do not get marked up ten times. There are not thousands --

SENATOR SKOUFIS: I have examples of it.

I mean, you're saying it never happens?

DAVID MARCUS: I would be shocked -- I would love to see the examples.

A 10x multiple on face-value ticket is extreme, and would represent --

SENATOR SKOUFIS: Agreed.

DAVID MARCUS: -- and would represent the far end of the curve.

The average markup on a dynamically-priced ticket is probably 1x -- one -- two -- sorry --

100 percent, average. Right?

And so we're not talking about 10x.

And there's no situation where shows sell out and then tickets get dumped in.

Again, we're -- we're in the business of matching supply and demand.

And the goal is to serve everybody who is at the front door, because once they come to the front door, if they don't find what they want, they go to somebody else's marketplace.

It's an unbelievably competitive situation we're in. And we're -- and we're competing --

SENATOR SKOUFIS: But if you're --

Sorry, Mr. Marcus.

-- so your suggestion there that, you know, there's competition within -- in, let's say, the primary marketplace, and people could just sort of go somewhere else if they don't like, you know, what they see within Ticketmaster, that's just -- I would argue that's just simply not true.

You know, you're the exclusive seller for, you know, MLB, and all these, you know, major sports organizations.

There is no other option.

Am I wrong?

DAVID MARCUS: If you're a consumer, there are -- there are dozens of other options. Every other market --

SENATOR SKOUFIS: In the secondary marketplace; correct?

DAVID MARCUS: -- from a consumer's perspective --

SENATOR SKOUFIS: Right.

DAVID MARCUS: -- if we don't offer them something that they're going to -- that they want buy, they'll go buy it from somebody else.

And there are plenty of brokers out there who are willing to play that arbitrage game.

So our job is not to hold back tickets or make it hard.

Our job is to serve our clients, and help them sell as many of their tickets as we can against the demand that they've paid to drive to this marketplace.

So I just -- I would just caution that all of the suspicion that somehow we're manipulating fans, there just -- it's just too hard to sell tickets.

And everybody wants to talk about the shows that sell out in minutes.

They are few and far between.

They're the sexy ones, they're the exciting ones, but they are rare.

And our job is not to make it hard; it's to make it easy.

We want to be the place consumers come to buy tickets. We don't want them to go to other marketplaces.

That's the competition we're in.

So making that experience simple, engaging, fulfilling, the last thing we want is somebody to come and see no tickets found. Or see tickets (simultaneous speakers; indiscernible) --

SENATOR SKOUFIS: Can I ask about, so a few years ago, we prohibited bots. You know, these automated tools that allow some individuals to gobble up huge amounts of tickets automatically.

And, you know, it's a misdemeanor currently in New York State law.

My understanding is that next to no prosecutions have happened under this statute.

My question to you:

You spoke earlier that, understandably, you're not able to police other sellers, but I suspect that, you know, you should be able to police yourselves.

Have you made any referrals to the New York State Attorney General under this bot provision in New York State law?

DAVID MARCUS: We -- we spend an inordinate amount of time and money defending our site against bots; working with third parties, building our own software, using our new smart-key platform, and having teams in real-time at every on-sale, trying to identify bot traffic and defend against it.

When the New York Attorney General has asked us for information in the past, we have provided it.

SENATOR SKOUFIS: Do you provide it without her asking?

DAVID MARCUS: You know, I am -- I am -- we are -- we are always engaged with law enforcement that's interested in supporting bot prosecutions.

SENATOR SKOUFIS: Okay.

I'm not sure -- if I could just ask the more direct question: You know, have you, unprompted by the attorney general reaching out, okay, you know, "Have you had bot activity?" have you referred cases of bot activity to New York State prosecutors?

DAVID MARCUS: I don't know whether we have done it unprompted, so I would have to get back to you on that.

SENATOR SKOUFIS: Okay. Thank you.

That's all I have.

I don't see any other hands.

Are there any other senators who -- oh, Senator Palumbo, go ahead.

SENATOR PALUMBO: Thank you, Chairman.

And I just have a few quick questions, Mr. Marcus.

So as far as -- I guess 2019 was the last -- the last real point of reference that we can use that was a fairly normal year -- right? -- as far as ticket sales?

DAVID MARCUS: Yes.

SENATOR PALUMBO: In 2019, I mean, there's been a lot of discussion about these holds.

What's -- what was the percentage of holds for, say, for example, your top five events in 2019?

Like, how much did you hold for those tickets that weren't sold, say, on the first day?

Do you understand that question? Does that make sense?

DAVID MARCUS: I understand the question.

It reference a practice that doesn't exist.

So Ticketmaster doesn't hold tickets at all.

Event organizers hold tickets.

The tickets that they hold are for uses that are non-commercial; again, production fitting in the building. The bands' mom wants to come to the show. Press. Record companies. The people who need to be at the show, who are part of the artist's career, and part of the event.

That number across -- I don't know what the top -- I can't tell you what the top five were in 2019, but it's some 5 percent.

Sometimes it's more in New York and L.A. than it is in other places because, that's where the industry is; that's where the PR people, the magazines, the television shows, are.

But it is -- but it is a single-digit percentage of the tickets.

Again, the cost of, you know, planning a show at Madison Square Garden is extraordinarily high.

The goal is to sell the tickets, to pay for the cost of putting on a show there; it's not to hold tickets back.

SENATOR PALUMBO: Okay.

And so -- and so -- just so I'm clear: Those tickets are held by, in that example, Madison Square Garden; they're not held by Ticketmaster? You don't keep them --

DAVID MARCUS: We do not hold tickets.

We do not decide on holds. We don't -- we give event organizers the ability.

And it's the artist, the concert promoter/the event promoter, and the building, are the event organizers. In the case of sports, it's the team.

They decide what their needs are to serve their VIPs in their industry.

And we just give them the tools to allow them to make that decision.

SENATOR PALUMBO: I see.

Okay. So other than -- other than Ticketmaster -- obviously, you have a very large market share.

You said there are other places or other brokers where people can get tickets.

Can they get them directly from the venue, without service fees, for face value?

Is that available?

DAVID MARCUS: Yeah, typically box offices sell tickets without service fees.

SENATOR PALUMBO: Okay.

Very good.

Thank you, Mr. Marcus.

DAVID MARCUS: Thank you.

SENATOR SKOUFIS: Thank you.

Senator Martucci.

SENATOR MARTUCCI: Thanks, Chairman.

Thank you, Mr. Marcus, for your testimony.

I just had one question, and, really, it's more related to the COVID-19 pandemic, and, specifically, refund policies, than it is kind of the broader discussion that we're having.

Who sets the refund policies with respect to events that might be rescheduled, or delayed, especially now because of pandemic-related issues?

DAVID MARCUS: Refund policies is similar to holds. All these decisions are made by the event organizer.

When the pandemic hit, and the scale of the refunds became clear, you know, our company worked very closely with all of the big live-event promoters, and Live Nation Entertainment in particular, took a leadership role in getting all the big-event promoters and event organizers to come up with consistent, coherent policies that fans could rely on.

We knew we couldn't have one-offs, depending on the event or the venue; and we were successful in that.

And in an incredibly short period of time, we not only came up with policies that were clear, but we at Ticketmaster, basically, built our machine to run backwards. Right?

It's not a machine that's built to refund $3 billion worth of tickets.

And it was an extraordinary effort. And the number-one priority was -- were fans.

We knew people were hurting. We knew that the industry wasn't going to come back quickly. That we had to give everybody, who had their money tied up in a ticket, a real opportunity to get that money back if their event wasn't going to take place for another year.

And if an event was canceled, no hassles, no action required, immediate refund.

SENATOR MARTUCCI: All right. Thank you, Mr. Marcus.

Yeah, I mean, look, my concern really surrounds this idea that, certainly, if an event is canceled, there's a necessary refund.

But, certainly, if an event is rescheduled, you know, one of our primary concerns is making sure that there are consumer protections, that allow folks who bought a ticket for a specific event at a

date and a time, who might not be able to use that ticket, to exercise that option.

So, thank you for your testimony.

Thank you, Chairman.

SENATOR SKOUFIS: Thank you.

SENATOR GAUGHRAN: We agree.

SENATOR SKOUFIS: Thank you.

Senator Reichlin-Melnick.

And then, Senator Gaughran.

SENATOR REICHLIN-MELNICK: Sure. Thank you.

And thank you, Mr. Marcus, for your testimony today.

Just wanted to follow up on a couple of issues.

You had mentioned, and I think early on, maybe in your opening statement, that 40 percent of tickets, on average, are unsold.

And can you clarify how that breaks down -- if that was the right number, first of all, and how that breaks down, because I'm sure there's a lot of smaller productions, other areas?

Is that the case in New York that 40 percent are unsold?

And when you're looking at some of the higher-profile events, I'm sure it's much fewer than

that that don't get sold.

DAVID MARCUS: Yeah, that's an industry average across live entertainment. Right? That's sports and theater and concerts.

And, you know, Senator Kaminsky started the data, asking about Bruce Springsteen tickets.

Bruce Springsteen doesn't have a problem selling his tickets.

But there are lots and lots of artists that have that problem. So some artists don't sell 50 percent of their tickets.

Some -- some -- sometimes the Mets aren't so great -- right? -- and they don't sell all of their tickets.

So that was an industry average.

SENATOR REICHLIN-MELNICK: I guess I just wonder how you saw that number is; if it's lumping together, you know, Super Bowl tickets, with Bruce Springsteen, with the Omaha Symphony, with, you know, the Binghamton Mets, or anything like that.

You know, what do we really learn when we're lumping together so many different sports, entertainment, all across the country, to try to make a point there?

DAVID MARCUS: I don't -- I'm not sure I know how to answer that question.

I guess the point I -- I think -- I think I was offering that stat to make a point, that -- that there are a small number of events that sell out instantly. And that it is hard to sell tickets; it is expensive to find fans.

Marketing for shows is expensive in an industry that has really low profit margins to begin with. I mean, the concert promotion industry is a single-digit margin business. So, you know, there's not a lot of free cash to go and find new fans.

And so the arguments that the secondary players are throwing up here, that suggest that we're somehow nefariously making it hard to buy tickets, just flies in the face of the business reality of the market that we operate in. Right?

It is about -- you know, there's a world-renown concert promoter who said, "There's just one rule in concert ticketing: Momentum."

Right?

Once you lose the momentum, you're dead.

And, you know, this is -- this guy is one of the greats.

And that's a lesson that we take every single

day, when we think about how we're going to make tickets available to fans, is: How do we make sure that everybody who wants a ticket gets one?

Because once you lose that momentum, it's really expensive to go get those people back.

SENATOR REICHLIN-MELNICK: I appreciate that.

And, again, I just would suggest that, going forward, it's probably a more useful way to try to look at this, both from our committee's perspective and from the industry, to try to break that out a little more between what we're dealing with, and whether it's, you know, venues that are in demand, or events that have trouble selling tickets.

And I'm sure, in both sports and live theater, there are many venues, and many events, that do have issues selling all the tickets.

But, of course, I think what we're seeing these large markups on are -- are the Bruce Springsteens of the world, or the Yankees, or the Jets, or any of the larger-profile events.

And I think that's where a lot of the concern comes from.

SENATOR SKOUFIS: Thank you, Senator.

SENATOR REICHLIN-MELNICK: And so I think -- no -- has my time expired?

Sorry.

SENATOR SKOUFIS: No, no. Go ahead. I thought you were done.

SENATOR REICHLIN-MELNICK: So -- yeah, so my one other question, I just want to kind to drill down, I know we've talked about this:

You know, we understand, I understand, the Attorney General of the State of New York did a study, and they did find that the majority of tickets for at least the most popular performance events weren't made available to the general public.

And I know that you're saying that just isn't right.

It's, just, I'm struggling to know what to make of the fact that we've got the attorney general on one side who's saying something, and you're just saying that they -- they simply didn't do their job right, or they didn't understand the issue?

What's your response to the report from the attorney general's office?

DAVID MARCUS: Was this the Schneiderman report from a few years ago --

SENATOR REICHLIN-MELNICK: Yes --

DAVID MARCUS: -- that you're referencing?

SENATOR REICHLIN-MELNICK: -- it is.

DAVID MARCUS: My recollection of that -- and I have not read that report recently -- my recollection was that that report pointed to a couple of shows, I think one of them was Justin Bieber, where there were a significant amount of tick -- at Madison Square Garden, where there were a significant amount of tickets held back for VIPs.

I -- that -- as I noted, that is a -- that is an extreme example.

And we've looked at this data, we've looked at it carefully, for situations just like this.

The percentage of tickets that are held for the events that we sell tickets for is sub-5 percent.

New York (simultaneous speakers; indiscernible) --

SENATOR REICHLIN-MELNICK: Is there (simultaneous speakers; indiscernible) --

DAVID MARCUS: -- go ahead.

SENATOR REICHLIN-MELNICK: -- no. I'm sorry. The connection's a little bit laggy on my end.

Is there a way that that data could be shared with this committee?

DAVID MARCUS: I presume it could be.

I'll have to get back to you on that, yeah.

SENATOR REICHLIN-MELNICK: Okay.

Thanks.

That's all I've got.

SENATOR SKOUFIS: Great.

We'll follow up on that request.

Senator Gaughran.

SENATOR GAUGHRAN: Thank you, Mr. Chairman.

Thank you, Mr. Marcus.

And I will try not to comment on and respond to your recent comment about the New York Mets, and --

[Laughter.]

SENATOR GAUGHRAN: -- and their performance sometimes leading to the inability to market some of the tickets.

But other than that, just following up, Senator Martucci touched a little bit on the COVID issues.

You know, and we see now that, that with some events we now have in New York, the requirement that people show proof of vaccination or proof of a negative COVID test.

And my guess is, as we move into the summer for, you know, all sorts of events across the

spectrum and venues, that just may be something that will become commonplace.

What efforts are you making to make sure that you are clearly providing to your customers the knowledge of that, so that they understand, when they show up at an event, you know, they -- they -- and they're not vaccinated, and they don't have, you know, proof of a recent test, that they may have a problem?

And, also, is there a refund policy in place in the event somebody shows up and cannot gain entry?

DAVID MARCUS: Yeah, that's a great question. Thank you.

We have instituted what we call "health-check information."

So for events where there are these requirements, in addition to having a ticket, you also need proof of either a negative test or vaccination.

There is information that we present to the consumer before they even enter the ticket-buying process: This -- here is what the requirements are for attending this event.

That information follows them through the

purchase journey. It's presented with their ticket.

And there is a refund policy, typically, that the event organizer provides, to the extent that the health credentials that are presented by the fan don't allow them to enter; don't qualify.

SENATOR GAUGHRAN: But is this information that they affirmatively have to check a box to make clear that they read it?

DAVID MARCUS: Yeah. We call it "Accept and Continue" -- right? -- to get to the next step (simultaneous speakers; indiscernible) --

SENATOR GAUGHRAN: (Simultaneous speakers; indiscernible) -- I understand --

All right. Thank you so much.

SENATOR SKOUFIS: Thank you, Senator Gaughran.

I just want to follow up with a question, pursuant to what Senator Reichlin-Melnick was asking you about.

And so understanding that, you know, the Justin Bieber concert is not the norm. Right?

And you've talked about, you know, these unsold tickets at, you know, many, many events that take place.

But understanding that that does happen,

where you have a very hot concert, or -- or, you know, "Hamilton" on Broadway, whatever it may be, and that those exist, do you think that there ought to be some limit -- statutory limit on holdbacks?

I mean, you know, even if it just happens a couple times a year, or a few times a year, at the hottest concerts, do you think that in -- you know, on behalf of your customers who are looking to get into these venues, do you think there should be some limit on holdbacks?

DAVID MARCUS: No. I think event organizers should be able to run their business the way they see fit.

I think that nobody knows their fans better than the artist.

These -- these venues are staples in their communities and in their markets.

And I think they need to make the decisions about how to run their business, as long as they do it in a way that doesn't defraud or injure or harm the public.

If Justin Bieber believes that, when he's launching his new tour and his new album, he needs to invite his record company to the show, to thank them for their work, that should be his decision.

It's his business, they're his tickets.

You know, our job is to make it -- is to empower the artist community, the event-organizer community, to effectively run their businesses the way they see fit.

And I think, as we start legislating decisions about, you know, how to take care of your constituents, I think you run into all kinds of problems.

SENATOR SKOUFIS: Can you understand that the average fan may be frustrated to learn, you know, who is desperate and dying to get into one of these concerts, that, after the fact, half of the tickets that they thought were available, actually went to friends and families of artists, and promoters, et cetera?

Do you sympathize with those fans?

DAVID MARCUS: Tickets are scarce. Right? It's -- it's the -- there's only so many tickets in any given venue.

And I sympathize with those fans every single day, because we recognize that people are passionate about music, they're passionate about sports, they're passionate about theater; and they want to go.

And when there are more people that want to go than there are tickets available, it's frustrating, but we can't make more. Right?

The tickets are what the tickets are.

And these, as I noted, the goal of almost every single artist, for every single event, is, "I want my fans there."

This is how they make their money, it's how they make their living.

The live-event industry is what drives artists' livelihoods.

It's not from streaming. It's not from selling T-shirts.

Those are important, but it's live.

And that money comes from selling tickets.

So I am sympathetic to the fans.

I'm a music fan. There's lots of shows that I want to go to, that I don't get to go to.

So I recognize that -- that frustration.

But it is not because we don't want fans there. It is not because Justin Bieber doesn't want his fans there.

Quite the opposite.

His success is 100 percent due to the fact that he tours, and makes ticket available to fans,

and he wants them in the building.

SENATOR SKOUFIS: Okay.

I'm done with my questions.

Seeing no other hands up, I want to thank you, Mr. Marcus. You've provided a lot of insight.

And we appreciate you -- your attendance, and your answering our questions.

And we do have a couple follow-ups, I think, over the course of this Q&A, that we'll reach out to you about.

But, otherwise, again, thank you for being here, and [inaudible remote audio.]

DAVID MARCUS: Thank you, all.

Appreciate the questions.

SENATOR SKOUFIS: Yep. Thank you.

Our second panel, that I'll introduce now, we have a few witnesses:

First, we have the general manager of the Times Union Center, Bob Belber;

We have from The Broadway League, Tom -- and I apologize if I'm mispronouncing your name -- Kirdahy, who is a producer with The Broadway League;

We have Gilbert Hoover, vice president and general counsel of The Shubert Organization;

And from Local 751 I.A.T.S.E., Treasurers & Tickets Sellers Union, we have Lawrence Paone, who is the president of the local.

Welcome, everybody.

I think -- correct me if I'm wrong, I think everybody wants to provide testimony.

If not, that's okay, but we'll start with, Mr. Belber, you want to go first?

BOB BELBER: Sure. Thank you.

Thank you very much.

