

1 BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON INVESTIGATIONS AND
3 GOVERNMENT OPERATIONS
4 AND
5 STANDING COMMITTEE ON COMMERCE,
6 ECONOMIC DEVELOPMENT, AND SMALL BUSINESS
7 -----

8
9 JOINT PUBLIC HEARING:

10 TO EXAMINE POTENTIALLY UNFAIR AND DECEPTIVE
11 PRACTICES OCCURRING IN NEW YORK STATE'S PRIMARY AND
12 SECONDARY TICKET MARKETPLACES FOR LIVE EVENTS IN
13 ORDER TO IDENTIFY ANY LEGISLATIVE AND POLICY REFORMS
14 -----

15 Zoom Remote Hearing

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

18 PRESIDING:

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

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

25 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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1 SENATOR SKOUFIS: Okay. Good morning,
2 everyone.

3 Thank you for joining us today.

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

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

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

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

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

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

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

1 pandemic.

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

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

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

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

23 These two considerations, fortunately, are
24 not mutually exclusive.

25 While we hear from some industry stakeholders

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

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

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

15 Thank you.

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

18 SENATOR KAPLAN: Thank you, Senator Skoufis.

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

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

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

1 partnership.

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

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

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

13 Concerns around any potential ticketing
14 practices that negatively impact consumers;

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

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

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

1 entertainment that this great state has to offer.

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

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

11 Thank you.

12 SENATOR SKOUFIS: Thank you, Senator Kaplan.

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

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

17 Great to see everyone this morning.

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

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

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

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

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

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

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

25 So it is important that something happens,

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

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

10 So I look forward to the testimony today.

11 I look forward to some questions that I have.

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

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

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

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

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

23 I suspect one or two others may join us.

24 And just some ground rules, heading in:

25 Each witness will be provided three minutes

1 to provide testimony.

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

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

11 Subsequent rounds/second rounds will be
12 permitted.

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

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

22 Welcome.

23 DAVID MARCUS: Thank you very much.

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

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

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

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

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

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

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

20 Live music in the United States generated
21 \$10.9 billion in 2019 in revenue, that all but
22 disappeared in 2020.

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

25 The impact of these closures has been

1 staggering.

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

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

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

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

14 95 percent of all events in 2020 were
15 canceled or postponed, and 77 percent of the
16 millions of live-event workers lost 100 percent of
17 their income.

18 97 percent of contract workers -- that's
19 backup musicians, sound mixers, bus drivers,
20 lighting companies, et cetera -- have been out of
21 work since March of 2020.

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

1 the country.

2 As an industry, we're all hurting.

3 Venues and promoters around the country saw
4 revenue evaporate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Despite the --

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

4 DAVID MARCUS: Oh.

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

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

9 SENATOR SKOUFIS: Great.

10 Thank you.

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

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

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

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

22 I've read it's about 80 percent.

23 Does that sound right?

24 DAVID MARCUS: I --

25 SENATOR SKOUFIS: Within the United States.

1 DAVID MARCUS: I'm sorry?

2 SENATOR SKOUFIS: Within the United States.

3 DAVID MARCUS: I think that maybe sounds
4 right.

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

7 SENATOR SKOUFIS: Okay.

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

10 SENATOR SKOUFIS: Okay.

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

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

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

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

25 DAVID MARCUS: Ticketmaster acts as an agent

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

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

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

10 SENATOR SKOUFIS: Are those -- sorry.

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

14 DAVID MARCUS: Yes.

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

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

20 SENATOR SKOUFIS: Okay. So --

21 DAVID MARCUS: That's how --

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

25 DAVID MARCUS: Correct.

1 SENATOR SKOUFIS: Got it.

2 DAVID MARCUS: (Simultaneous speakers;
3 indiscernible.)

4 SENATOR SKOUFIS: Okay.

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

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

12 \$19, two tickets; so \$38.

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

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

20 \$89 for two tickets; so \$178 for the two.

21 And on those two tickets was a, very modestly
22 increased over those this cheap seats,
23 \$15 convenience fee, as opposed to the \$11, and the
24 same \$4.10 per-order fee.

25 So, in that case, where the consumer was

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

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

13 Is there an issue with that?

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

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

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

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

1 SENATOR SKOUFIS: Okay.

2 And so, to that end --

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

5 -- so these are convenience fees.