SENATOR SKOUFIS: Thank you.

BOB BELBER: So first I'd like to say that the Times Union Center, just to give you some background, is a 17,500-seat facility, very much like Madison Square Garden.

We call it the "Upstate New York premier sports and entertainment facility."

We've had about 600-plus employees that have not really worked since March of 2020.

We're very much looking forward to the restarting of live entertainment; sports, and entertainment.

The ticketing industry is something that our industry, and all of our careers, are centered upon.

And for the fans, it's something that we have

a lot of, you know, sincere feelings, that they should get what they are paying for, that they should enjoy the events that they're putting their hard money out for, and that they should be able to buy those tickets in a non-deceptive way.

And so one of the biggest concerns that I have in my 27 years of being here, is the third-party, or, secondary market.

And where I focus my concern, is for the consumer that buys a ticket on the speculating side, where seats are put on sale by third-party brokers on a website, that the seat may not even exist.

And in some cases we've had tickets that have been sold on secondary-market sites for major events.

You know, whether it's a Paul McCartney or Elton John or some other major artist, where they show up at the building with a ticket for a section seat and seat number that was purchased through a secondary market, that doesn't even relate to a seat that exists in the building.

So those kinds of deceptive practices I'm very, very concerned about.

As it relates to the actual websites where the secondary markets are selling tickets, that's

another big concern of mine.

And I say this really on behalf of our facility, but I'm sure other facilities in the state are having the same problems, in that the secondary-market sites are using our logos, they're using our photographs of the buildings, they're using our seat locations and seat maps in the buildings, without authorization, and making it look as though -- for a consumer that's going on their site, as though there are -- they are the official site for the venue; and they are not.

And so, our site, we do have "official" on it. We play the chess game of trying to get ours on the top of the list so that people can get to it first. And it becomes a money game for -- you know, for the Internet, as far as who's paying more to be dominant in the space.

But from an enforcement standpoint, it's almost impossible for us, or for Ticketmaster, to be able to enforce people that are using, without authorization, our assets; our name and likeness.

And so, if there's one thing that I would love to see from the State side, and perhaps from the attorney general's side, is to crackdown on websites that are using photographs, logos that are

trademarked, that are deceptive, and make the consumer feel as though they're on the official site, when they're not.

SENATOR SKOUFIS: Thank you, Mr. Belber.

And I do want to acknowledge your participation here.

We invited a number of the very major downstate venues to this hearing.

They chose not to participate, unfortunately.

And so your insight is really valued here today.

Thank you for being here.

BOB BELBER: Sure.

SENATOR SKOUFIS: Broadway League, you want to go next?

TOM KIRDAHY: Sure.

My name is Tom Kirdahy.

I'm a Tony and Olivier award-winning independent producer, with credits including "Hadestown," "Tina," "Anaestasia," "Ragtime," "The Inheritance," and "Frankie and Johnny in the Claire de Lune" on Broadway.

I'm also the former chair of the Broadway League, Government Relations Committee. And I participated in many of the conversations that

led to Senate Bill 8501B being signed into law into live 2018.

I thank Chairs Skoufis and Kaplan, as well as the distinguished members of the committees on Investigations and Government Operations, and of Commerce, Economic Development, and Small Business, for this opportunity to speak this morning.

I'd first like to provide some background.

In 2019, Touring Broadway performed in over 200 cities, welcomed 17.5 million theater-goers, and had an economic impact of approximately $20 billion on the United States.

In New York City, Broadway welcomed 14.8 million admissions, and provided almost 100,000 full-time-equivalent jobs.

Due to COVID-19, the industry has come to a screeching halt, resulting in an historic financial hardship.

The U.S. loses approximately $1.4 billion in economic activity every month Broadway is closed.

Broadway's most successful productions have long been targets of scalpers.

In 2018, when Assemblyman O'Donnell, Senator Murphy, and Governor Cuomo decided to revise the state's ticketing law, our members felt it was

important to address our ven -- to issues our venues had found the most challenging.

Patrons would often arrive at theaters, deceived about their seat locations, the face value of their -- and the face value of their tickets, leaving venue staff to sort the confusion.

I witnessed this firsthand on many, many occasions at my own productions.

We were satisfied, overall, with 8501B's disclosures on pricing, spec ticketing, refunds, relationship with the productions and surcharges, and prohibitions against deceptive URLs.

We believe these changes went a long way towards protecting consumers, artists, and venues.

However, current law has only been effective since late December 2018, and the industry has remained shuttered since March of 2020.

Without a significant period of effectiveness to examine the impact of this litigation -- this litigation may have -- this legislation may have had on the industry, it would be difficult to discuss the amendments.

Further, as noted earlier, we are in a crisis.

When shows can restart, we cannot simply turn

the lights on and open the doors.

We need to fund rehearsals for casts who have not performed in over a year, recast performers who have left New York or found other work, refurbish physical sets, and prepare venues for safe return of audiences.

We are working with lawmakers and health-care experts to raise our curtains, put crews back to work, and help revitalize the state's economy.

We are simply not equipped to implement new regulations governing ticketed distribution at this time.

The Broadway League therefore suggests extending the current law for two years.

We're optimistic that, by 2023, our productions will have resumed at full capacity, and we'll be in a better position to discuss what amendments will be in the best interests of theater-goers.

Thank you for your time this morning.

SENATOR SKOUFIS: Thank you for your testimony.

Shubert Organization?

GILBERT HOOVER: Thank you, Senator Skoufis, and Senator Kaplan, distinguished committee members.

Good morning.

I'm Gilbert Hoover, vice president and general counsel of The Shubert Organization.

I thank you for allowing me to participate in this hearing.

By way of background:

Shubert operates 17 Broadway venues, making it the largest Broadway venue operator.

In addition, Shubert operates Telecharge, a leading provider of ticketing services of Broadway and off-Broadway shows and other events across the country.

We share the committees' interest in ensuring that live-event ticket sales across New York State are fair and equitable for all parties, especially our patrons.

For the reasons that I will explain, we believe that the current law which will sunset on July 3rd of this year should be extended for another two-year period without any further amendments.

I am joined in this position by the Nederlander and Jujamcyn organizations which, collectively, own and operate 14 other Broadway venues.

Because of COVID, Broadway is enduring the

longest closure in its history.

You've heard from the previous panels of the enormous financial impact on our industry.

We were amongst the first businesses to close, and the last to reopen, in accordance with the New York State mandate and applicable law.

Commencing on the evening of March 12, 2020, over a year ago, all Broadway venues were shuttered by executive order.

While the Governor recently announced guidelines to allow Broadway venues to reopen at severely limited capacity, we are still waiting for the day when we will be welcoming our audiences under something approaching normal circumstances, and full, or close to full, house that are needed for our industry to survive.

Now is simply not the time to amend the current ticketing law.

Both live-event venues and live-event ticketing industry are in time of great dislocation of people.

Our focus is on doing what is necessary to ensure our survival, and to restart Broadway's economic engine, an engine that is essential to the economic recovery of New York City, including the

repopulation and revitalization of Times Square, and the return of tourism to the city.

And as you've heard --

SENATOR SKOUFIS: If you could --

GILBERT HOOVER: Oh?

SENATOR SKOUFIS: -- go ahead. I'm sorry.

GILBERT HOOVER: -- as in three years ago, the ticketing law was amended in significant respects.

Many of these changes are for the better; however, I do not believing that there has been sufficient time to evaluate the long-term effectiveness of these methods.

This is especially so, given the fact that the live-event industry has been largely shut down. And for our industry, the venues of Broadway shows entirely shut down since for over 13 months.

We should give these measures more time, we should give ourselves more time, to evaluate the impact of these measures on our industry.

In short, we don't believe that changes to the current law are warranted at this time.

Thank you.

SENATOR SKOUFIS: Thank you very much.

And last, but certainly not least, Local 751.

LAWRENCE PAONE: Thank you.

Senator -- Senate Chairs Skoufis and Kaplan, and distinguished members of the Senate committees, I am Lawrence Paone, president of the Treasurers & Ticket Sellers Union, Local 751 I.A.T.S.E.

I am here today to provide testimony on behalf of the 500 box office workers and venues throughout New York City.

Local 751, chartered in 1941, represents workers in over 60 venues, including the Metropolitan Opera; Broadway theaters; and arenas, such as Madison Square Garden and Barclays.

Our industry has been devastated due to the COVID-19 pandemic, with the majority of our members unable to work due to the closure of theaters and other venues.

Many of our members have suffered financially during the pandemic, struggling to make ends meet.

And for the support of Albany, we are grateful. We applaud your work on the COBRA subsidy funding.

I am here to testify in regard to the current state of the secondary market for tickets.

In an average year, millions of dollars in tickets are sold for live events through the

secondary market.

Local 751 is not opposed to the existence of the secondary market.

The goal of every Local 751-represented employee is to provide world-class customer service to theater-goers while maximizing sales for our employers.

Part of our job responsibilities, and what we pride ourselves on, is to provide personalized customer service, solve ticketing problems, and ensure that everyone has a good experience and enjoys the show regardless of where a customer purchased their tickets.

Based on Local 751's experiences, we see both the positive and negative aspects of the secondary market at the box office window.

Many customers have a good experience with the secondary market, and are happy when they get to see a hit show, even when they know they paid an above-market price to secure a ticket.

On the other hand, other customers are extremely upset to discover that they overpaid for their tickets.

To that end, it is important that there is full transparency in the secondary market so that

all customers understand beforehand, both the base cost of a ticket and the additional costs added by the reseller, and can thus make an informed purchase decision.

In addition, customers sometimes unwittingly purchase from fraudulent tickets -- they purchase fraudulent tickets from bad sources because it is difficult to tell which online sources are legitimate versus illegitimate.

Illegitimate resellers sometimes resell the same ticket over and over again, making it very difficult for the box office to determine ownership so that customers may enter the theater.

The box office staff does everything in its power to assist the customers in these situations, such as attempting to verify ownership through the various methods in our ticketing systems; selling the customer new seats that accommodate the wishes, when possible; and in the case of fraud, pointing the customer in the direction of law enforcement.

Our workers can only mitigate the fallout. We alone cannot prevent the fraud.

When reforming the secondary market, we recommend you strengthen protections against deceptive and fraudulent practices, to push bad

actors out of the secondary market.

Thank you for the opportunity to appear on the behalf of the members of the Treasurers & Ticket Sellers Union, Local 751.

And we hope to be a resource as you delve into the reforming the secondary market.

And I look forward to answering any questions you may have.

SENATOR SKOUFIS: Thanks very much for your being here, and your important testimony.

I'll open up questions.

I'll start with Mr. Belber, please.

Can you speak a little bit about what your true options are as a venue when it comes to ticketing?

So you have Ticketmaster.

Do you have any other options, really?

BOB BELBER: No.

We have an exclusive contract with Ticketmaster. And I will say that we have been very happy with Ticketmaster over the years.

And I think their secondary platform that they have is the one platform, and I'm not saying that everyone else is bad, but, you can get a guaranteed seat, and you will always get a

guaranteed seat, that's a good seat, in the secondary market on Ticketmaster, as compared to, as Lawrence brought up just a few minutes ago, there are some deceptive websites out there, and ticket brokers, that often will sell tickets that are not -- either non-existent or duplicative sales.

SENATOR SKOUFIS: Right.

And if we can speak a little bit about what we heard from Ticketmaster, you know, they --

I hope I'm not mischaracterizing this. I'm sure they would argue that I am.

-- but, they sort of threw the venues under the bus a little bit, when I asked about these service charges that are associated with purchasing tickets through their platform.

And, you know, they basically said, well, that's -- those are the numbers that the venues, the event organizers, come up with.

Can you speak a little bit about that arrangement; how those service charges are developed with Ticketmaster?

Are they in the contract?

Without speaking to the specifics of your contract, of course, but, you know, is that something that is covered in the contract?

And, again, you know, how are those -- if you could speak to how those fees are split?

Can you talk to that issue a little bit?

BOB BELBER: So -- so event -- event producers are all -- there's different types of arrangements with all kinds of different promoters and event producers.

And there are sometimes splits of service charges, and -- and sometimes there aren't, depending on the type of event, promoter, sports, et cetera.

Ticketmaster does have a base service charge in the agreement that we have. And the setting of those service charges, generally, is agreed upon between the promoter and the venue, and in conjunction with Ticketmaster.

But a lot of times it relates to a comparison of what the service charges are in other like markets and other like facilities; and, therefore, it's not something that this facility, for example, would set without double-checking to see what the promoter may see as service charges in other like venues.

SENATOR SKOUFIS: Okay. Very good.

Thank you.

And my last question for you, sir:

It's my understanding that -- that the Times Union Center has chosen not to engage with -- directly deal with brokers.

If that's the case, can you talk about how you came to that decision?

BOB BELBER: Well, that's been our policy since I've been here, 27 years now. We don't -- we just don't have any arrangements directly with third-party platforms or secondary-market ticket sellers.

It's just the choice that we've made.

We feel comfortable with Ticketmaster. We're comfortable with their secondary market.

If something happens with an artist or a promoter that might relate to a third-party broker that we're not aware of, we just don't have that knowledge.

SENATOR SKOUFIS: Do you have a sense of whether that policy is, more or less, the norm among venues, or are you more the exception to the rule?

BOB BELBER: I think that's pretty much the norm.

There are always going to be artists that are going to have fan clubs that they will want to have

a certain very small number of tickets that would be available for either presale or fan club sales. And those will go out to a secondary source, or platform, sometimes. But it's never more than 5 to 10 percent.

But none of the buildings, that I'm aware of, and I certainly know a lot of other facility executives, none of them, that I know of, have direct relationships with secondary brokers.

SENATOR SKOUFIS: Very good.

Thank you.

I'd like to turn to The Broadway League, and to the extent that you'd like to answer, any of the other panelists.

It's -- you know, you mentioned a number of times the 2018 amendments that were made to the state's ticketing laws.

One of those amendments had to deal with -- or, dealt with "white-label resale sites," as they're called; these deceptive websites that exist.

And it's my understanding that, you know, perhaps, while, you know, there has been an improvement in this area, it has really not closed down this cottage industry of deception.

One such example that I'm aware of is --

is -- is Broad -- I think it's Broadway.com.

Is that right?

Are you familiar with that site?

It's my understanding that -- that they make up -- or, you know, based on some data that I've seen, they made up between 15 and 17 percent of the volume and value of tickets sold at Broadway shows over the course of 2018 and '19.

Broadway.com has no affiliation, official affiliation whatsoever, with any Broadway stakeholders.

And at the sites, it's common for customers to pay handling, shipping, service fees, in the range of 25 to 50 percent on these tickets.

Do you -- do you think that -- that this remains a significant problem within your industry?

Do you believe that we ought to be doing more to close down sites, like Broadway.com, that are deceiving unwitting customers?

Can you speak to this issue a little bit?

TOM KIRDAHY: I -- I can try.

The bigger problem, frankly, is -- Broadway.com is a credible site. I can't think of an instance where a patron has shown up, where they were deceived about their seat or the face value of

their ticket or the legitimacy of their ticket.

There are other sites that I can't name, that -- because I honestly just don't have it off the top of my head, that, with great frequency, especially on hit shows, people will arrive at a theater, when I was producing "Anastasia," we often had people showing up with fraudulent tickets that they purchased on -- through deceptive URL sites. And they had arrived, thinking they had third-row seats. And either had a seat in the back row, or it wasn't a legitimate seat at all.

So I think that enforcement is a very serious issue.

My -- I'm a recovering lawyer, and I will share with you something deeply personal and intimate.

My husband was the great American playwright Terrence McNally, who died from COVID on March 24th of last year.

When I was involved in lobbying about this issue years ago, one of the things that I noted to anyone who would listen, is that artists lose out when, on the secondary market, tickets are sold at these great -- at these astronomical prices, because the artists aren't receiving the royalties on those

markups.

So the -- I do have a firm belief that the -- sort of what we are looking at today bears scrutiny. And the secondary market is really something that needs to be addressed.

My personal concern is about the "when."

And, also, I don't believe we've learned enough, because that legislation is so new, about what the real pitfalls are.

I'm a very hands-on producer.

I show up at the theater five nights a week, and I watch what happens for the patron experience because it's so important to our long-term health.

And so it's hard to answer that question, but I will tell you that there are bogus sites out there that are really ripping people off in a way that does need long-term addressing.

SENATOR SKOUFIS: I would like to follow up with one last point, then. I know my time has expired, but while we're on this subject:

So I don't think there's any suggestion that Broadway.com is, you know, selling fraudulent tickets.

I understand that there are over a thousand complaints that have been filed against Broadway.com

with the state attorney general and the FTC.

I think the concern is, with a name like Broadway.com, that customers are just fundamentally deceived into thinking that, you know, this is like the official outlet of Broadway tickets.

So do you have, not concerns with the tickets themselves being real or fake through Broadway.com, but do you have any concern with just sort of the fundamental, what I would characterize as, "deceit" behind the name/the URL, Broadway.com?

GILBERT HOOVER: I would be happy to try and answer that, if I could, Senator Skoufis.

I mean, I believe that Broadway.com is very careful about how they present themselves to the public. And they are not operating in a deceptive manner, or suggesting that they are somehow something other than what they are, which is a resale site for tickets.

And unlike as Tom Kirdahy had suggested, there are a number of sites that engage in speculative ticketing, or are in violation of the -- you know, as you mentioned, the practice of somehow deceiving the customer, and the nature of their white-label site.

But I don't believe that that is the case

with Broadway.com.

And I do think that enforcement is a major issue in this area.

And I can tell you, in response to a question that you had asked previously, that, at Telecharge, we have actually gone to the AG's office, to give them instances where we have information about what we believe to be people using bots, in an effort to get enforcement.

And I think that it's important that we all try to make sure that we take action against bad actors in the industry.

SENATOR SKOUFIS: Thank you very much.

And so, before I hand it off, I do want to express, Mr. Kirdahy, my -- my deepest condolences for your -- your loss that you mentioned.

And thanks again, both, to -- to your answers.

If I may now turn it over to Senator Kaplan.

TOM KIRDAHY: Thank you.

SENATOR KAPLAN: [Inaudible remote audio] for your testimony here today.

And this question is for anyone on the panel.

There was a significant discussion with the last witness, Mr. Marcus, on the topic of holding

back on certain percentage of ticketed sales to the public.

Can you explain exactly how the decisions are made by the event organizers as to what percentage of tickets that were held back from general sales to the public might eventually be released for the public sale, such that they're no longer being held for VIPs or friends or family?

And a follow-up: And when those tickets are released for sale to the general public, what, if any, price changes are made to those tickets, and why?

Also, how is the public made aware of these tickets that have become available?

GILBERT HOOVER: I would be happy to try and answer your question, Senator Kaplan.

In general --

SENATOR KAPLAN: Thank you.

GILBERT HOOVER: -- there are contractual arrangements between the venue operator and the primary ticketing agent.

And that contract would, you know, provide, just as Ticketmaster represented, that, you know there's an agreement as to house seats. And so the contract will spell out the number of house seats.

That's a form of "hold."

And we have supplied information, and with respect to the earlier information request that were requested, that is, shows that, 2019, the last year we really had significant sales, house seats, and any kind of hold, for the top five Broadway shows that we sell, less than 5 percent -- I think actually more, I think it may have been 7 percent.

So I really don't think that this is a Broadway issue in terms of holds.

And I think that, you know, other forms, if you want to call them "holds," if you're selling tickets, say, for a Lincoln Center, a nonprofit theater, they might decide that they want to give their subscription base first dibs, if you will, on getting tickets.

In my mind, that's not a negative. That's something that the venue operator should have the right to make those kinds of decisions.

So I don't see this as, for the Broadway industry, where you have open-ended run, that holds is really something that is a significant problem.

And I don't see that disclosure of, you know, or, you've got eight performances a week, 40 Broadway venues, if you do the numbers, it's just

a massive amount of data that would not, if you had to disclose it on your site, I don't think would inform or change in any way a customer-purchasing habit.

TOM KIRDAHY: Yeah, I would just --

SENATOR KAPLAN: Thank you.

TOM KIRDAHY: -- just, may I just piggyback on that for a moment?

When we were discussing 8501B a few years ago, this issue came up. And it seemed that we had learned, and drawn distinctions between larger venues and the Broadway space and the Broadway model, where, say, the average house is 1,000 tickets.

The number of holds is -- on Broadway, is somewhat de minimis.

It's certainly under 5 percent, and it's usually tied to, if a star comes to Broadway, she or he may have four house seats that they have to use 48 hours before -- before the performance, or those tickets get released at face value.

The difference, of course, is that, when we come to Broadway, we hope to stay. So it's eight shows a week, and, hopefully, for many years; or, if it's a limited run for 16 or 20 weeks.

It's not one night only, where there are -- where the hold process -- the hold process is very different.

So there's -- it's slightly apples and oranges on the subject of holds.

SENATOR KAPLAN: I appreciate it.

Mr. Belber, would you like to comment on this?

BOB BELBER: Yes.

I think you've got two different issues here.

As you're calling it "holds," I really have to agree with Mr. Marcus, that it's really not per se holds.

And in the arena business, or at least here at our facility, it used to be where VIPs, from the building side, could hold a couple hundred tickets, maybe 300 tickets, for a major concert.

That has gone away.

The building can't have those holds like it used to years back. I mean, it's been several years since we've been able to do that.

There are some buildings that still hold out and still try to do it as best they can.

But we don't hold tickets here for our VIPs. They have to buy them just like the consumer.

But the other side of it, on the pricing, you mentioned something about, when does the price change, and do the consumers know about it?

And there is a relatively new program that is out, that's called "variable pricing."

And I'm not sure if this impacts the Broadway side or not, but it's based on demand in the public, and what the demand or price could potentially be set at, and it is -- it will be flexible. And it's somewhat new. It's only in the last year, or year and a half, that it's been out.

I do expect that's probably going to be requested of us, to be able to allow promoters, whether it's Live Nation or AEG and others, to use variable pricing.

So I think it's way too soon now to know what that looks like, but I think that's definitely coming.

SENATOR KAPLAN: Thank you.

My next question is to Mr. Tom Kirdahy.

Again, I am very sorry for your loss.

You did talk about Article 25, and the extension that was granted in 2018, where there were several significant changes made to the law, including issues dealing with transparency

requirement, and speculative ticketing, and additional penalties for the use of prohibited ticket bots.

And you did discuss that the time frame that this has been applied is a very short time.

But I wanted to know, are there any quick judgments you can share about how successful, or unsuccessful, those changes have been?

TOM KIRDAHY: It's a -- that's a -- it's a great question, and my honest answer is, no, there isn't a quick judgment.

My -- my concern is that we can't diagnose effectiveness without a commitment to enforcement.

And I think that the events of the last 14 months make it impossible to be proper diagnosticians to its effectiveness.

I certainly -- I -- my hope and expectation is that it's a wonderful step in the right direction, but I think absent enforcement, it's toothless.

SENATOR KAPLAN: I appreciate it.

This is for anyone else:

Can you explain to me the various service fees you charge per ticket or per order?

Is it really necessary?

What is the difference between a service fee or a convenience fee? Why would you charge both on a ticket?

And when a family of four orders four tickets, why must there be a fee be charged for each of them?

To me it seems these fees are just a way for you to get consumers to pay for your online ticketing system, or the salary of your employees.

GILBERT HOOVER: So I guess, as a primary ticketer, I'd be happy to answer that.

We use a consistent terminology. We have a per-ticket service fee, and we have a separate order [indiscernible] charge, and we do scale it.

I believe the current scale, if it's under $50, it's $8.50 per-ticket service fee; and if it goes at the high end, if it's $200 or over, it's $15. And the per-order fee is $3.

I think you'll find that those fees compare very favorably to both the primary -- other primary ticketers, and to the markups that are charged in the secondary market.

And I would add that, Senator Skoufis, you had mentioned about the "reasonable" requirement.

And, actually, my reading of that statute is

that, that application is only to the primary market. In the secondary market there is no cap on what can be charged.

So we are, let's say, tied to the idea that it be reasonable, and we have tried to take that into account in determining what are service and penalty charges.

And, yes, it is a way to pay for the business of having a computerized ticketing system and staffing it.

LAWRENCE PAONE: If I may just jump in, Senator Kaplan.

I would just like to point out at this time that when a customer purchases their tickets at the box office, other than the facility fee, there is no -- there are no service charges.

So you can tell all your constituents that once Broadway is reopened, come down to the box office, and the employees that I represent will be more than happy to sell them a ticket with no service charges.

SENATOR KAPLAN: I appreciate it.

Thank you so much.

My time is up. I yield to you, Senator Skoufis.

SENATOR SKOUFIS: Thank you, Senator Kaplan.

Senator Martucci.

SENATOR MARTUCCI: Thanks, Chairman.

So I just have one question, really, it could be for anyone on the panel.

I think, Tom, you brought it up in your testimony.

You know, one of the things that I want to be particularly sensitive to is the fact that, you know, your industry is on its knees.

And I think we all understand that here, we're all sensitive to that.

And you talked a little bit about recasting the shows, restaffing.

So maybe each of you, in terms of, you know, the components, or, certainly, Mr. Paone, the folks who you represent, like, kind of give me some sort of sense of, you know, what percentage of your workforce do you believe is gone?

You know, just kind of a little bit of insight into what "restart" looks like for you right now, and how you think those challenges are laying out.

Because, certainly, again, I'm sensitive to the fact that any changes that are made in this

phase need to be made with close attention paid to the fact that there's a [indiscernible] in which to implement them, and the fact that you're, essentially, juggling several balls at a time.

So I think I just want a basic understanding of that.

TOM KIRDAHY: Sure.

I have two shows that will return, "Little Shop of Horrors" off Broadway and "Hadestown" on Broadway.

Our hope is that both shows will return this fall.

We talk daily about what the needs will be as we return. That includes the ongoing wellness of our companies.

A number of our cast members have had to move out of New York because they have no income.

People have moved back to their families.

One cast member moved back to Canada, so there are added immigration issues.

We know full well that people can't just come back and get on stage the next night. We're going to have to re-rehearse them probably for three weeks, which is a very expensive endeavor.

And, frankly, we believe that we're going to

have to provide people with psychosocial support services, mental-health support services, in order to help people succeed.

I mean, the sort of challenges of returning are going to be enormous.

We have to remarket our shows.

We have to make sure that the public feels safe.

There -- I think that on both of my shows, by and large, most of the companies will come back.

We have done our best, because it's, frankly, my value as an independent producer, to stay in touch with our companies, to check in with them routinely, to keep them as engaged as possible.

But all of that is -- is hard to determine until we actually restart. And the process of restarting is going to be intense, because it really -- it's a lot of people moving back into New York, securing either new housing or returning to their old apartments. Just getting into physical shape to be able to do eight shows a week, something none of us have been doing the way we once did.

It's a very, very difficult question to answer, but I'll tell you, I spend about five hours on Zoom a day, that's just on those subjects, doing

my best to make sure as a big a percentage of our companies come back as possible.

But the challenges are going to be enormous. Just enormous. Things that we can't possibly predict will present themselves, I have no doubt about that.

It will also be thrilling, because there's nothing like the curtain going up.

I'll say that.

BOB BELBER: If you don't mind, I'll pop in just for a minute on that topic.

So the Times Union Center in Albany, New York, is looking at the challenge as being only allowed to have 25 percent of our normal capacity to be sold for events. And that's just recently, just in the last couple of days. Effective as May 19th, we'll be able to sell up to 25 percent.

So for us that's going to be about 3500 tickets for an event.

And every event has to be presented to the New York State Health Department for approval. And we have a great relationship with the department, and we've spent a lot of time with them, to make sure fans come in and the environment is safe.

And our company, ASM Global, which is the

biggest in the world, with 350-plus facilities, has a "venue shield" program, that that's -- has a tremendous number of protocols to keep the people safe.

And in other parts of the country, the challenge for us in New York, is other parts of the country are already opening up with 33 percent, or 50 percent, or in some cases, 75 percent and 100 percent.

And so the real tough thing for the tours, for the biggest concerts that are going to come out, is if it's not across the board, so that everybody has somewhat of the same number of seats available to sell, it's going to be very hard for them to be able to route tours.

And right now they are doing that. And we've got a lot of dates on the calendar for future, for late fall, and into 2022, on the speculation that we're going to be at 75 or 100 percent, in hopes that we'll be there.

But between now and the end of the fall, we're hoping to be able to get promoters that will come in and bring smaller country shows, comedy shows, smaller family shows, that will play to 3500 seats, with social-distance seating, people in

groups, 6 feet apart throughout the arena.

And it's a challenge, because the very next state next to us may be at 10 percent; or, you know, the other parts of the region may be getting most of the tour dates because they're already at a higher number.

My point is that, to my knowledge, in those places that have opened up with 33 percent or higher, and they've used all the right protocols and safety measures, there's no spikes in cases that have taken place.

So I'm hoping that there will be a willingness to allow for an expansion, albeit with a continuance of safety measures, to allow the sellable seats to be able to increase as rapidly as possible.

SENATOR MARTUCCI: Thank you, Mr. Belber.

And, certainly, I share that hope with you.

And I know my time is up, Chairman, so I will -- I will turn this back over to you.

But -- what I think, you know, as a closing sentiment to my question, what I want you to know is -- I don't know if you were in a virtual green room, or where you were, when our Chairman kicked off this Zoom, but what I do want to you know is,

we're certainly being very sensitive to the concerns of the industry, with respect to reopening, the duration of the closure, as any of these changes are being considered.

So I thank you for your answer with respect to that question.

SENATOR SKOUFIS: Thank you, and that's absolutely right.

I would like to ask a question or two.

You know, it's been mentioned, Mr. Kirdahy, and Mr. Hoover in particular, I understand your position of looking for a straight extension here, and your rationale is that, since the reforms in 2018, there really hasn't been adequate time to evaluate the effectiveness of those changes.

That stands to reason.

I will say, and I'm sure you both know, since it sounds like you were involved in those amendments in 2018, that, you know, the crux of those reforms three years ago were focused on, really, transparency.

I mean, you had, you know, some additional disclosures; you had some transparency related to speculative tickets; you an attempt at transparency, and new enforcement, surrounding what we, you know,

discussed before, these white-labeled resale sites.

But to be clear, the crux of the state's ticketing laws have been around for far longer than three years. They've been around for over a decade now.

And so I guess my question is:

You know, in light of the fact that, you know, 2008 was 13 years ago, not 3 years ago, for those components of the law that have been around beyond 2018, do you think that, in those cases, there has been adequate time to make a proper evaluation as to the effectiveness of those parts of the law?

And I guess, you know, as a part two to the question:

Why not have an openness to those parts of the law that have been around for a great deal of time now; an openness to taking a look at their effectiveness, and in those areas that -- that don't have a direct impact on the responsibilities of Broadway, of the producers, of the venues, of the artists?

Why not have some openness to trying to -- to improve what was put in place in 2008?

Anyone want to take a stab at that first?

GILBERT HOOVER: I mean, I guess my reaction is, yes, [indiscernible remote audio], the provisions that have been in there since 2008 have been around long enough that we can make some of evaluation.

Although, I think you -- you -- your -- evaluating any law, you have to look at the full panoply of what the provisions are.

And so these new provisions, which I perceive as beneficial about spec ticketing, prohibiting deceptive practices, and white-labeled websites, those kinds of additions, and increasing the penalties on bots, are positive.

And, overall, I feel as though the law works well, on balance.

Are there things that, you know, down the road, we may look at and say, you know, we -- you know, my personal opinion would be, speculative ticketing just shouldn't be permitted at all?

You know, there are other provisions that I'm sure people feel strongly about too.

But, overall, I feel as though it's working, and especially in this climate where we don't know what the new normal will look like exactly.

We know, for example, under the interim

guideline, that it's really important that we be able to identify each of the customers and where they're sitting in our venue.

So I wouldn't want to do anything that would interfere with technology that allows you to have that type of a system.

I don't know if that would be permanent, or it would be temporary, but it's something that needs to be considered.

TOM KIRDAHY: And to me, it's really that we're an industry that's -- we're fighting for our lives right now, and we're all working together, just to be able to go back.

And that's my primary concern at this time.

SENATOR SKOUFIS: And that's completely understandable, and I share that sentiment.

And to the extent that these committees and the legislature can be further helpful in getting your legs back under you, I think -- I'd like to think that we're all in agreement here.

I guess, my question is, though, you know: Is it conceivable that -- that there are reforms that can be made here to the ticketing laws that could support that effort, that -- you know, that to that end, can actually help you get your legs back

under you?

TOM KIRDAHY: I think it's so hard to make that determination right now, because we don't even know what the inside of a theater will look like. We don't know what seating is right now.

It's because of the question and challenge of social distancing, we can't even look at a seat map and properly make decisions about what it will look like at the moment.

You know, I genuinely applaud the committee, and the intentions of what everybody is trying to do here. I think it's wonderful.

I just think the timing is -- poses deep, deep practical challenges to us right now.

And I feel your good will, I really want to say that.

SENATOR SKOUFIS: Just -- my time is up, but just one last question for me. And if any other members have questions, to please raise your hand in the Zoom.

Changing topics a little bit, do any of you feel that within the secondary market there is too high of a markup, or there can be too high of a markup?

Or do you think that it should be completely

free-market, completely open-ended, and for the hottest -- for hottest tickets, if someone can sell a ticket, 10 times, 20 times, the face value, God bless them?

Or do you think that there should be some reasonable safeguards in place within the secondary market on markups, so that, what I'll characterize as, average customers, average New Yorkers, can maintain access to those shows?

BOB BELBER: You know, if you don't mind me chiming in on this, the fact is, if you go back -- and I'm going to date myself here -- but, you know, I still remember that old law from way back, where it was -- the resale was capped --

SENATOR SKOUFIS: $2.

BOB BELBER: -- at no more than 10 percent of the face value.

And we saw how the black market, you know, more or less, destroyed the ticketing business back then, because of the caps that were put on how much the resale could be.

The reality is, I think what Tom had said is true.

I've got 75 percent of my seats that are zip-tied right now and nobody can sit in them.

And so the timing is so premature.

Having said that, I think that this committee is -- should be a -- should be thanked for everything that you're doing to try to protect the consumer.

But I think that the law that exists, if it was extended for a limited number of years, a year or two, whatever, to let us get our feet under us, let the industry come back and host events.

And, if anything, I think enforcement of the current law that does exist, more enforcement on bots, you know, more enforcement on speculative tickets.

If there was an elimination of speculative tickets, I think that would be wonderful.

As it relates to secondary markets putting tickets on sale with specific seat locations before the show even goes on sale, is just wrong in so many ways.

So there are some things that could be done within the nutshell of the law that currently exists, that could probably make it better for the consumer, as well as us in the venues, and for the artists.

But I can't see where changes really, at this

time, are needed in the actual law.

SENATOR SKOUFIS: Anyone else want to speak to the markup issue?

No?

Okay.

I'll save that question for the next panel, of resellers.

So seeing no other questions, I want to thank each of you for your participation today.

And let's keep in close contact, not only on, you know, this particular issue of the sunsetting laws, but, in general, like I said, I think, you know, I speak for most, if not all of my colleagues, in wanting to support you all as we come out of this pandemic.

So, to that end, however we can be helpful, please do be in touch.

But thank you for participating today.

(All panel participants say "Thank you.")

SENATOR SKOUFIS: All right. So our third panel of four is next.

We have from StubHub, Laura Dooley, head of global government affairs;

From TicketNetwork, Donald Vacarro, CEO;

From Vivid Seats, Ryan Fitts, vice president,

legal and government affairs;

And from the Coalition for Ticket Fairness, Jason Berger, president.

Welcome, everybody.

DONALD VACARRO: Thank you.

RYAN J. FITTS: Thank you.

JASON BERGER: Thank you.

SENATOR SKOUFIS: Okay. Why don't we kick it off, I'm just going to go in order on the agenda I have here, StubHub, do you want to go first, Ms. Dooley?

LAURA DOOLEY: Absolutely.

Hi, Chair Skoufis, Chair Kaplan.

Thank you for having me here today.

My name is Laura Dooley. I'm the head of government relations for StubHub.

Many of you may know that StubHub was founded in 2000, and we were really the first in the secondary sales market.

We revolutionized an industry that used to happen in the back of newspapers and classified ads and on street corners, and put it on the Internet to provide a safe, secure, and transparent marketplace for customers to buy and resell tickets.

StubHub has a long history of working with

policymakers and regulators, to better understand our industry, and to promote the enforcement of existing laws, or the creation of new laws, to benefit our customers.

New York as a state has consistently led the nation in its protections of consumers in this industry.

And we want to thank you all for that leadership.

StubHub was proud to have supported the state's most recent legislative initiatives in 2018, which introduced several new consumer protections, as well as enhancing existing consumer protections, we believe all in the benefit of the customer.

At that time we saw the enhanced penalties for illegal bot usage, the regulation of the sale of speculative tickets, enhanced disclosures on deceptive URLs, renewing -- and then renewing the state's critical transferability requirements.

Together, this list really is a robust set of consumer protections that honestly ticks off most of the public policy issues we hear debated about in the states today.

We strongly encourage the renewal of these statutes, and are certainly open to discussions on

other issues, but certainly want to make sure that at least those protections remain in place for customers, and that they're strongly enforced.

You know, as StubHub believes that, as our industry reemerges from the COVID-19 pandemic, empowering consumers with flexibility and choice is paramount to the success of our industry, as well as to consumer protection.