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

9 Is it all the same?

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

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

19 SENATOR SKOUFIS: Okay.

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

22 Senator Kaplan, do you have anything right
23 now?

24 SENATOR KAPLAN: Yes.

25 SENATOR SKOUFIS: Okay.

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

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

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

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

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

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

14 And those two things are related.

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

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

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

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

1 their fans to that again.

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

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

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

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

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

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

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

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

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

25 We are sometimes aware of when speculative

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

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

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

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

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

16 SENATOR KAPLAN: Okay. I appreciate it.

17 DAVID MARCUS: Thank you.

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

20 SENATOR SKOUFIS: Okay.

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

24 I'll now turn it over to Senator Kaminsky.

25 SENATOR KAMINSKY: Thank you very much.

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

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

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

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

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

17 The vast majority of tickets never sell.
18 Right?

19 40 percent -- not the vast majority of
20 tickets -- but 40 percent of live-entertainment
21 tickets just never sell.

22 So the problem is not increasing scarcity.

23 The problem is, how do we sell more tickets?

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

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

5 And --

6 SENATOR KAMINSKY: Mr. Marcus, just to be
7 clear: I'm being told by people in your industry
8 that there are times, for big concerts, that, like,
9 90 percent, or 80 or 70 percent, are not on sale
10 right away. That you put like a very limited amount
11 and it drives up demand.

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

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

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

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

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

25 Who's the marketing partner?

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

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

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

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

14 And --

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

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

20 DAVID MARCUS: No, because there is no
21 number.

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

24 There are all kinds of holds that happen.

25 Holds for press.

1 Holds for friends and family of the artist.

2 Holds for production kills.

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

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

12 Right?

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

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

20 It is a real-time changing number.

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

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

3 They all make money by selling tickets.

4 Nobody makes money by holding tickets.

5 SENATOR KAMINSKY: Okay. Let me ask another
6 question.

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

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

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

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

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

21 That's where investment is made in attracting
22 fans.

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

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

4 SENATOR KAMINSKY: Okay.

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

6 DAVID MARCUS: Yes.

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

11 DAVID MARCUS: I don't believe so.

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

14 Okay. I appreciate it.

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

17 SENATOR SKOUFIS: Thank you.

18 Senator Hoylman.

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

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

25 And I carry a bill, and wanted your opinion

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

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

10 Do you think that's acceptable?

11 DAVID MARCUS: No.

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

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

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

1 kinds of tickets for sale.

2 Now, that's the major marketplaces.

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

6 I do think it's distasteful.

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

12 DAVID MARCUS: Yes.

13 SENATOR HOYLMAN: Thank you very much.

14 SENATOR SKOUFIS: Thank you, Senator Hoylman.
15 Senator Helming.

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

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

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

1 a competitor's marketplace.

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

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

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

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

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

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

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

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

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

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

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

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

17 DAVID MARCUS: No.

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

19 DAVID MARCUS: No.

20 SENATOR HELMING: Okay.

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

25 DAVID MARCUS: We use that information to get

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

4 That's what that information is used for.

5 SENATOR HELMING: Okay. Thank you.

6 SENATOR SKOUFIS: Thank you, Senator Helming.

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

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

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

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

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

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

25 And I think that the market dynamics tell the

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

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

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

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

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

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

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

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

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

1 to attend their live events.

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

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

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

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

11 SENATOR SKOUFIS: Okay.

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

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

20 Is that where those platinum tickets come
21 from?

22 DAVID MARCUS: No.

23 SENATOR SKOUFIS: Where do they come from?

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

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

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

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

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

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

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

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

25 SENATOR SKOUFIS: Do you -- do you place a

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

3 DAVID MARCUS: There is no picked aside.

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

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

8 But --

9 SENATOR SKOUFIS: So there's no limit?

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

15 Is that -- is that possible?

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

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

22 SENATOR SKOUFIS: No, understood.

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

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

8 You see no problem with that?

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

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

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

15 SENATOR SKOUFIS: I have examples of it.

16 I mean, you're saying it never happens?

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

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

21 SENATOR SKOUFIS: Agreed.

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

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

1 100 percent, average. Right?