We believe that the existing statute does provide those protections and aligns with those principles.

We're certainly willing and able to participate in any state or health guidelines required to get fans back into stadiums and back into theaters.

We do caution, though, against the use of technologies that may hinder consumer choice or transferability in a guised attempt to kind of meet those health requirements.

We believe fans should be accommodated everywhere that they want to buy tickets, and believe that we can do that, and find comprehensive solutions to help restore our industry quickly.

To the extent that additional conversation is warranted on enhancing consumer protections, we

would point to increased transparency on the primary market.

It's not always about percentages of tickets available for sale, but just when they're going on sale, and maybe how many.

That type of information can be informative to consumers as they make their decisions.

We want to thank you for the opportunity again to participate today.

Again, we strongly urge you to renew those consumer protections, and we're happy to answer any questions after the panel is finished.

SENATOR SKOUFIS: Thanks very much, Ms. Dooley.

Next we'll hear from TicketNetwork, Mr. Vacarro.

DONALD VACARRO: Right, thank you, Senator.

Thank you for everyone on the panel.

I appreciate the invite today, and I want to try to be, as always, as candid as possible.

One, well, we have the issue of transferability -- transferable tickets.

The legislation we have needs to go farther, and it has to do with data; meaning, that other states that have this law give consumers a lot more

protection than New York consumers have about transferability.

They're able to transfer the ticket without going through the vendor -- without going through the primary vendor.

And in doing that, they don't have to give this information up to the primary vendor, which the primary vendor sells: your name, your address, your phone number, your IP address, your e-mail address, your physical address; unique identifiers.

So every time you're a New York resident and you change tickets at some primaries, they take that information and they sell it, including your gender and/or change of gender.

That has to change.

Connecticut consumers who buy New York events don't have to share that information. But New York consumers have to share it.

That has to change.

As far as the holdbacks, you're absolutely correct with the holdbacks.

Holdbacks will give clarity to the consumers.

And remember, and I think there's a fundamental concept that a lot of primary sellers don't agree with, is that decreasing the supply

raises the equilibrium price.

So you can fix the market with holdbacks, and raise the price on tickets, which does happen.

And I know Senator Kaplan was talking about when those tickets go back into the system; and she's right.

Some of those tickets, when they go back in the system for holdbacks, the price is raised to many times what it would normally be selling for, due to venues using dynamic pricing.

But, probably the biggest issue that New York has right now is, as the first gentleman brought up, in making the venues the bad actor, when you talk about venues that charge service charges, New York has a specific statute, that venues are not allowed to receive rebates.

They don't want that to happen because the rebate is just an advance of the admission price.

There are, literally, hundreds of millions of dollars due to New York consumers for New York events, because the primary sellers jacked up the service charge to give these illegal rebates to the venue.

New York Attorney General knows about it, they know it's there. They don't want to act on it,

I don't know why.

But, again, that is probably the biggest issue that we have.

My time is up.

So thank you for allowing me to speak.

SENATOR SKOUFIS: Thank you very much.

We'll now hear from Vivid Seats, Mr. Fitts.

RYAN J. FITTS: Thank you.

Chair Skoufis, Chair Kaplan, and distinguished Senators, my name is Ryan Fitts. I'm the vice president of legal affairs for Vivid Seats.

Thank you for the opportunity to testify today.

Vivid Seats is an online ticket marketplace.

We have sent millions of fans to live events since our founding 20 years ago, and we're now the official ticketing partner at ESPN.

We've been successful because we put fans first.

For the last two years, including during the pandemic, we have been named to "Newsweek's" list of America's Best Company's for Customer Service, ranking number one in ticketing.

A lot has changed in the last year; our commitment to our customers has not.

We continue to be recognized as the industry leader in customer service, as one of the few, and perhaps the only, resale marketplace to always provide customers with cash-refund option when events were canceled.

When we give customers 100 percent buyer guarantee, we meant it. We went further, still, offering customers a choice to receive a 110 percent credit so they can get more bang for their buck when events resume.

In those cases, we also made a 10 percent contribution to Music Cares, which provides a safety net for artists in times of need.

And there's no doubt the last year has been a time of need. COVID-19 was devastating for our industry.

I remember last spring when event cancellations starting popping up in the headlines.

Spring training shut down, and the NCAA Tournament was canceled.

The ticketing industry was one of the first to feel the economic effects of the pandemic, and will be among the last to recover.

But there is light at the end of the tunnel, and we're looking forward to getting back to what we

do best: sending fans to events.

We're 100 percent committed to doing it safely. We're dedicated to complying with and supporting public health requirements before, during, and after events.

As a technology company, we are well positioned to communicate entry requirements, like negative tests.

Our inventory is strictly managed so we can maintain [indiscernible] integrity.

We stand ready to assist with contact tracing because we know our customers.

In recent months, as events have reopened, we have had no public health issues.

So that's what we're doing.

I know these committees are asking what the legislature should be doing in this industry, and I think the answer is clear:

Extend the existing law for an additional two years, and perhaps, in the case of holdbacks, expand it.

New York's law is among the most comprehensive in the nation, focusing appropriately on transferability; the notion that the ticket is the fan's property to sell or give away if she

wants.

This is the cornerstone of competition in this industry, and without it, just one entity, the corporation that controls the box office, would have control over the entire ticket-distribution market.

I think we need more competition in our industry, and not less.

Vivid Seats is committed to working with these committees to foster innovation, promote competition, and protect New York's fans.

Thank you for your time today, and I'd be happy to answer any questions.

SENATOR SKOUFIS: Thank you very much.

And finally we'll hear from Jason Berger, Coalition for Ticket Fairness.

JASON BERGER: Good afternoon, Senators, committee staff, and industry stakeholders.

My name is Jason Berger. I am representing the Coalition for Ticket Fairness, known as "CTF," which is a New York-based association of New York industry professionals, licensed ticket brokers, and fans dedicated to transparency in the primary and secondary market for entertainment tickets.

I have spent the last 30 years in the ticketing industry.

I've worked at Ticketmaster. I founded Allshows.com. And I've been an advisor to many ticketing companies.

I have served as a president and board member to industry associations, such as the National Association of Ticket Brokers, and the New York State Ticket Brokers Association, as well as others.

It is an honor to be invited to participate today, as the CTF has an invested interest in the longevity of the live-entertainment industry.

So, thank you.

The world of entertainment provides a gateway for New York tourism and other ancillary businesses that rely on an industry to operate efficiently.

Broadway, sports, and arenas, and all other live entertainment, have been completely shut down by COVID-19, and, mostly, still remain either closed or partially reopened.

At the onset of the pandemic, many large ticketing companies were under fire for slow refunds and lack of customer service.

This was generally not the case for independent small ticket resellers who base their business on stellar customer service.

The CTF has learned of many stories of small business taking loans to repay canceled shows that weren't available to them for months.

This separated smaller independent ticket resellers from the box office and promoters who represented artists directly.

It is because of this customer service that the resale business in New York receives an extremely low amount of complaints year after year, as documented by the New York State Department of Consumer Affairs.

The CTF is proud to show our continued support for Article 25 of the Arts and Cultural Affairs Law. We believe this law provides fans consumer protection, as well as a free and open marketplace.

Over 45 percent of tickets on the secondary resale market are sold for less than box office price.

This is what happens when a free and open marketplace, rather than a market that is artificially set by one company, team, or artist.

Simply put, the free market for tickets continues to work for consumers in New York.

We ask that the pillar of the New York law,

ticket transferability, be observed, maintained, and enforced.

Consumers want the right to choose where they buy, sell, and transfer their tickets.

Further, we ask that operators make a good-faith effort to read Article 25, and recognize, it was never the intent of the law to allow an operator to take away season tickets based on the subscriber reselling them.

In fact, we argue that Article 25 intends to stop that kind of activity.

This is a free market, and tickets are expected to sell by a very -- in a very active secondary market.

Many fans of teams have invested years of capital in purchasing season tickets and the licenses that go with them, just to be told by the team that their tickets are being taken away, and the only basis for taking them away is that they've been resold in the secondary market.

This kind of activity places a chilling effect on the market, and, therefore, is bad for consumers.

In conclusion:

After a year of such incredible upheaval,

COVID-19 affecting everyone, especially our industry, the CTF believes it is unwise to make any changes to the existing law.

It is best to allow the best law in the nation to be replicated in other states, and simply needs to be followed and enforced.

Consequently, we support the passage in both houses of a multi-year extender of Article 25.

Thank you again for your time, and I'm happy to answer any questions you might have.

SENATOR SKOUFIS: Thanks very much, Mr. Berger, and to all the panelists.

I'll start.

The current statute requires that brokers be licensed with New York State.

It's my understanding, through testimony -- written testimony from the Yankees, and others, that, you know, there is an understanding that there is a significant amount of broker activity that happens without a license, and is thus illegal.

I guess, Mr. Berger, can you first answer whether you can share with these committees in con -- with a high level of confidence, that all of your members are licensed?

And a question to the other panelists:

How do you all monitor on your platforms whether brokers reselling tickets on StubHub, and elsewhere, do have their proper licenses with New York State?

JASON BERGER: Thank you, Senator Skoufis.

I can just answer the first part.

In terms of our members, we actually don't have members.

The Coalition for Ticket Fairness is not a membership-based organization.

SENATOR SKOUFIS: My apologies.

JASON BERGER: So -- well, no problem.

SENATOR SKOUFIS: You understand what I mean, though?

JASON BERGER: Yeah, absolutely.

So we don't -- I mean, there are lots of companies in New York, and any of them can support us. Any individual fans, yeah, anyone, can support the Coalition for Ticket Fairness.

So if you're asking me what would I feel in terms of the number of people who are licensed versus the number that would not be licensed, I think there's a lot that goes into that.

I would like to personally see more people licensed in the state, and I think that there is a

few reasons why that is not the case.

The New York State licensing fee for ticket resellers is $5,000. It's higher than any other license in the state.

We actually have been told that medical licenses in the state are less.

So in order -- that -- that barrier of entry for someone, and I use the analogy of cryptocurrency, if you ask someone who sells -- buys and sells cryptocurrency, a lot of people that you know might say, yes, I do it.

But, at what point does the person say that they're a professional cryptocurrency trader?

At what point is a season ticket holder a professional seller?

It's hard to make that distinction.

However, we would like to make that barrier to entry lower, so that if the licensing fee was lowered from $5,000, we believe there would be a lot of individual sellers and fans, who sold tickets on a regular basis, who would say it would be worth their time and investment.

So I think that that is one of the biggest barriers right now in the state to enter the market and become licensed.

And I do share your concern that there are not enough people licensed in the state.

I think that's one of them.

And I also think that, also, the licensing has a very antiquated reporting, where -- whereby you actually have to report your sales in two different times, January to June, and July through December.

The filing, so let's say July through December, it's due on December 31st, and it has to include your sales that you make on December 31st.

So your report is actually due during the time that you have to file it.

So there are some things that I would love to work with your office and the committee members, to discuss ways that we can improve that licensing reporting to make it easier for small business.

Most of the people in our -- that we are aware of in the state are small businesses, and it's very hard to comply with a regulation like that.

SENATOR SKOUFIS: I appreciate that.

Before we hear from the others, I would just note that the law does not distinguish, you know, whether -- you know, if you're a professional or sort of do this as a hobby, whether you need a

license.

It's pretty clear, as far as I can tell, as to who needs to be licensed as a broker in New York State, right down to, you know, qualifiers, such as, if you own and operate an office or an agency or a branch, you know, you must be licensed in New York State.

If you participate in auctions, you have to be licensed in New York State.

So, you know, it's not a matter of -- so perhaps, you know, there are barriers, but they're not optional.

If you conduct this activity in New York State, whether you like the barriers or not, whether the barriers are high or low, you need to be licensed.

And so I do believe the statute is pretty clear, and it doesn't offer really very much of a gray area in terms of, oh, do I need to be licensed in my profession or not?

But if we can hear from the other three as to what you all do to ensure on your platforms that brokers who participate are indeed licensed in New York.

RYAN J. FITTS: I can start.

I mean, we do require professional sellers in New York to disclose a New York license number to us, so we can track that.

We also display it on the site.

SENATOR SKOUFIS: But do you have a means of identifying folks who should be licensed, but are not?

RYAN J. FITTS: I mean, we definitely know who our sellers are. And so we -- if somebody's offering a ticket professionally on the site, then we do require a New York license.

SENATOR SKOUFIS: Otherwise, they cannot move forward with that sale?

RYAN J. FITTS: Yeah, I mean, you can't -- if we're -- if we don't know you, you can't sell tickets on our website. We carefully vet ourselves.

SENATOR SKOUFIS: Okay.

Ms. Dooley?

LAURA DOOLEY: Sure.

I think similar to Ryan, we, similarly, when the law was enhanced in 2018, notified our sellers of this requirement, that their license should now be published on our website as well. And worked with them to collect that information and to publish it.

I don't -- I think it might be a stretch too far to say that we proactively police the sellers on our site. We are a marketplace. But our user agreement does require that they follow all laws of the states in which they're selling.

So to the extent that we're made aware that a broker isn't licensed in New York, we would take issue with that. It would be a violation of our policies, and certainly could result in the removal from our site -- or, suspension from our site until those situations were corrected.

SENATOR SKOUFIS: So have you identified yourselves any brokers that are not licensed, or is it really just a matter of you're just notifying everyone, you need to be licensed?

LAURA DOOLEY: The latter.

To my knowledge, I'm not aware of any, like, preemptive, like, situations where we policed that on our own.

SENATOR SKOUFIS: Okay.

Mr. Vacarro?

DONALD VACARRO: If I'm correct, every broker, everyone who sells a New York event ticket on our system, is licensed.

I'll check it out and verify it.

We also display that license number, as required by the law.

SENATOR SKOUFIS: Okay.

Senator Kaplan, do you have any questions?

SENATOR KAPLAN: I do. Thank you.

SENATOR SKOUFIS: Okay.

SENATOR KAPLAN: First of all, let me thank the panel for joining us today and for their testimony.

My first question is for Mr. Donald Vacarro.

I recently read an article titled "How Is This Legal," written by Byard Duncan.

I'm sure you're quite familiar with it, you are quoted in the article.

You're actually quoted, stating that, "Speculative market is a great thing, and it's very pro consumer."

This article also says that your company refunds those of your customers who don't receive tickets, and that you propose to the attorney general that anyone who did not get a ticket be paid a 200 percent refund.

Do you stand by these words?

And what steps does your company take to

ensure consumers are made aware that they are not actually guaranteed to receive a ticket?

DONALD VACARRO: Got it.

So I'll go through the 200 percent refund first.

In the meeting with, I believe it was Senator Squadron, who used to be a senator in New York, we -- a group of folks in primary and secondary gathered in the room, and we talked about refunds.

And I believe, if I'm correct, all the secondary marketplaces agreed that if consumers somehow don't get the ticket they're guaranteed or a better seat, that the consumers would get a 200 percent refund.

But, I also believe at the same time, the primary ticketer said, no, we can't do that.

So that's what happened with the 200 percent legislation.

As far as the disclosure on our website, again, we put up all of the disclosures on the website, as required. And we enforce it a little bit more stringently, not only in New York, but in other states, about it.

And as far as speculative tickets -- and it

depends on, everybody has a different definition of "speculative tickets" -- but, anyway, anytime -- there's two things about it:

Anytime you add supply to the marketplace, the equilibrium price goes down.

So you combine selling tickets before you have them in hand, and consumer prices go down.

And the reason why they do is because of what Senator Skoufis was bringing up, these massive, massive, massive holdbacks of tickets create a scarcity effect, which allows primary ticketers to artificially raise the price that consumers pay.

That's why there's holdbacks in the system.

And if you ask them, and you find out, and if you speak to someone a little bit more neutral, you'll find out exactly what you said,

Senator Kaplan: When they add those holdbacks in, and there's a scarcity, they raise the price.

SENATOR KAPLAN: Thank you.

DONALD VACARRO: Thank you.

SENATOR KAPLAN: You also mentioned in your written testimony about the congressional hearing in 2020, addressing the ticketing industry, and a bill by Congressman Pascrell, I believe.

Can you expand upon your comments a bit, and

explain what issues Congress was looking to address the industry, and whether New York already made those changes to address --

DONALD VACARRO: Okay.

SENATOR KAPLAN: -- [simultaneous speakers; indiscernible] the 2018 amendments?

DONALD VACARRO: Thank you, Senator.

So their -- Congress, their biggest -- they have two big issues in Congress.

One is, ticket transferability -- okay? -- because without ticket transferability, consumers don't have a right to a product.

And there's some arcane notion that tickets are universally licensed.

They're not.

In Connecticut, tickets are, statutorily, property, and you can resell it.

And now the problem with transferability is --

And I'm going to share with you some pretty nasty stories, but, we'll have to go through it.

-- so sometimes with ticket transferability, people try to stratify society.

There was a professional baseball team in New York, who had some fans sitting right by the

field. And the team said, Those fans don't look like they belong there.

Because they were low-income people who bought a very expensive ticket at a low price in the secondary market, much lower, and they sat down by the field.

And I don't know if you saw John Oliver at night. He made jokes of it and fun of it.

Two professional owners, two owners of professional basketball teams, both said they don't want people of a certain color in their venue.

Both owners had to divest from the teams.

So there's a lot of problems with tickets not being transferable.

Congress knows that that's one issue.

The second issue is data.

Let's say, most venues are either -- a lot of venues are 501(c)(3) which have government protections, or state venues.

Can you believe, you're going to a state venue that you paid for as a taxpayer. And in order to buy a ticket, you have to share this incredible amount of data with the primary ticketer, who then sells it. Your personal phone number, your IP address; everything they can possibly do to track

you, put things on your website, or on your browser, to track you, and then they sell that data.

It's different if a private customer does it -- or, a private company.

But the best thing I could ever say is, if you saw Dick Durbin question Mark Zuckerberg, and say, Mark Zuckerberg, do you want to tell me the hotel you stayed at last night?

And he said, No. I don't want to give you my personal information.

So if you ask that same question to anyone in the primary market, or stuff like that, "Would you mind if we sold all your personal information?" I think if they were being candid with you, they would admit that they have a big problem with it.

SENATOR KAPLAN: Okay. Thank you.

DONALD VACARRO: Thank you.

SENATOR SKOUFIS: Are you finished, Senator Kaplan?

SENATOR KAPLAN: Yes.

SENATOR SKOUFIS: Yeah, okay. Thank you.

I'll ask a few more questions, then.

Those of you who are brokers, or you engage with brokers, can you tell me, say, you know, the really hot tickets; the hot concerts, and sporting

events, playoffs, et cetera, what's the largest number of tickets that you've seen a broker buy up with intention to resell?

JASON BERGER: I mean, I don't -- I would -- I can answer --

SENATOR SKOUFIS: Ballpark. Obviously, I'm not looking for an exact number here.

JASON BERGER: -- yeah, I mean I don't really know how we would even be able to quantify that, because we don't really have numbers like that.

I don't know. I really wouldn't have no idea.

I would say, with an open transparent marketplace, though, I mean, I don't think it's very high.

I think there's a lot of companies participating and competing, but I don't think that number is very high.

But I don't have data like that, so I couldn't really -- I wish I could help you.

SENATOR SKOUFIS: Certainly, you know, 100 right? -- I'm sure that's happened.

Has any broker ever bought 1,000 tickets to a single event?

DONALD VACARRO: Senator Skoufis, if I may,

I think what's important here is to distinguish that there are many event producers -- okay? -- and many sports teams in the leagues, that sell directly, thousands of tickets to brokers, or arbitragers, to reduce the risk on their event, if they are not contractually tied into the primary ticketer that they have to sell them there.

And that's another issue too, as well, that there's only a certain segment of the population, or of the --

SENATOR SKOUFIS: If I could interrupt, though.

But, certainly, there's no risk for, let's say, a World Series game. You know you're going to sell out.

DONALD VACARRO: I think there's a huge risk to the World Series game, because what -- just to share with you, sometimes when you have to buy that World Series tickets, you might have to prepay, as a broker, the full next season and you might have to buy more expensive seats the next season to do it.

Also, in order to buy the World Series game, you might have to buy all the playoff games before it. And just, sometimes, people just don't want to go to the playoff games.

You know, they get -- when the Yankees are constantly winning, they don't want to go that much.

So there is a tremendous amount of risk with something like that.

But anytime that there's --

SENATOR SKOUFIS: Risk for the broker; not for the promoter or the venue. Right?

I mean, when you're talking about risk, you're talking about for the broker?

DONALD VACARRO: Absolutely. The broker takes --

SENATOR SKOUFIS: Yeah, just to be clear. Okay.

DONALD VACARRO: -- a huge capital risk. Right.

And, again, there's a lot of teams, leagues, and promoters who want the brokers to take that capital risk, because, you know what? That means less advertising that they do. Less things that can go wrong.

Because I know what you're saying about the World Series. And years ago it was really true, when the World Series tickets were cheap.

But now as that price goes up, if they're forecasting rain -- you know what I mean? -- it

might not be as good anymore, and that price might dive down.

SENATOR SKOUFIS: And so what you're describing -- what you're describing, where the team, or the promoter, the venue, they actively seek out sales with brokers.

Give me a sense of how normal that is.

So, let's take MLB.

Does that happen with regular season games?

DONALD VACARRO: With all the major -- with the four major leagues, almost -- all major leagues have teams. All teams in the four major leagues have a deal with what they call "brokers" or "consolidators" to buy tickets, and then resell them.

And we're talking, at that number, probably with the four major leagues, league-wide, is well over half a billion, maybe close to a billion dollars, that's invested before those leagues go on sale -- before those go on sale.

SENATOR SKOUFIS: And what percentage of tickets are we talking about, on average, if that happens?

DONALD VACARRO: I would probably think that that's -- let's see.

Maybe 10 percent of the tickets.

SENATOR SKOUFIS: Do the rest of you agree with that, that 10 percent?

JASON BERGER: I wouldn't have a way to know.

But I would like to add on something to the -- what Don had mentioned, that, you know, earlier we heard Ticketmaster talk about the platinum sales, and how they hold tickets back, or they sell them at various prices.

We're all independent and we all compete with each other, and we all have multiple platforms that we market our tickets from, whereas Ticketmaster only sells exclusively.

So a performer, a team, or an artist would have a great benefit to selling their tickets through our exchanges as well. It gives it more visibilty.

We, potentially, could have lower fees. We have -- you know, we all compete with each other.

So I think that there's also -- there's a big benefit. And that's why we're seeing a lot more of these deals that Don Vacarro just mentioned, about teams and performers going out to consolidators and people in the secondary market, because it gives them an alternate, rather than dealing exclusively

with Ticketmaster and exclusively with their terms.

SENATOR SKOUFIS: Got it.

Changing gears a little bit, and I'll continue, since I don't see any of my colleagues' hands raised in the Zoom.

Do any of you engage in reselling -- I don't even know if that's the right word, given the circumstance -- but I'll say, reselling tickets that were free on -- on point of sale?

LAURA DOOLEY: Senator, I can jump in here.

StubHub has a policy, that we don't list tickets for events -- tickets to free events.

So the example provided earlier about the Pope's visit to New York, that's an event that just wouldn't even be created on the StubHub platform.

And we hold that as the consistent policy across any type of free events along those lines.

SENATOR SKOUFIS: So you -- is it -- is it fair to say StubHub's position on making that practice illegal, it would favorable, or fine with that?

LAURA DOOLEY: Yeah, certainly for free events.

SENATOR SKOUFIS: Yeah.

LAURA DOOLEY: I think the nuance of

charitable events becomes a little bit more difficult.

I'm certainly not opposed to regulating the sale of charitable tickets; however, not every charitable event is created equally.

You know, is it 1 percent of the proceeds? Is it 100 percent of the proceeds?

We have policies in place to ensure that, when we're at -- you know, the majority of proceeds going to a charity, or -- we will not allow tickets to be sold for that event, unless we are in partnership with the charity, or we commit to providing our own proceeds to the charity as well.

And I think just working through those nuances for charitable events would be important.

But certainly, for free events, it feels very simple, from our perspective.

SENATOR SKOUFIS: The rest of you?

RYAN J. FITTS: Yeah, I think I agree that we're, philosophically, open to the idea that free events shouldn't be resold.

I think that there might be the slight danger, is what if it's a free ticket with a $50 T-shirt, or there's some kind of way to game that by somebody.

But if we have, you know, clear guidelines as to what is "free" and what is permissible, philosophically, we would agree with that.

SENATOR SKOUFIS: So do you prohibit selling free tickets on your [simultaneous speakers; indiscernible] --

RYAN J. FITTS: We do.

I mean, the event that sticks out in my mind, is I remember that tragedy [inaudible remote audio] worked for at the Ariana Grande concert in London, and they did a huge benefit for that. And we weren't reselling that.

SENATOR SKOUFIS: Okay.

DONALD VACARRO: So I take a slightly different take on this.

I would say this: Anytime there is an event, where it's for some certain purpose, that it's free for an ethical reason, yes.

I don't know of any free tickets that we ever resell. And I haven't checked it, anything that.

But I know that sometimes we get complimentary tickets that we resell.

I wouldn't want to get that bundled in.

Sometime there's tickets in other states that don't have a price on it.

As far as charitable events, I take great exception to not being able to resell them, and I'm going to share with you why.

In Connecticut we have, every year, an annual hundred -- the NAACP does a show, the 100 People of Color, every year, and it's at the NAACP convention.

So two years ago they called me up. They said, Look, we're doing a show. We want you to buy -- we want you to pay for the artists, put up the money. We'll give you the tickets, you sell them, because we want the show to happen.

So there's a lot of smaller charities that people really don't give that much to, whether it's the National Action Network, the NAACP, which I'm big supporters of both.

I actually did the show for them and paid for them.

But, again, they needed my distribution to sell those charitable tickets out there.

So as far as the charitable ones, I have a big problem with trying to do -- make that illegal, because I think, in a lots of ways, you're disenfranchising charities who don't -- who don't have the marketing wherewithal, and they don't have the high-value donors.

SENATOR SKOUFIS: Mr. Berger?

And then I'll go to Senator Kaplan. I see her hand raised.

JASON BERGER: Yeah, I would agree with what Don had mentioned.

I've worked with nonprofits, we currently work with nonprofits, and we help them in terms of fundraising and marketing to our clientele.

So I think that the idea of working with nonprofits.

Free tickets, you know, there's -- we talked about the -- the Pope event. We didn't sell tickets for that. We didn't sell tickets for these high-profile free events.

SENATOR SKOUFIS: Is "Shakespeare in the Park" -- "Shakespeare in the Park" is another event in New York City, free tickets that are very commonly resold?

JASON BERGER: Yeah, I don't remember selling tickets for "Shakespeare in the Park." So I -- so that's something that it's -- if we did sell it, I can't tell you off the top of my head.

I don't think we did.

So I can tell you this, though: There are a lot of people, when the market works well, and it's

regulated, it protects the buyers and the sellers.

If you're looking at "Shakespeare in the Park," and people who do buy and sell those tickets, and they go to Craigslist and eBay, those are the kind of complaints that we see in the department of consumer affairs consistently.

I'm not saying that that should be allowed.

Probably shouldn't be, and it should be regulated.

But the idea, though, is that when there's a free and open marketplace, and people are protected and the players are regulated, I think it helps consumers.

So the more -- the more cutouts that you put on that, I think it creates barriers for customers to get tickets at a fair -- at a fair point through an online marketplace.

SENATOR SKOUFIS: Okay. Thank you.

Senator Kaplan?

SENATOR KAPLAN: [Inaudible remote audio] 2018 law put additional limitations on the sale of the speculative ticketing; however, it appears that some of those limitations may not be strong enough to alert the consumers to the fact that they're buying speculative tickets.

Can any of you speak a little bit about your thoughts on whether these limitations on speculative ticketing are sufficient in transparency to protect the consumer?

RYAN J. FITTS: I can begin.

I mean, I think we definitely agree with the principle that people should understand what they're buying, there should be clear disclosure; and people should get what they pay for, there should be fulfillment.

And in 2018, you know, there was a law passed in New York that really solidified that.

We supported that law at the time; we support it now.

And, you know, we think we should let it play out and see how things go. We really haven't had events for the last 14 months.

But, we think that's a good law; we think the law should be enforced.

SENATOR SKOUFIS: Do you all at all communicate?

I know you're competitors, but do you communicate with each other in identifying these incidences, or do you just work alone on this?

LAURA DOOLEY: I think there are instances,

Senator, where we have received e-mails from the primary market, suggesting that -- or regulators, suggesting that some of the listings on our site are speculative.

When we receive those, we just take a standard practice of investigating, you know, exactly what's going on; contacting the seller, trying to understand if they appropriately sourced that inventory.

And if we find that they have not, then that inventory comes down from our site.

So it is a collaborative process, but the collaboration I think happens more between ourselves and the primary, as opposed to ourselves and other secondary platforms.

I also think it's fair to say, like, the two or three instances I can think of in my time at StubHub where we have received an e-mail like that, it has been for major events, like major headline concert tours going through.

I think Mr. -- Mr. -- David talked to us earlier about them not being able to maybe police it as much as they would like, and we can appreciate that perspective.

But, certainly, when those inquiries come in

we take them seriously.

SENATOR KAPLAN: Thank you.

SENATOR SKOUFIS: Thank you, Senator Kaplan.

I want to turn to fees.

In the document requests that most of you returned to our committee last year, you spoke at length about the service charges that your platforms employ.

And you're just as -- just as sort to test, I have used StubHub before, just as a refresher, I went on this morning and looked -- looked up -- queued up a ticket for a Mets game this weekend.

And in the document request on StubHub -- from StubHub, you had noted last year that your fees range from 20 to 30 percent.

And, sure enough, the fees -- the accumulated fees here amounted to 27 percent on the tickets I was looking at.

So a couple of things.

First, it's not one fee.

I'm looking at a service fee. I'm looking at a fulfillment fee.

And I know for other platforms that is common, where there is not just one fee, there are multiple fees, assessed on tickets.

Can you explain to me what the difference is between the service fee and the fulfillment fee; how you come up with those charges?

And I guess, you know, we heard from a previous witness that they do not believe that -- the "reasonableness" clause of Article 25 in the state's ticketing laws, they do not believe it applies to secondary markets.

I think there's a gray area, at best.

The statute refers the "licensees." It does not refer specifically to primary marketplaces only.

And so I guess my question also extends: Do you believe that you all are subject, in the secondary marketplace, to the "reasonableness" clause that governs these service fees?

And if so, how you determine "reasonableness."

I know there are a lot of questions there, but perhaps, Ms. Dooley, if you want to start?

LAURA DOOLEY: Absolutely.

So, fundamentally, the difference between our service fee and our fulfillment fee is -- is how they're determined.

Our service fee is dynamic. It is -- it evolves.

And that's a pretty standard industry practice, which is why, you know, we provided a range, not a specific number.

That dynamicness of that fee is always a percentage of the ticket price, but may fluctuate, based on the type of event, the genre, or various other factors.

The fulfillment fee is static.

And so that's a fee that will -- that is determined, based on the type of ticket you're buying.

So if you're buying a mobile transfer ticket, or mobile ticket, it's always $2.50.

If you're buying a hard-stock ticket, that requires, you know, essentially, the seller to mail it to the buyer, that is always a flat fee of, I believe it's $5.25, regardless of how much it actually costs to make that shipment.

And so those are the differences between the two fees, essentially.

I think, from our perspective, you know, I have not -- I -- I certainly do not have a fully informed opinion, and it's something we can certainly ask our legal counsel, about whether or not we're subject to that "reasonableness"

requirement.

But in establishing our fees, you know, we need to be reasonable in order to earn customers.

And so, you know, if our fees weren't competitive, or if we were consistently higher in our fees than any of our competitors in the secondary market, we would lose sales; we truly believe that.

And so, you know, we believe our fees are competitive.

We believe that our fees are always displayed, and very -- and made very much aware to our customers before they purchase.

And it's our, you know, assessment that the more competition we have in the secondary market, the more important it becomes for those fees to stay competitive, because that is what will drive the user experience, that's what will drive customers.

So [simultaneous speakers] --

SENATOR SKOUFIS: What does -- thank you for that.

What does your fulfillment fee speak to? Like, what is that cost related to at StubHub?

LAURA DOOLEY: So for -- I mean, it's very evident for the UPS costs. Right? And they could

[simultaneous speakers; indiscernible] --

SENATOR SKOUFIS: For mail, that was evident.

LAURA DOOLEY: -- yeah, for UPS --

SENATOR SKOUFIS: I'm talking about the electronic.

LAURA DOOLEY: -- right.

And just, for equitable distribution, creating a service for any other type of, you know, ticket delivery, it's -- again, it's static.

Sometimes it is like, you know, part of a partnership deal that we may have, or something along those lines.

But, again, it's -- it is, I think, all intents and purposes, all fees go to the same effort, which is the operation of our business, the privilege of partnering with various marquee, like, leagues, or teams, or whatnot. And it just, essentially, funds our ability to provide a safe and secure platform for our customers.

SENATOR SKOUFIS: Okay.

RYAN J. FITTS: If I can piggyback on what Laura was saying, I think we care about fees and prices, we care about competition; we care about competition, we care about transferability.

So transferability is vital in this market.

It seems like whenever this bill comes up for extension, there are elements in the primary sale that try to push back on that notion.

But that's actually a really key thing to keep prices lower.

Speaking to our fees, I mean, our fees are used to support the services that we provide.

So we have a full-time call center that operates to assist people, from 7 a.m. to midnight, with any issues they might have.

We have a large antifraud team. You know, we carefully vet our sellers before we put them on the site.

I think the real distinction is that, you know, change between now, and maybe between the 1990s when I was just moving to Chicago, you know, if I wanted to see the Cubs, I had to go find a guy on the street corner. He didn't have a guarantee, you know, he didn't have selection.

But what we do is, we take that moment of walking up to the gate, and we make sure people are certain that they have what they need to get in.

We provide that assurance, we provide that flexibility.

SENATOR SKOUFIS: Okay.

DONALD VACARRO: As far as TicketNetwork's fees, 50 percent of our sites, that we have our branded sites, do not charge any service charges.

100 percent of our sites allow consumers to see the total final cost of the ticket before they enter any personal identifiable information.

That was something that the FTC director brought up, that she wanted to see all sites do.

If I'm correct, I believe StubHub has that toggle, I believe, to see the service fees on there.

And it gets consumers the transparency of not having to wait till the end of the transaction to see how much they're paying.

And, we lose sales from it.

But, you know what? If a consumer is better informed, you get a much better response from them, and, hopefully, they'll repeat.

SENATOR SKOUFIS: Okay. Thank you for that.

Let me -- let me ask about markups on the secondary marketplace.

And I guess, understanding and acknowledging that many events obviously do not sell out; in fact, many tickets that are resold are at or below face value, or, you know, what the price was at point of sale.

So with that acknowledgment, I want to speak to the other events, the events that do sell out, the events that produce a very hot ticket.

Do any of you -- I guess, let me start with this:

Do you have sympathy for those fans who -- working, middle class, lower income, who would love to see their favorite artist, would love to see, you know, the marquee pitching matchup of their favorite team;

The game is sold out, oftentimes within, you know, literally, a minute, or a couple of minutes in some cases;

And then, you know, in a desperate attempt to try and get their son a ticket for their birthday, the only place is the secondary marketplace;

And for those hot events, they have to now pay, and they cannot afford, a ticket that is triple or quadruple or 10 times the face value when it went public -- when the event went public?

Do you have sympathy for those, what I'll call, "average" fans that don't come from wealth, that they would probably argue are locked out of these types of events?

LAURA DOOLEY: You know, Senator, I think

it's a challenging market, and, certainly, you know, we understand that not all consumers are able to participate in.

You know, certainly, you know, there's empathy for that.

I do believe, though, that what the secondary market provides is additional access that may not have been provided to them otherwise, regardless of their socioeconomic status.

You know, the ticket-selling process is opaque. You know, we've talked about that a lot today, you know, regardless of whether it's possible to highlight how many, like, the percentage, of tickets that will be made available, and how many won't.

You know, I think we can all agree it is definitely possible to tell people how many tickets are going on sale in any given moment, and how many tickets will go on sale maybe next week, or the following week, or the week after that.

And, unfortunately, like, what you end up finding is this artificial notion that all of these events are sold out, when, in reality, they're not.

We heard that today. Right? There's only a few percentage of events that sell out.

When there is ample supply, secondary markets provide an access point at a significantly reduced rate. Right?

Like, it's not uncommon to find baseball tickets for 8, 10 dollars on StubHub.

That's a great benefit for fans.

But on the flip side of that, with any market, there are those, like premier events, that will come at a heightened cost.

You know, StubHub isn't setting the price.

The price is being set by our sellers, and they're pricing it to what the market can bear.

You know, if the market can't bear a high number, those numbers will drop.

And I think, you know, the nature of our business is that there is limited supply and there is significant demand.

And I think the market forces create that situation that you just described.

We're very aware of it.

And what we want to do, is make sure that if a customer chooses to spend their hard-earned dollars with StubHub, they are receiving a premier experience, they have no regrets, and they'll come back anytime that they want to kind of participate

with us again.

RYAN J. FITTS: And, you know, I'm a dad, and I love taking my kids to games. I'm an alumni -- a [indiscernible] alumni of [indiscernible] university. I go a couple of times every year to the basketball game.