2 And so we're not talking about 10x.

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

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

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

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

13 SENATOR SKOUFIS: But if you're --

14 Sorry, Mr. Marcus.

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

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

24 There is no other option.

25 Am I wrong?

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

4 SENATOR SKOUFIS: In the secondary
5 marketplace; correct?

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

8 SENATOR SKOUFIS: Right.

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

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

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

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

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

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

25 They are few and far between.

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

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

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

8 That's the competition we're in.

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

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

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

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

21 My question to you:

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

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

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

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

12 SENATOR SKOUFIS: Do you provide it without
13 her asking?

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

17 SENATOR SKOUFIS: Okay.

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

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

1 SENATOR SKOUFIS: Okay. Thank you.

2 That's all I have.

3 I don't see any other hands.

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

6 SENATOR PALUMBO: Thank you, Chairman.

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

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

13 DAVID MARCUS: Yes.

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

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

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

20 Do you understand that question? Does that
21 make sense?

22 DAVID MARCUS: I understand the question.

23 It reference a practice that doesn't exist.

24 So Ticketmaster doesn't hold tickets at all.

25 Event organizers hold tickets.

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

7 That number across -- I don't know what the
8 top -- I can't tell you what the top five were in
9 2019, but it's some 5 percent.

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

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

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

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

21 SENATOR PALUMBO: Okay.

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

1 DAVID MARCUS: We do not hold tickets.

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

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

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

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

11 SENATOR PALUMBO: I see.

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

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

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

19 Is that available?

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

22 SENATOR PALUMBO: Okay.

23 Very good.

24 Thank you, Mr. Marcus.

25 DAVID MARCUS: Thank you.

1 SENATOR SKOUFIS: Thank you.

2 Senator Martucci.

3 SENATOR MARTUCCI: Thanks, Chairman.

4 Thank you, Mr. Marcus, for your testimony.

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

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

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

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

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

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

5 It's not a machine that's built to refund
6 \$3 billion worth of tickets.

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

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

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

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

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

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

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

3 So, thank you for your testimony.

4 Thank you, Chairman.

5 SENATOR SKOUFIS: Thank you.

6 SENATOR GAUGHRAN: We agree.

7 SENATOR SKOUFIS: Thank you.

8 Senator Reichlin-Melnick.

9 And then, Senator Gaughran.

10 SENATOR REICHLIN-MELNICK: Sure. Thank you.

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

13 Just wanted to follow up on a couple of
14 issues.

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

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

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

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

1 that that don't get sold.

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

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

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

9 But there are lots and lots of artists that
10 have that problem. So some artists don't sell
11 50 percent of their tickets.

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

15 So that was an industry average.

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

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

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

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

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

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

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

21 Right?

22 Once you lose the momentum, you're dead.

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

25 And that's a lesson that we take every single

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

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

6 SENATOR REICHLIN-MELNICK: I appreciate that.

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

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

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

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

23 SENATOR SKOUFIS: Thank you, Senator.

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

1 Sorry.

2 SENATOR SKOUFIS: No, no. Go ahead.

3 I thought you were done.

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

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

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

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

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

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

23 SENATOR REICHLIN-MELNICK: Yes --

24 DAVID MARCUS: -- that you're referencing?

25 SENATOR REICHLIN-MELNICK: -- it is.

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

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

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

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

16 New York (simultaneous speakers;
17 indiscernible) --

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

20 DAVID MARCUS: -- go ahead.

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

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

25 DAVID MARCUS: I presume it could be.

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

2 SENATOR REICHLIN-MELNICK: Okay.

3 Thanks.

4 That's all I've got.

5 SENATOR SKOUFIS: Great.

6 We'll follow up on that request.

7 Senator Gaughran.

8 SENATOR GAUGHRAN: Thank you, Mr. Chairman.

9 Thank you, Mr. Marcus.

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

13 [Laughter.]

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

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

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

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

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

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

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

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

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

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

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

25 That information follows them through the

1 purchase journey. It's presented with their ticket.

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

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

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

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

14 All right. Thank you so much.

15 SENATOR SKOUFIS: Thank you,
16 Senator Gaughran.

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

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

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

25 But understanding that that does happen,

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

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

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

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

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

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

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

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

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

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

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

17 Do you sympathize with those fans?

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

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

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

4 The tickets are what the tickets are.

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

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

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

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

14 Those are important, but it's live.

15 And that money comes from selling tickets.

16 So I am sympathetic to the fans.

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

19 So I recognize that -- that frustration.

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

23 Quite the opposite.

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

1 and he wants them in the building.