And, you know, the one thing that resale does, resellers/resell marketplace, is we provide access.

So, you know, I mean, the New York Attorney General reports that more than half of the tickets aren't being offered to the public.

So, you know, we provide people with a way to access. Like, we don't hold anything back. All of our inventory is there, it's available, and we're an equalizer.

JASON BERGER: Senator Skoufis, if I could just chime in.

I want to echo what Laura Dooley and Ryan Fitts said, but also want to go back to something that the Times Union Center, Bob Belber, said earlier, which is, you know, it -- it is a finite resource. And it does become -- and I -- I do have empathy, first of all, first and foremost, 100 percent, I have empathy for, everyone wants to

be in the front row for a Bruce Springsteen concert, or whatever their -- their -- their performer.

SENATOR SKOUFIS: I think there are plenty of people who would be content in the back row of a Bruce Springsteen concert, but the back row might be going for hundreds of dollars.

And that's where that sort of comes from.

JASON BERGER: Yeah.

I think there's two things that go into that.

The first thing is, and as Laura and Ryan said, the fact that there is a transparent and safe marketplace for them to purchase, and know that they're actually getting what they buy, that's a very big thing because, when the black market was in effect, which is what the Times Union Center referenced, which is true, before the law, before there was a marketplace in New York, people would go to the black market.

We would -- there was tons of complaints. And people would be going to Craigslist, and out-of-state companies, and it was -- it didn't work well for consumers.

That's the first thing.

And the second thing is, also, in terms of transparency, we -- I support, I think we all

support, a better law, and a better way for fans to know what they're buying, and how they're getting their tickets.

I actually, recently, when we were trying to get the COVID vaccine, you go online into New York State, and it tells you, there's 14 appointments available. And you're trying to get that one appointment, and you say, Great. Okay, I got my appoint. There was 14 available.

But when I see a thing that says there's one appointment available, I'm not going to spend 20 minutes trying to get that one appointment.

The reason I bring that up is that, that actual methodology is used in other countries for ticket -- for ticket sales.

So when tickets go on sale, it will say, there's X number of tickets in this block, in the Price Level 1; this number of tickets in Price Level 2.

And that number starts diminishing as the time goes on.

It goes on sale at 9:00.

By 9:05, there's nothing in Block 1. There's half the tickets in Block 2.

And you can start tempering your expectation,

and say, You know what? I'm not going to try this anymore.

So the idea, I think, is that it would be better to have a better way for consumers to have a better expectation of what they're getting out of live entertainment, both in the primary and the secondary market.

SENATOR SKOUFIS: Okay.

DONALD VACARRO: Senator Skoufis, if you wouldn't mind me just chiming in.

SENATOR SKOUFIS: Sure.

DONALD VACARRO: And I'll emphasis that we all empathy for folks like that.

But there is one way to address your concern, which a lot of folks have actually brought up; and now that way would be, and you hit the nail on the head before, with the holdbacks to credit card companies.

There's some credit card companies who only sell those tickets to the top echelon of the public.

And now we're talking, and it's astronomical, about how -- how homogenous that crowd is.

And I'm sorry, I'm the White male, it's for me, it is, it is what it is, that we get those advantages because we have that money.

And these are publicly-financed buildings.

I mean, I saw some of the tax credits that, like, in New York, that was the Presidential Candidate Yang that was railing against them the other day. That one thing, he was getting huge tax credits in New York, and not even making the tickets available to the public.

So I think one way to do that is with the whole back thing. But ...

SENATOR SKOUFIS: Ticketmaster claimed that it's only about 5 to 10 percent of tickets that are held back.

You disagree?

DONALD VACARRO: Okay. See -- I absolutely disagree.

And I'll share with you, too, to Mr. Hoover's comment, from the Shubert -- The Shubert Organization runs a much different thing -- okay? -- a much different program.

There's not that many real complaints about theater in proportion to concerts.

So concerts are the big problem. Okay?

They don't consider -- sometimes they do, sometimes they don't, sales for these thousands of tickets that they hold back for these credit card

companies, they don't consider those holdbacks.

Sometimes they don't consider the thousands of tickets that a venue has for its staff, holdbacks.

So, yes, I absolutely disagree about the number of concert holdbacks, and it's a little bit different from my angle, because we are also a concert promoter too.

I also have a small primary ticket operator, a smaller -- small primary ticket software.

So I see from the other side what people do.

I see why promoters hold back.

Promoters hold back to create a scarcity, and drive the ticket price up, to mislead consumers about the amount of tickets available.

And, legislatively, in certain states, legislatures have -- has taken action on -- on products where either the manufacturer or the retail outlet says they have a product available, but didn't have a sufficient enough quantity to meet demand.

There used to be those old newspaper flyers, when we used to read the newspaper 20 years ago. You know, when a big chain store would have this TV on sale for $49, well, they had one per store,

and they just used it to drive people in. You know?

SENATOR SKOUFIS: Right, right.

Hey, thank you for that.

And so in the interest of time, I just want "yes" or "no" from each of you on a couple of sort of lightning-round questions here.

So, in light of what I just heard, yes or no, do you believe that we should either be barring or, at a minimum, strictly limiting holdbacks --

DONALD VACARRO: Yes.

SENATOR SKOUFIS: -- in New York State?

DONALD VACARRO: Or disposing it.

Yes.

LAURA DOOLEY: I think we would suggest, we should be transparent about it, but allow the practice to happen, as long it's, certainly, you know, available to the customer to digest.

RYAN J. FITTS: Disclosure is a key piece of the supply and demand.

JASON BERGER: I actually have a -- I'm sorry, I can't answer yes or no.

I have an idea, though.

If Ticketmaster is saying it's usually 5 percent, maybe disclose it if it's about 10 percent, automatically disclose it, because then

I think people would have an idea that this is the number of tickets that are held back for that Justin Bieber concert example, which happens I think a lot more frequently than we all think.

SENATOR SKOUFIS: Uh-huh. Okay.

DONALD VACARRO: You know, just to add on to Jason's thing, Senator Skoufis, and I hate to do it, technologically, it's simple to do.

This is probably one of the most simple things in the world for a primary vendor to do technologically.

You just have to say: Here's the status of the tickets.

It's very, very simple.

SENATOR SKOUFIS: Right.

And I guess, you know, this is a two-parter:

So, yes or no, do you all engage in speculative ticket sales?

And, yes or no, do you believe that we should be banning speculative ticket sales in New York?

RYAN J. FITTS: We have zero tolerance for undisclosed speculative ticket sales.

We think that the New York law was well considered in 2018.

SENATOR SKOUFIS: Yes, the 2018 law just

speaks to disclosure, correct.

I'm, you know -- so, (a) do you engage in it at all, even if it's disclosed? (b) do you think that the 2018 law should take the next step forward, if you will, and prohibit the practice?

RYAN J. FITTS: Yeah, I mean, our -- our -- we have a zone program that sells tickets, that are guaranteed to a particular section. We carefully vet those participants, and we only allow a certain subset.

And that program is, of course, compliant with New York law, and so [indiscernible].

DONALD VACARRO: I guess I would say, generally, I agree with what Ryan has said.

I think, the disclosure, I actually think it's a good provision in the law. And I think everyone adhere to it. I think the customers see transparency.

And, as far as the practice, with whatever you consider them, yes, it's good, because it increases the supply, it lowers the equilibrium price.

JASON BERGER: I would say, we do participate, and we actually tell consumers that we are preselling.

And people do come to us and ask us to help them with presale -- help them with inventory that is not available in the marketplace.

How can you find this ticket for us for the Super Bowl?

The tickets are not released until two weeks before.

Can you help us obtain tickets for an overseas match that's not available?

So as long as there's disclosure, I think it's important to have that ability for consumers, because limited supply in the marketplace drives prices up.

SENATOR SKOUFIS: Don't you think that, you know, the practice gives a leg up to higher-end consumers who have the wherewithal to go through a broker?

You know, the average consumer is likely not trying to get a hot ticket through a broker. They're trying to get it through sort of the traditional means of the primary marketplace.

And so what you're describing, Mr. Berger, is sort of an add-value -- or, value added, I should say, that you're able to provide, that is not readily available to, you know, probably 98 percent

of fans. Fair?

JASON BERGER: I actually see it a little differently.

I see it, that increased supply decreases prices.

So I don't necessarily see it the same way, that only a specific percentage of clients can participate, and buy a ticket for an event.

Zone pricing is available on a lot of marketplaces, and it helps consumers when there's nothing available.

There's also the -- you know, when there's -- when there's nothing available, I think that zone pricing helps.

In other countries, it's -- that's how a lot of tickets are sold, and it drives prices down.

So I do actually believe it's, increased supply decreases prices.

SENATOR SKOUFIS: Okay.

And, Ms. Dooley?

LAURA DOOLEY: Yeah, I would align with what we've heard here.

Certainly supportive of the existing law.

Certainly supportive of continuing the conversation to tighten it where it needs to be

tightened.

SENATOR SKOUFIS: Okay. Very good.

You're all off the hot seats.

Thank you very much for your participation.

You gave some great incite, and we're grateful for it.

So, thank you, and we'll be in touch with you.

(All panel participants say "Thank you.")

SENATOR SKOUFIS: Okay. And we're up to our finale, our fourth panel.

We have, John Breyault, vice president - public policy, telecommunications, and fraud, from the National Consumers League;

We have, from Consumer Reports, Anna Laitin, director of financial fairness and legislative strategy;

From NetChoice, Carl Szabo, vice president and general counsel;

And from Sports Fans Coalition, Brian Hess, executive director.

Welcome, everybody.

JOHN BREYAULT: Thank you.

SENATOR SKOUFIS: Mr. Breyault, do you want to go first?

JOHN BREYAULT: Sure. Thank you.

Good afternoon, Chairman Skoufis, Chairwoman Kaplan, and members of the committee.

My name is John Breyault, and I'm the vice president of public policy, telecommunications, and fraud for the National Consumers League, America's pioneering consumer-advocacy organization.

I appreciate this opportunity to appear before the committee, and provide testimony in support of your investigation of the live-event ticketing industry.

My testimony today will focus on two of the areas where you have an opportunity to address -- to strengthen consumer protections in the industry: ticket holdbacks and ticket-buying bots.

First, holdbacks, also known as "allocations," are one of the dirty little secrets of the live-event industry.

As the 2016 report by the New York Attorney's General's Office -- New York Attorney General's Office found, only 46 percent of tickets to popular events, on average, are ever made available to the general public.

Those findings were recently corroborated by a 2020 audit by the Honolulu City Council, which

found that promoter and venue holdbacks were the primary reasons that consumers could not access tickets to events there.

Instead of tickets being made available to the general public, they are diverted to connected insider groups, like fan clubs, credit card rewards programs, artists, venues, and promoters, who often work with brokers to increase their profits by reselling tickets on the secondary market at inflated prices.

To be clear, we do not oppose holdbacks in principle.

Primary ticketers, whether they be Ticketmaster or box offices, artists and concert promoters, they should be free to distribute their tickets as they see fit.

However, we believe it is an unfair and deceptive practice to advertise an event, lead customers to believe they have a reasonable chance of getting a seat at face value, trumpet the artificially engineered quick sellouts, and then point the finger and blame at the secondary market, or even fans themselves, when tickets are scarce.

The best antidote to ticket-holdback practices -- to deceptive ticket-holdback practices

is more transparency.

We support legislation requiring primary ticket sellers to disclose on their websites, and at the box office, the total number of tickets to be made available to the general public no less than seven days prior to the date on which tickets go on sale.

The second issue my testimony will address today is the use of ticket bots by unscrupulous ticket brokers.

Ticket bots are sophisticated programs used to electronically jump the line to buy hundreds or thousands of tickets in a matter of seconds. Those tickets are then resold on the secondary market, typically, at greatly inflated prices.

To address this, New York should take steps to address -- sorry -- to increase penalties for violation of its existing anti-bot statute.

We also urge you to pass legislation, requiring entities, such as primary ticketers, venues, promoters, or other actors in the live-event ecosystem, who have knowledge of illegal bot use to report such activity to the attorney general's office.

Senator Skoufis, I believe you were getting

at this earlier in your line of questioning to Mr. Marcus from Ticketmaster.

Finally, in addition to our recommendations regarding ticket holdbacks and ticket bots, we support many of the other comprehensive solutions I anticipate you will hear from our colleague organizations today, such as prohibiting undisclosed speculative ticketing, reigning in drip pricing, prohibiting white-label ticket websites that defraud fans, requiring refunds for canceled or rescheduled events, and requiring ticket sellers to provide toll-free numbers for customer support.

Chairman Skoufis, Chairwoman Kaplan, thank you for giving the National Consumers League the opportunity to provide testimony on this important issue.

We look forward to answering any questions that you or other members of the committee may have.

SENATOR SKOUFIS: Thank you very much.

Next we'll hear from Ms. Laitin.

ANNA LAITIN: Thank you, Chair Skoufis and Chair Kaplan, ranking members, and distinguished members of both committees for inviting Consumer Reports to testify at this important hearing.

My name is Anna Laitin, and I'm the director of financial fairness and legislative strategy at Consumer Reports, based in Yonkers.

This hearing is taking place at a unique time.

As the worst of the pandemic appears to be behind us, artists, venues, and fans are all hopeful that we will be able to attend live events and share experiences again.

But we urge you to ensure that we do so in a marketplace that works for consumers, one that eliminates unfair and deceptive practices that target ticket buyers.

As you well know, Americans have long expressed frustration with online ticketing.

In 2018 Consumer Reports reached out to our members, asking them to share stories about ticketing and ticket fees. And more than 6600 consumers, including more than 500 New Yorkers, wrote back.

Many gave concrete examples of frustrations with hidden fees, raising the price of a ticket well beyond what the individual had understood to be the price; with bait-and-switch tactics that left them uncertain about what they had bought, and whether

the tickets were even legitimate; and with the opaque operations of the secondary ticket market.

It became clear from these stories that the online event-ticketing marketplace is not transparent. It does not operate in a manner that enables consumers to make informed purchase choices. Hidden fees can increase the price of a ticket by as much as 30 to 40 percent, and consumers find themselves spending more than they intended in order to buy tickets, or they simply back out and decide not to bother with attending an event that they cannot afford.

The ticket sellers know what they are doing when they set their prices in this way.

In December 2016 the National Economic Council issued a report, "The Competition Initiative and Hidden Fees," which notes that these fees are generally structured as they are, quote, in order to drive down the perceived price, and lure consumers to make purchasing decisions based on information.

Go on to say, that these fees are, at worst, quote, fraudulent or deceptive. At a minimum, they make prices unclear, hinder effective consumer decision-making, and dull the competitive process.

New York has taken steps to protect consumers

in its marketplace with the enactment of laws requiring transparency disclosures, as well as by prohibiting the most egregious white-label websites that fool consumers into thinking that they are buying from the venues.

These protections have made a difference, and Consumer Reports urges you to renew these expiring protections, but we also urge to you take additional steps.

I use my time today to urge you to ban hidden fees and require all end pricing for all tickets.

If a fee is certain to be charged to a consumer in order for that consumer to receive a ticket, that fee should be included in the base advertised rate. It is a simple straightforward change that would improve consumer welfare.

The ticket sellers have made clear that this is not a change that they will make on their own absent a mandate.

You have the opportunity to set that mandate.

Thank you, and I look forward to your questions.

SENATOR SKOUFIS: Thank you very much.

We'll next hear from Carl Szabo, NetChoice.

Welcome.

CARL SZABO: Good afternoon.

My name is Carl Szabo. I'm vice president and general counsel of NetChoice. I'm also an adjunct professor at the George Mason Law School.

Now, we've heard a lot about the problems in the ticketing market.

And one of the things I always look for is, what is the root cause?

And I was looking around on the Internet, and I was just curious to see how much the COVID outbreak has impacted the events market and the ticket market.

And, it's hit everyone hard, except for one company in particular: Live Nation.

Live Nation's stock price today is not only higher than it was before the pandemic started a year ago, it's the highest in its history.

And why is that?

Well, we have to unpack the onion and look at the root cause.

But before we jump into that, I'm going to ask that we do three important things.

One, renew the existing New York Consumer Protection Law;

Two, require transparency on how many tickets

are available;

And, three, encourage your state AG to investigate the antitrust violations of Ticketmaster and its parent company, Live Nation.

Now, we heard, well, if we just give people transparency, it's not going to change consumer buying habits.

So, really, there's no logical reason why you shouldn't disclose it.

It's kind of like my kids holding something behind their backs, and saying, Oh, don't worry, dad. It's nothing bad.

Should I believe my kids?

Probably not.

If it's nothing bad, show it to me.

One of the things that is also worth analyzing is the antitrust violations by Ticketmaster and Live Nation.

Now, I spent an inordinate amount of time dealing with [indiscernible].

Under today's laws, the Supreme Court has never found an antitrust violation when the controller has less than 75 percent of market.

But you heard from Ticketmaster today that they represent 80 percent of the primary ticket

sales in the U.S., well above the Supreme Court threshold.

But Ticketmaster isn't just the ticket issuer. They complained about how it's the artists and venues that are causing them to adjust the tickets. But their parent company, Live Nation, is the lead promoter.

So that's the artists that they work with, through Live Nation, setting the prices that Ticketmaster sells.

And, by the way, Live Nation and Ticketmaster own dozens of venues across the country.

So if the complaints are the artists and the venues, they're really complaining about their own ticketing practices.

You now see Ticketmaster using their size and control to seize control of the secondary market.

You've heard them talk about creating pricing models that increase their service fees and prices.

I mean, this is a slam-dunk case on antitrust.

And that's why I am excited to see Chairman Nadler and several members of the U.S. House of Representatives, including Representative Pascrell, ask the Department of

Justice and FTC to enforce against this monopoly.

Your state AG could take similar steps.

Now, the important thing is also on transferability.

States are running to catch up with New York's transferability laws.

Today, Colorado, Utah, Virginia, Connecticut have caught up to New York.

New York should continue to lead the way, and give consumers the protections that they deserve.

SENATOR SKOUFIS: Thank you very much.

Last, but not least, we'll hear from Brian Hess, Sports Fans Coalition.

Welcome.

BRIAN HESS: Thank you, Chairman Skoufis, and members of the committees.

I'm Brian Hess. I'm the executive director of Sports Fans Coalition.

SFC was founded in 2009, and we're a national nonprofit advocacy group devoted to representing fans wherever public policy impacts the games we love.

New York tickets resale laws are strong, promote competition, and they're good for the consumer.

If the New York Senate were to do anything following today's hearing, it should extend the sunsetting provisions, preferably indefinitely.

Today I will focus on a few areas of public policy that impact the ticket-buying consumers, protecting transferability, price controls that harm fans, white-label websites, and requiring affordability of primary tickets for tax-funded venues as a good idea for consumers.