2 SENATOR SKOUFIS: Okay.

3 I'm done with my questions.

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

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

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

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

14 DAVID MARCUS: Thank you, all.

15 Appreciate the questions.

16 SENATOR SKOUFIS: Yep. Thank you.

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

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

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

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

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

4 Welcome, everybody.

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

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

9 BOB BELBER: Sure. Thank you.

10 Thank you very much.

11 SENATOR SKOUFIS: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 another big concern of mine.

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

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

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

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

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

4 SENATOR SKOUFIS: Thank you, Mr. Belber.

5 And I do want to acknowledge your
6 participation here.

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

9 They chose not to participate, unfortunately.

10 And so your insight is really valued here
11 today.

12 Thank you for being here.

13 BOB BELBER: Sure.

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

16 TOM KIRDAHY: Sure.

17 My name is Tom Kirdahy.

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

23 I'm also the former chair of the
24 Broadway League, Government Relations Committee.

25 And I participated in many of the conversations that

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

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

8 I'd first like to provide some background.

9 In 2019, Touring Broadway performed in over
10 200 cities, welcomed 17.5 million theater-goers, and
11 had an economic impact of approximately \$20 billion
12 on the United States.

13 In New York City, Broadway welcomed
14 14.8 million admissions, and provided almost
15 100,000 full-time-equivalent jobs.

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

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

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

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

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

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

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

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

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

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

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

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

25 When shows can restart, we cannot simply turn

1 the lights on and open the doors.

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

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

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

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

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

20 Thank you for your time this morning.

21 SENATOR SKOUFIS: Thank you for your
22 testimony.

23 Shubert Organization?

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

1 Good morning.

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

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

6 By way of background:

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

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

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

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

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

25 Because of COVID, Broadway is enduring the

1 longest closure in its history.

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

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

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

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

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

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

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

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

3 And as you've heard --

4 SENATOR SKOUFIS: If you could --

5 GILBERT HOOVER: Oh?

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

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

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

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

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

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

23 Thank you.

24 SENATOR SKOUFIS: Thank you very much.

25 And last, but certainly not least, Local 751.

1 LAWRENCE PAONE: Thank you.

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

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

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

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

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

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

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

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

1 secondary market.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 actors out of the secondary market.

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

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

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

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

11 I'll open up questions.

12 I'll start with Mr. Belber, please.

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

16 So you have Ticketmaster.

17 Do you have any other options, really?

18 BOB BELBER: No.

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

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

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

7 SENATOR SKOUFIS: Right.

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

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

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

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

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

22 Are they in the contract?

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

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

3 Can you talk to that issue a little bit?

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

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

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

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

24 SENATOR SKOUFIS: Okay. Very good.

25 Thank you.

1 And my last question for you, sir:

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

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

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

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

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

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

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

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

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

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

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

10 SENATOR SKOUFIS: Very good.

11 Thank you.

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

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

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

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

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

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

2 Is that right?

3 Are you familiar with that site?

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

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

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

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

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

20 Can you speak to this issue a little bit?

21 TOM KIRDAHY: I -- I can try.

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

1 their ticket or the legitimacy of their ticket.

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

12 So I think that enforcement is a very serious
13 issue.

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

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

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

1 markups.

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

6 My personal concern is about the "when."

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

10 I'm a very hands-on producer.

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

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

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

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

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

1 with the state attorney general and the FTC.

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

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

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

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

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

25 But I don't believe that that is the case

1 with Broadway.com.

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

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

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

13 SENATOR SKOUFIS: Thank you very much.

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

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

19 If I may now turn it over to Senator Kaplan.

20 TOM KIRDAHY: Thank you.

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

23 And this question is for anyone on the panel.

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

1 back on certain percentage of ticketed sales to the
2 public.

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

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

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

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

17 In general --

18 SENATOR KAPLAN: Thank you.

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

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

1 That's a form of "hold."

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

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

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

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

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

23 And I don't see that disclosure of, you know,
24 or, you've got eight performances a week,
25 40 Broadway venues, if you do the numbers, it's just

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

5 TOM KIRDAHY: Yeah, I would just --

6 SENATOR KAPLAN: Thank you.

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

9 When we were discussing 8501B a few years
10 ago, this issue came up. And it seemed that we had
11 learned, and drawn distinctions between larger
12 venues and the Broadway space and the Broadway
13 model, where, say, the average house is
14 1,000 tickets.