Transferability must be the cornerstone of any pro-consumer ticketing law.

As the industry's dominant primary ticketer, Ticketmaster's embrace of nontransferable ticketing practices does nothing more than to create burdens for consumers, limiting the ability for fans to transfer, give away, or resell their tickets that have been rightfully purchased.

It is also highly anticompetitive.

The consumer groups in this panel aren't alone in this concern.

This week Chairman Jerry Nadler and four other congressmen sent letters to the DOJ and FTC, asking them to open an investigation into Ticketmaster and Live Nation for all of the anticompetitive practices they engage in.

I would like to quote from that letter.

"Not satisfied with its near monopoly of the primary sale of tickets, Live Nation Entertainment has tightened its grasp on the secondary market, making it one of the largest ticket resellers in the United States.

"The company is now leveraging its position in the primary channel, to drive out competition in the resale market, and allowing for, potentially, unfair and deceptive practices."

While Ticketmaster claims their barriers prevent ticket scalping, they are often designed to control resale and ensure it occurs on platforms aligned with the primary ticketing company.

Designated resale exchanges allow Ticketmaster to double-dip the fees on both their initial sale of the ticket and secondary sale.

Despite claims that these restrictions protect consumers, they do the exact opposite.

I urge the committee to protect New York's right to transfer in any legislation that it considers.

Buying tickets is also an investment in fandom.

When the ticket is to a single game or an

entire season, a fair and open ticket market spurs investment among the fan base.

To restrict the cost of that secondary ticket site stifles that investment.

If I'm a season ticket holder in the Yankees, and I want to sell my ticket to the Red Sox games, to either recoup my costs for the package, pay an unexpected medical bill or a parking ticket, or anything, I should have the right to do so.

Stifling that does little to stop bad actors who will just go to other platforms, or back on the street corners, and they will always find a way to skirt the law.

Sports Fans Coalition advocates against any legislation or regulation that attempts to control ticket prices artificially.

Lastly, many other people today have talked about white-label ticket sites and how they defraud fans by using similar iconography, URLs, names.

So I won't dive in too deeply on that, but New York has lead the nation in prohibiting this practice.

To stop that today, or this year, would really hurt the industry efforts that have been -- coincide by state regulations, and companies, such

as Google's ad word policy, that have largely addressed the practice, though it still proliferates.

I see my time has expired, and so I will ...

SENATOR SKOUFIS: Thank you.

I'm sure there will be more opportunity to flesh out your remaining comments as we go to questions now.

So a common theme from many of you in your testimony was the need for additional disclosure.

And I think you'll find few, if any, arguments against that amongst our two committees here.

I guess my question is:

Is it enough -- you know, if you have a bad practice, or, an unsavory practice maybe is a better characterizing, like holdbacks -- excessive holdbacks -- Mr. Breyault, I think you described it as the industry's dirty little secret -- is it enough to just -- to just require stakeholders to let the public know, hey, we are engaged in these bad practices? Or, should we be taking the next step in regulating those bad practices?

Do any of you, do all of you, think that we should not just disclose the fact that these

holdbacks are taking place, and locking average New Yorkers out of events?

Do you think we should be limiting, or perhaps even banning holdbacks here in New York State, as we look at potential future reforms?

JOHN BREYAULT: Senator Skoufis, thank you for that question.

From NCL's point of view, we don't believe that banning holdbacks is appropriate at this time.

However, I think I share your desire that they would hold back fewer tickets, and make more tickets available to the general public at face value.

And I think transparency would start to get us there.

I think that artists, in particular, value the relationship that they have with their fans. And they don't want to be seen as -- as bidding -- selling off their tickets to the highest bidder; giving them to connected insiders; only the people who have the super-Platinum American Express card can get access to our pre-sales.

But the fact that they can get away with that, or that venues or promoters can get away on their behalf, or on the side, in this opaque system,

where so many tickets are held back from general resale, that means that they can get away with that without repercussions or any kind of consumer knowledge.

I think consumers armed with the information that they would get from holdbacks -- from transparency and holdbacks would actually decrease the incentive to hold back tickets in the first place.

And so I often talk about the harm that comes to consumers from undisclosed holdbacks in four ways, and I hope you'll excuse me for going down the list.

But, first, consumers waste time.

When I'm online at 10 a.m. on a Saturday trying to get tickets, when I think that there may be, you know, most of the tickets of the 20,000-seat Madison Square Garden are available. But, in fact, if there are only a very small percentage that are available, then I might not have wasted that time.

Number two, when tickets to Justin Bieber sell out in 30 seconds for MSG, then I think it's a hot ticket.

I'll go to secondary market, and I'll see a price for tickets there and think, that's the market

price for that ticket, and I may even pay it.

In fact, as I think Mr. Vacarro alluded to earlier, that price may only reflect artificially-engineered ticket scarcity.

Number three is, when a consumer pays that price, we -- it's often seen that the tickets will be made -- more tickets will be made available closer to the date of the event at face value.

So now a consumer has paid above face for tickets they could have gotten for face value in the first place.

So I think for all of those reasons, this is a practice that would benefit from more transparency.

If a consumer knew, for example, that they only had a shot at 10 percent of the tickets for Justin Bieber at MSG, they probably wouldn't waste their time.

If they went to StubHub or Vivid or one of the other resellers that was testifying before us, and said, Oh, I see these tickets are on sale for three or four times face. But I know that there's still thousands of tickets out there, unaccounted for, they may wait.

Mr. Marcus talked earlier about sort of

that spike in the first 12 to 24 hours of demand, followed by a decrease.

If consumers knew how many tickets were out there, they may be able to make the decision to purchase that ticket further on down that curve, closer to the date of the show.

SENATOR SKOUFIS: Sure.

JOHN BREYAULT: So I think all of those ways would benefit consumers for more transparency.

SENATOR SKOUFIS: Yeah, very good. Thank you.

In the interest of time, does anyone have the opinion that we should be considering steps beyond transparency, or do you all agree that that is the solution here?

CARL SZABO: I think transparency is a good --

[Simultaneous speakers; indiscernible.]

CARL SZABO: -- yeah, transparency is a great start.

I think, that, coupled with maintaining transferability, will let us better understand how the market operates.

And, frankly, it may stop the idea of bots, because now you know how many tickets were

available, if they were grabbed by humans, or were they grabbed by -- or were they never available to begin with?

BRIAN HESS: I agree with Mr. Breyault and Mr. Szabo.

SENATOR SKOUFIS: Ms. Laitin, do you agree with [simultaneous speakers; indiscernible] --

ANNA LAITIN: I agree as well.

SENATOR SKOUFIS: -- yeah.

Okay. Great.

Senator Kaplan, do you have anything?

SENATOR KAPLAN: Yes.

So this is to anyone who wants to take the question.

If ticket sellers were required to disclose the total ticket price, including fees, up front, also known as "all-in pricing," and not at the end of that purchase when fees are usually added, how do you think this would impact consumer purchasing habits?

CARL SZABO: So, Senator --

[Simultaneous speakers; indiscernible] --

CARL SZABO: -- oh.

Go ahead, please.

ANNA LAITIN: I'll just take a little bit,

and then turn to Carl.

I think it would dramatically improve consumer welfare.

What we hear from consumers is that they choose tickets based on the price they see, and are consistently surprised by the increased price.

If it's a highly in-demand concert, or other event, they may feel trapped.

If they go backwards, they may not be able to choose the cheaper ticket; they might not have time if the tickets have sold out.

So buy a ticket they can't afford, or simply not go to concert.

What we have heard from the industry repeatedly is that there's a competitive disadvantage to them for doing it on their own.

This is one of those things that does require governmental action.

They will not do it on their own; they'll be at a competitive disadvantage.

But if all of them are required to do it, then it would be a more fair marketplace, and consumers would understand what they're getting.

SENATOR KAPLAN: Levels the playing field for all of them.

CARL SZABO: So one of the things that you'll likely see is an initial dip in purchasing, just because people will be surprised. But then they'll become accustomed to it.

One of the things that we've seen is, this is not limited just to the ticket markets. This is in all aspects.

We see it in, for example, hotels.

You get to the hotel, and they say, Oh, we have something called a "resort fee" that you now have to pay that you're here.

Can I not take the resort fee?

No.

So we see this in many different markets.

I think getting the idea out front is important, but as was noted, this has to be done across the board, because you do see some businesses stepping up and saying, we are going to make this disclosure available.

But by the same token, they're competing with people who only show you the final all-in price at the end.

This should apply not only for second secondary ticket sellers, but primary ticket sellers as well, because if I'm looking at prices on, for

example, Ticketmaster -- it seems to be one of the only places to find anything -- then I need to know, should I line up virtually; or, am I going save about $50 for a family of four by just going to the box office?

JOHN BREYAULT: And, Senator Kaplan, if I may add to what my colleagues have said, such a requirement for all-in pricing is not unprecedented in the industry.

If you look at, for example, airline tickets, airlines are currently required, under federal regulation, to advertise the full fare. So that is the cost of the ticket plus all ancillary fees that are required.

So this is something that New York would not be sort of going outside the mainstream to require such all-in pricing.

And I think, as others have alluded to, you've been the leader on things like transparency -- sorry -- transferability, on anti-bot practices.

So I think it would continue your state's leadership to require all-in pricing for tickets.

SENATOR KAPLAN: In your experiences, does the establishment of price floors negatively impact

consumers in multiple ways?

For example, late in a sports' team season, the team -- one team is playing really poorly, and the original ticket holder doesn't want to go to the game, and just wants to offload their ticket.

A consumer who usually cannot afford a game, they want to go and catch a game. It's priced at the right number for him, and he would enjoy it.

So won't pay face for it, but would like to purchase it.

Are they getting a deal?

BRIAN HESS: So with price floors, in particular, the New York Attorney General found a few years ago that it was anticompetitive; launched an investigation into the NFL and their designated resale exchange that put this kind of price floor onto the ticket.

And they found it does artificially -- it does hurt consumers by artificially raising the price, actually.

So we would definitely recommend against allowing for price floors, or, you know, any kind of price controls, for that matter, because we do find that it ends up hurting the fan more in the long run.

CARL SZABO: Senator, could you imagine price floors at a yard sale?

I mean, it violates our notion of two-party transactions, where I want to sell it at a price that's fair to me and you want to buy it at a price that's fair to you.

You go to a yard sale, and you go to buy a used up fold-up chair, and, suddenly, you have to pay $20 because the company who made the fold-up chair put a price floor on it.

It's an absurd rule, and it's bad for everyone.

SENATOR KAPLAN: Thank you.

I'm good, Senator Skoufis.

SENATOR SKOUFIS: Oh, okay. Thank you.

Let me see if there is anyone else.

I'll jump in, I don't see any other hands.

I'll ask the same yes-or-no question of each of you that I asked the last panel.

We have -- we have disclosure requirements related to speculative ticketing here in New York, as of 2018.

Do you believe that the practice should exist at all?

Should we ban speculative tickets; yes or no?

CARL SZABO: When you don't have a contractual right to those tickets, yes.

The risk is, however, if, for example, I have a full season of tickets that I have already pre-ordered, and you don't yet have those tickets in hand, that, then, yes, you should be able to give away those tickets if you know you're not going to be able to make the game six months down the road.

But, overall, if you don't a license -- or, right to those tickets, then I think that's a reasonable step.

BRIAN HESS: Agreed.

A lot of the speculative language that we end up seeing in draft form, that prohibits speculative ticketing, ends up accidentally incorporating sport season ticket holder.

You know, I have season tickets to the Washington Nationals, and so I know that I'm going to have a game on May 11th that I can go to. Right?

Even though I don't physically have that ticket in my hand yet, but I know it's coming, I should be able to resell that if I wanted to, or transfer it however I wanted to.

That should not -- if you were writing any kind of spec ban, you need to make sure that you

include that season ticket holders are not counted in that realm of speculation.

SENATOR SKOUFIS: But save for season tickets, your organization would be supportive of the ban?

BRIAN HESS: Yes. I do not support speculative ticketing if I don't have the knowledge that I will be receiving that ticket in the near future, that I can then pass off to --

SENATOR SKOUFIS: Okay.

JOHN BREYAULT: Senator Skoufis, from our point of view, we don't believe that speculative ticketing has value for consumers.

And what we would also say is, that if you were to ban speculative ticketing, the way I would look at this, is to ban it prior to the public on-sale.

What we saw at places like the FTC's ticketing workshop a couple of years ago, was where consumers and venues were seeing tickets go on sale before they were even on sale at the box office.

That presents a very great danger, that a consumer would be confused, and purchase a ticket that they think is actually a real ticket, when, in fact, it's just a speculative ticket, even with the

disclosures that are currently required.

So I think if you're looking to ban speculative ticketing, I would focus on speculative ticketing that may occur before the public on-sale.

SENATOR SKOUFIS: Okay.

ANNA LAITIN: I agree almost entirely.

I think we have seen some examples, where tickets were already on sale, and white-label sites were selling speculative tickets when, they did not own the ticket, they did not have the ticket, but tickets were still available at the venue.

So I think there are -- it's -- speculative tickets are a huge problem. There do need to be some carve-outs for things -- for things like season tickets, and, potentially, other elements.

But, yes, agree that they -- a ban is appropriate.

SENATOR SKOUFIS: Okay.

Thank you.

I want to talk, you know, there's been some discussion with this panel, about the perceived monopoly of Ticketmaster in the primary market.

And short of -- I guess my question is, short of regulators, or prosecutors, coming in and breaking up the monopoly, are there any steps that

we as a legislature can take to inject better competition in the primary market here in New York?

For example, one idea that comes to mind, should we bar these exclusivity arrangements between Ticketmaster and event organizers, venues?

Should there not be exclusivity allowed?

Perhaps a more radical idea: Should there be, effectively -- if there is no way to inject more private competition, because Ticketmaster has just taken it over almost completely, should there be a public option when it comes to the primary market?

You know, perhaps it's, again, a little bit out of left field.

But, what can we do to address the anticompetitive existing nature of the primary marketplace?

CARL SZABO: Senator Skoufis, I think the first thing that you can do, is to reauthorize the existing law, because one of the things that you are very likely to see --

SENATOR SKOUFIS: Transferability, understood.

CARL SZABO: -- transferability, number one, because they're going to extend their vertical merger into a horizontal merger and take over

secondary markets.

Second step could be in the vein of self-dealing.

Now, one of the challenges that we're seeing is, because there is a vertical monopoly between Live Nation and Ticketmaster being the same company, with the artists, the venues, and the ticket -- primary ticket sellers, there might be a way to write in requirements to prohibit the internal self-dealing within that vertical infrastructure.

So, for example, if Live Nation owns the venue, and owns the artist, they can't then tell the artist, you have to use Ticketmaster.

SENATOR SKOUFIS: Thank you.

Anyone else?

JOHN BREYAULT: Senator Skoufis, we opposed the Ticketmaster-Live Nation merger back in 2009. We thought it was a bad idea for all the reasons that Carl just elaborated on.

I think we've been proven right.

Even the assistant attorney general for antitrust who reviewed the merger has said that he thinks that that consent order did not improve competition.

So we would be supportive of steps that

New York would take, either regulatory, through regulation or legislation, to inject more competition into this marketplace.

CARL SZABO: Senator, may I make one last recommendation?

SENATOR SKOUFIS: Sure.

CARL SZABO: So one of the things that you see under a monopolist is prices either remain the same or go up, because there's a derth of competition as a fundamental sign of the existence of a monopoly.

With respect to Ticketmaster, can anyone on this panel say that service fees have gone down for tickets?

No. They've either stayed the same or they've gone up.

That is the sign of monopolistic control where competition doesn't exist.

So this may get into limitations on the primary ticket seller's service fees that they can charge, and availability of other ways to make the purchase with other services.

SENATOR SKOUFIS: Okay.

Before I continue, Senator Kaplan, do you have anything more?

SENATOR KAPLAN: I'm good. Thank you.

SENATOR SKOUFIS: Okay. Thank you.

I'll keep going, then.

Thanks.

Let's talk about the service fees.

Should -- you know, we've talked a little bit about price controlling in the secondary market, generally. And I'll save -- I've got a question or two on that.

But, should there be some controls within these fees?

JOHN BREYAULT: Senator --

SENATOR SKOUFIS: Some -- it appears to me -- now, most -- most primary and secondary platforms do seem to charge, or develop, their fees as a percentage of the tickets.

However, that's not across the board.

There are some platforms that charge a flat fee, which by its very nature is regressive.

However, as I shared in, I think, with the -- with the first panel, with Ticketmaster, an example from, you know, a ballgame I looked at this morning, whereby the cheap seats, you know, your fees amounted to 40 percent of your ticket costs. But the field-level seats, they were, I think, it was

only 15 or so percent of your total ticket costs were the fees.

Should there be some controls in this area?

ANNA LAITIN: Well, I'll jump in quickly and say, there's a couple of issues here.

One is, if it's truly a service fee, it doesn't make sense. If it's an amount that it costs to process a ticket, it doesn't make sense for it to a percentage.

Does it make it -- or -- so, one of the things we found, one of the stories that came into us, this was from a gentleman who bought three tickets from the same venue, same seller, to three different concerts, and the fee structures were completely different.

So there's no predictability to the fees.

What we have argued for at Consumer Reports is less focus on the fees themselves than the price.

There's a lot of -- there seems to be a lot of movement within the pricing of making the ticket look cheaper, so increasing the service fees.

And we don't know precisely where all those service fees go.

So the consumer sees one price, and it's the ticket plus all the fees, and that's all they see.

We're less concerned about what the -- what the service fee is as compared to the price, as long as the consumer knows what they're being charged.

And then that can be worked out between the venue, the seller, the performer, and whoever else is getting a piece.

So, now, if there isn't all-in pricing, then there's a larger call to deal with, sort of, transparency, visibility, of these fees.

But I don't know that limitations on the fees is exactly the right way to go.

SENATOR SKOUFIS: Thanks.

[Simultaneous speakers; indiscernible] --

CARL SZABO: Go ahead, John.

JOHN BREYAULT: Yeah, I would -- I would -- just to build on what Anna just talked about, an all-in pricing requirement would address the service-fee issue.

The cost of a ticket is the cost of a ticket, and artists or theater owners are going to set it where they want to.

By giving consumers the visibility at the front end, when that fee -- when they first see the price of going to that event, whether that fee is 10 percent of the face value, plus 90 percent

service fees; or 50/50; or some other combination, I don't think consumers really care.

They just want to know how much it's going to cost to get in the door.

So an all-in pricing requirement would address the service-fee issue that you and other members of the committee have raised today.

CARL SZABO: Senator, I think service-fee requirements are most important when there's no competition in the marketplace. That is where the service-fee abuse is ripe to occur.

When you have multiple secondary platforms on which to sell, I mean, you heard several different ones on the prior panel, they're going to fight over the same consumer base. They're going to fight over service fees, prices, and the like.

What you don't see is the competition in the primary ticket selling, which to many of the points that were just made, I -- it seems incoherent to have a different price from the face value and the service fee when you're the one printing and handing the ticket at the box office.

That service fee, like all other fees that you're charging, whether it's cleaning the theater, setting up the lighting, should all be encompassed

in that face value.

So when it comes to primary ticket sales, it doesn't even make sense to charge a service fee.

SENATOR SKOUFIS: So how would you address that?

Would you bar service fees in the primary marketplace?

CARL SZABO: So if you did that, what would happen is, service fees then just become the face value.

SENATOR SKOUFIS: Is that what you suggest happen? Or, what's your recommendation, I guess is my question here?

CARL SZABO: I think my recommendation, especially when it comes to primary ticket sellers, that they should be required to have all-in pricing.

When it comes to secondary ticket sellers, one of the challenges that they're going to face is, they're dealing with venues all across the country.

That's something that should be addressed, and should be done at the federal level.

When it comes to a venue in New York, they know the laws in New York better than almost anyone, because they live there.

When it comes to a service, where you've got

sellers across the country, it's a little different.

So I think it should be addressed, but it should be addressed at the federal level for the secondary ticket market.

Primary ticket sellers, the all-in pricing should be when you go and buy the ticket.

SENATOR SKOUFIS: Okay.

Let me -- unless, Brian, you have anything to add here, let me turn to price controls on -- in the secondary market.

I agree with the sentiment completely that we shared before when it comes to price floors.

So I want to focus on price ceilings.

I know, Mr. Hess, you -- in your opening remarks, you made your position very clear that you and your organization are concerned with that concept.

If there's more to add, feel free, but I'm interested in, thus, the other three on the panel.

And, you know, I posed this question a couple of panels ago, and it was met with silence, which was interesting to me. This was the Broadway panel and the Times Union panel.

And the question is: Do you think that the secondary marketplace should be completely

free market, should be completely open-ended; if there is demand to purchase a ticket that is 100 times the face value, God bless, and have at it?

Or, do you think there should be some reasonable controls, such that the average New Yorker who is a working-class person, a middle-class household, who is, from their perspective, maybe locked out of these hot tickets because, within 30 seconds, they weren't able to jump into the primary market for that Justin Bieber ticket; and, now, by God, you know, if I want to go to this concert with my family, it's, you know, $500 a ticket, whereas it would have been, you know, $80 a ticket if I were one of the lucky few that got in within 30 seconds when it opened up?

Do you think that there should be reasonable controls vis-a-vis a price ceiling?

Or, do you think in some ironic way, perhaps that is anti-consumer?

JOHN BREYAULT: So, Senator Skoufis, I'll take that one.

You know, I think I share the frustration that I think you elaborated on, of people who can't get access to tickets at a fair price.

I know there are many shows I would like to

see, that I just can't afford to go to because my budget doesn't allow it.

But price caps is a difficult issue, because I don't think they work, to be honest with you.

I think what you'll -- what you would see is, if you put a ceiling on -- on the price of tickets, either on the primary or the secondary market, is you would see, number one, more tickets go to unregulated marketplaces.

So the street scalpers, for example, where consumers have no guarantee of a refund if the ticket ends up being bogus and doesn't get them in the door.

Number two, I think you would find the brokers were very adept at getting around price caps when they existed in other states in past decades.

They would do things like say, okay, the face value of the ticket is $100, the market value is $500. We're going to sell you a $500 steak dinner, plus you get this $100 ticket on the side.

So I think they would be adept at getting around price caps.

I do think that in this case that, for pricing of the ticket itself, the market seems to be the best way to address that.

So, I -- we would not support price caps.

BRIAN HESS: There are also a lot of instances on which you can find a ticket below the face value on a secondary platform.

SENATOR SKOUFIS: Of course, of course.

CARL SZABO: Senator --

BRIAN HESS: But if you add in caps and controls, it prevents the market from fluctuating the way that it naturally would.

CARL SZABO: Senator, to flip it on its head, one of my good friends, he's a season ticket holder for Maryland basketball, University of Maryland.

It used to be more valuable in the past; not so much anymore.

And there is one rabid fan, but there's one game he would sell every year, and that's Maryland versus Duke, their number-one rival. He would sell it every year, and he would sell it above face value.

You know what that would do?

That would cover the cost of his entire season of tickets.

SENATOR SKOUFIS: Sure.

CARL SZABO: I, for example, likewise, was able -- lucky enough to go see "Hamilton" in

Chicago. It was the last-minute ticket. And it had been running for a while, so I got the ticket well below face value.

Well, if I had come here, come back to D.C. where I live, the Kennedy Center said, Well, you've got to buy the entire season of Kennedy Center tickets to have a shot at "Hamilton."

One of the things I considered doing was buying that, and then selling the "Hamilton" ticket to somebody who really wanted it, and then just pay for an entire season of Kennedy Center tickets, which I otherwise would never have, like, thought of spending the money on.

So it does work in both directions as well.

There is a consumer benefit, because I was able to, essentially, pay for something that I otherwise couldn't afford, by selling a ticket that I didn't necessarily want.

BRIAN HESS: Yeah, any kind of price cap will affect the fans' decision when they choose doing the best in the -- a season ticket. Right?

So a 42-game season ticket pass to a baseball season is a lot of games that you have to commit to, also, as a fan right out of the gate.

And I don't know if, you know, my grandmother

is going to pass, and I have to go to her funeral that weekend.

I don't know if, you know, maybe I do have an unexpected medical bill at some point, that selling a ticket for 200 bucks, if that's what the market is selling those tickets for, might help me with.

SENATOR SKOUFIS: I guess the question is -- sorry to interject.

I guess the question is:

No doubt about it, and I agree with what's been said about season ticket holders, and how, you know, this is advantageous and pro-consumer for those that are engaged in season tickets.

My question is, for every one season ticket holder that benefits, how many lower-income New Yorkers are disadvantaged by there not being caps?

You know, is it -- you know, for every one season ticket holder who sells that Yankees ticket, where, you know, they've got a big matchup against the Red Sox, you know, are there 5 or 10 or 50 average New York families who cannot access that Yankees versus Red Sox game because you have a flood of tickets on the secondary market way above face value?

ANNA LAITIN: I think, Senator, you make an interesting point.

And I think some of the things you're talking about, on limiting bots and others, where they really jack up the prices, that could help with some of this.

I think the problem is, for the instance you're talking about, whatever you put the cap at is where those really exciting tickets are going to end up.

SENATOR SKOUFIS: Sure.

ANNA LAITIN: And then the lower-income New Yorkers still won't be able to afford them, because you can't -- it would be unfeasible to put the cap low enough, probably, to make the marketplace work.

So I think better than going for those caps is to look for ways to eliminate the bots, and get more real people buying the tickets at the front end, so that when we're dealing with the secondary market, we're dealing more with the instances that Carl and Brian are talking about, of people selling their tickets, rather than it being a market completely overrun by the industry that is invested in buying tickets solely for the purpose of resale.

BRIAN HESS: And -- but to Anna's point with -- you know, if we get real people, real fans, selling individual tickets more often than an industry of bots doing it, so, if you price cap it, you're just sending all of those tickets that are being bought up by bots on the unregulated marketplace, like Craigslist, which is going to put those low-income fans that you're rightly concerned about at a far greater disadvantage, where they have no protections or guarantees or oversight from larger platforms, or even in the public's eye of what's going on.

The other way you can address your concern about making sure that low-income or working-class New Yorkers can get access to games is through the Professional Facilities Act that's in New York right now, which would give -- which would create a class of tickets for afford -- of -- that's affordable to the ZIP code in which the stadium is located to fans.

And that's one way.

We have long supported that if a stadium is tax-funded, there should be a litany of benefits that the local communities get from that, because seldom do tax-funded stadiums ever yield economic

results for localities.

One of those benefits we often times advocate for is that the local community should get discounts on tickets, or there should be a local rate for community of people in that community to get a less-expensive ticket.

And there are ways you can craft that law as well, to prevent scalpers from buying up those local, you know, less-expensive tickets, and jacking up those.

I mean, there's other ways that we can work on crafting that kind that legislation, to make sure the implementation of it serves the need -- the purpose.

SENATOR SKOUFIS: Okay. Thank you.

Do you all believe that the state can -- I guess it's a two-parter -- can, and should, if you think that we can, prohibit primary marketplaces from engaging in a secondary marketplace as well?

Of course, the obvious company here being Ticketmaster.

Do you think the state can, basically, prohibit that double-dipping that, Mr. Hess, you described?

And if so, do you think that we should?

CARL SZABO: So under the Sherman Act, I think you do have that power. It's federal law applicable by the states.

And I wouldn't do it just wholesale, because I think that could get a little sticky.

You do have smaller venues that maybe do want to engage in that. I don't know.

I think it should be done once a business has achieved a certain percentage of control of the primary ticket sales.

I think that's really going to be your trigger. That way, you can craft it in a way that's not overinclusive.

Do I think you have the power?

Absolutely.

You absolutely have that power, under your existing state consumer protection law; or, literally, you're the lawmakers, you can write that law. Your state Constitution would allow it.

But I do think it should be predicated, based on dominance of the primary ticket market.

SENATOR SKOUFIS: Okay.

And do the rest of you agree? disagree?

JOHN BREYAULT: Senator Skoufis, yes, I agree with Carl on this point.

And I do -- I would underscore that the transferability protections that you're discussing would also address this issue.

I think it's clear to us that primary ticketers, like Ticketmaster, are trying to use transferability restrictions, not to eliminate resale, but to direct that resale to exchanges that they control, where they set the fees and the prices.

BRIAN HESS: Exactly.

SENATOR SKOUFIS: We talked a little bit about the fees.

As you all may know, we have a "reasonableness" clause in Article 25, as it pertains to ticket sales.

Seems to be a self-defining statute, as we heard from Ticketmaster much earlier on today.

Do you think that we need to better define that "reasonableness" provision?

JOHN BREYAULT: Senator Skoufis, I mean, I think that the all-in pricing issue that we talked about would be a way --

SENATOR SKOUFIS: That covers it?

JOHN BREYAULT: -- would cover it.

SENATOR SKOUFIS: Right.

JOHN BREYAULT: I mean, I think that that's the best way.

I would, however, point out, I can't help but note that Mr. Marcus on the first panel was very quick to point the finger at venues and artists and promoters who set the fees that they end up charging.

I think what he neglected to mention to you was that, those same promoters and venues and artists, and Ticketmaster itself, are all owned by the same company, Live Nation Entertainment.

So those fees do -- do end up trickling up to the parent company regardless of who they're set by.

I thought that that was a fairly disingenuous comment on his part.

SENATOR SKOUFIS: Do you all agree that all-in would cover this issue?

[Simultaneous speakers; indiscernible.]

SENATOR SKOUFIS: Yeah. Okay.

What about platinum tickets; your thoughts?

Should we be regulating those specifically, or those types of tickets, banning them?

If we're talking about price controls, maybe price controls on these type of tickets?

What are your thoughts on what I view -- and,

you know, it's -- and I meant to quote Ticketmaster's website when Mr. Marcus was here.

They, on their website, claim, quote, They give fans fair and safe access to some of the best seats in the house, unquote.

Those are the platinum tickets that they provide.

I think most consumers who look at this objectively would dispute that, you know, Seat 10-A priced at $10,000, platinum ticket, next to Seat 10-B, the same seat, basically, priced at, you know, a third of that, is not exactly fair.

And so my question to you is: What should we do about these platinum tickets, if anything?

CARL SZABO: I think what you can do is, just, I think transparency is going to be the first, most important, step.

When it comes to the idea of platinum tickets, I -- look, I'm a free-market guy, so I appreciate maximizing profit. But trying to pretend that it's good for the consumer is not accurate.

When you're setting up a show, you know your total overhead costs are going to be.

You know how much the venue is going to

charge, your electricity, your law enforcement, people who clean it up.

And you take all that, divide by the number of total seats you think you're going to sell, and that's the face value of the ticket.

If you don't think you can get that face value, then you don't have the show.

These are the basic economics that every promoter goes into a show with.

So the basis that a platinum ticket is good for a consumer doesn't hold water.

But I do think making clear the number of tickets that are being used for this behavior will really help make clear what's going on, more so than just, when I sit down at an event, and I turn to the person sitting next to me, and find out they paid $200 less than I did, that's not what you want to do.

I think being transparent at the front end is going to be really key to ameliorating a lot of these problems.

SENATOR SKOUFIS: The rest of you, any thoughts?

JOHN BREYAULT: And, Senator, just to clarify, when you're talking about platinum tickets,

I believe that you're referring to dynamic pricing? Is that correct?

SENATOR SKOUFIS: So, in effect, that's what it is, yes.

But it's a -- you know, it's a specific practice that Ticketmaster engages in.

You know, they disputed my characterization as, you know, a certain number of tickets being reserved for platinum tickets; but, in effect, that is what it is.

And they're put on sale shortly after the main pool of tickets is sold out; and, you know, thus, they come at a premium for some of their higher-echelon clients, if you will.

But, yes, effectively, it's dynamic pricing.

JOHN BREYAULT: So I think what concerns me most about dynamic pricing is, what signals are being used to show a certain price to a certain consumer?

The FTC, later this month, will be holding a workshop on so-called "dark patterns."

This takes in idea -- you know, how a certain price is provided to a certain consumer.

Is it because I have more Twitter followers that I got this price?

Is it because I clicked on an ad at some point that I got the price?

Is it because they know that I have a higher-limit credit card that I'm getting that price?

It's all very much a black box, in terms of why a particular consumer is provided with a certain price.

Now, some of that may be addressed through all-in pricing requirements. If that's the price that you're going to charge me, just let me know up front.

But it's -- I think that more -- more transparency into how these prices are being set is something that would help the industry right now.

As to whether $10,000 is enough to see Justin Bieber, I can tell you what I think about that as a fan of punk rock.

But I -- but is it -- what -- is it -- is it what the market would bear? I really couldn't tell.

But I can tell you that the signals that go into setting that price are entirely opaque and unclear to consumers.

SENATOR SKOUFIS: Okay.

My last question, because I have gone on for

long enough here, is:

Do you -- and this came up a little bit earlier, or I alluded to it.

Do you believe that these platforms should be required to report bot activity to prosecutors?

We heard pretty clearly that, yes, it sounds like they respond when the AG or other prosecutors ask about bot activity.

But they, unprompted, do not -- do not forward those referrals to prosecutors when they discover them.

A. Do you believe that they have the wherewithal, technology, infrastructure, et cetera, to very clearly, and relatively easily, identify when there is bot activity?

And, B. Do you think they should be mandated to report it?

BRIAN HESS: Yes, and yes.

CARL SZABO: So, Senator, I'm going to disagree with some of my colleagues on the mandate for reporting when discovered, because one of the things that this would do, it would actually create a disincentive to seek them out.

Remember, if I'm a primary ticket seller, what's my number-one goal?

My number-one goal is to sell tickets.

At the end of the day, I don't care if it's one person buying 1,000 tickets, or 1,000 people buying one ticket.

In fact, the former is often easier than the latter.

By, essentially, criminalizing failure -- duty to report, it gives even more of an incentive to lower the guard against bots, because, now, if I'm doing a great job protecting against bots, and I neglect to report it, now I'm on the hook.

I think an alternative could be, an annual report on the number of referrals that were made.

That way, you're not criminalizing the monitor and the failure to report, but you're making transparent the number of referrals that occur.

That way, when, for example, you, Senator, ask the vice president of Ticketmaster in charge of ticketing, how many referrals he made to your state AG, and he says, "I don't know," he might actually have access to that information.

I think that would address it.

SENATOR SKOUFIS: John and Anna, what are your thoughts?

JOHN BREYAULT: Senator, I'm going

respectably disagree with Carl on this one.

CARL SZABO: Okay.

JOHN BREYAULT: I do think that -- as I mentioned in any remarks, that they should be required to report this.

As Ticketmaster never fails to talk about, they invest ten of millions of dollars in fighting bot usage.

Why wouldn't they want to report this information to allies, like the New York Attorney General's Office?

We had a federal "bots" statute on the books since 2016.

And this January was the very first time that the Federal Trade Commission, and, in fact, as far as I know, any enforcement body, has brought a case against a ticket bot since probably the wise-guys case, which was mid-2000s. And that wasn't even under federal "bot" statute.

So they should have every incentive to report this.

Why they don't, I have my suspicions.

But I think, given the harm that illegal bot usage poses to consumers, I do think that the organizations that have the data to show that use,

Ticketmaster, other primary ticketers, the venues, who have access to things like the ticket manifest, should be required to provide that, and they should be more willing to do so than pushing back against requirements that they are required to do so.

BRIAN HESS: And they do have the ability.

And I think what demonstrates that is what the "Toronto Star" uncovered a couple of years ago, when they found out that Ticketmaster, on their resale, was actually helping brokers use bots to circumnavigate the bot detection technology to resell their tickets.

SENATOR SKOUFIS: Hmm.

BRIAN HESS: Ticketmaster has been engaged in this.

That's -- that's -- my opinion, why they aren't actively referring the detections over, is they want to be in this space; they want to make all -- you know, take all the sales they can, regardless of if it skirts the law or not.

ANNA LAITIN: I'll jump in and say an absolute yes on, they can do it.

On this question of the mandate, I actually haven't given it enough thought, and I would like to spend some more time on that, because I understand

what Carl is saying; but, at the same time, they are not doing now.

And if a mandate is what it takes, then that may be the case.

SENATOR SKOUFIS: Okay.

Senator Kaplan, have you cultivated any questions as I've rambled on here, or are you good?

SENATOR KAPLAN: No. I've actually enjoyed listening to everybody.

Thank you so much for your testimony.

I think you highlighted, really, transparency I think is very -- is key.

And you all brought very good points.

And, again, thank you for coming in, and testifying.

SENATOR SKOUFIS: Yeah, and I'll echo that.

I want to thank each of you.

You all provided a lot of great information and insight.

I suspect that we will be in touch in the weeks ahead as we contemplate the sunset that -- that's due on July 1st.

But, you know, this is -- this has been terrific testimony.

Thanks to each of you.

And thanks to everyone who has hung in there with us over the last few hours.

This concludes our hearing.

I want to, in particular, thank, from my office, Evan Gallo, as well as Tara McCoy; and central staff for assisting with the technological capabilities here as we have conducted the hearing; and all my colleagues as well who participated.

Thanks very much, everybody.

Enjoy the rest of the day.

JOHN BREYAULT: Thank you, Senators.

ANNA LAITIN: Thank you.

(Whereupon, at approximately 1:54 p.m., the public hearing held by the joint committees concluded, and adjourned.)

--oOo--