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

17 It's certainly under 5 percent, and it's
18 usually tied to, if a star comes to Broadway, she or
19 he may have four house seats that they have to use
20 48 hours before -- before the performance, or those
21 tickets get released at face value.

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

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

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

6 SENATOR KAPLAN: I appreciate it.

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

9 BOB BELBER: Yes.

10 I think you've got two different issues here.

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

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

18 That has gone away.

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

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

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

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

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

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

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

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

19 SENATOR KAPLAN: Thank you.

20 My next question is to Mr. Tom Kirdahy.

21 Again, I am very sorry for your loss.

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

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

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

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

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

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

14 And I think that the events of the last
15 14 months make it impossible to be proper
16 diagnosticians to its effectiveness.

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

21 SENATOR KAPLAN: I appreciate it.

22 This is for anyone else:

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

25 Is it really necessary?

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

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

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

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

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

15 I believe the current scale, if it's under
16 \$50, it's \$8.50 per-ticket service fee; and if it
17 goes at the high end, if it's \$200 or over,
18 it's \$15. And the per-order fee is \$3.

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

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

25 And, actually, my reading of that statute is

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

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

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

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

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

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

22 SENATOR KAPLAN: I appreciate it.

23 Thank you so much.

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

1 SENATOR SKOUFIS: Thank you, Senator Kaplan.
2 Senator Martucci.

3 SENATOR MARTUCCI: Thanks, Chairman.

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

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

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

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

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

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

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

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

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

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

7 TOM KIRDAHY: Sure.

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

11 Our hope is that both shows will return this
12 fall.

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

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

18 People have moved back to their families.

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

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

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

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

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

6 We have to remarket our shows.

7 We have to make sure that the public feels
8 safe.

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

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

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

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

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

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

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

9 I'll say that.

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

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

18 So for us that's going to be about
19 3500 tickets for an event.

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

25 And our company, ASM Global, which is the

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

5 And in other parts of the country, the
6 challenge for us in New York, is other parts of the
7 country are already opening up with 33 percent, or
8 50 percent, or in some cases, 75 percent and
9 100 percent.

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

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

21 But between now and the end of the fall,
22 we're hoping to be able to get promoters that will
23 come in and bring smaller country shows, comedy
24 shows, smaller family shows, that will play to
25 3500 seats, with social-distance seating, people in

1 groups, 6 feet apart throughout the arena.

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

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

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

17 SENATOR MARTUCCI: Thank you, Mr. Belber.

18 And, certainly, I share that hope with you.

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

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

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

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

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

9 I would like to ask a question or two.

10 You know, it's been mentioned, Mr. Kirdahy,
11 and Mr. Hoover in particular, I understand your
12 position of looking for a straight extension here,
13 and your rationale is that, since the reforms in
14 2018, there really hasn't been adequate time to
15 evaluate the effectiveness of those changes.

16 That stands to reason.

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

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

1 discussed before, these white-labeled resale sites.

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

6 And so I guess my question is:

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

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

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

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

25 Anyone want to take a stab at that first?

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

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

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

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

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

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

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

25 We know, for example, under the interim

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

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

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

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

14 And that's my primary concern at this time.

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

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

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

1 under you?

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

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

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

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

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

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

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

25 Or do you think that it should be completely

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

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

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

15 SENATOR SKOUFIS: \$2.

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

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

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

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

1 And so the timing is so premature.

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

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

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

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

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

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

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

1 time, are needed in the actual law.

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

4 No?

5 Okay.

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

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

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

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

18 But thank you for participating today.

19 (All panel participants say "Thank you.")

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

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

24 From TicketNetwork, Donald Vacarro, CEO;

25 From Vivid Seats, Ryan Fitts, vice president,

1 legal and government affairs;

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

4 Welcome, everybody.

5 DONALD VACARRO: Thank you.

6 RYAN J. FITTS: Thank you.

7 JASON BERGER: Thank you.

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

12 LAURA DOOLEY: Absolutely.

13 Hi, Chair Skoufis, Chair Kaplan.

14 Thank you for having me here today.

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

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

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

25 StubHub has a long history of working with

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

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

8 And we want to thank you all for that
9 leadership.

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

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

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

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

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

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

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

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

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

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

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

1 would point to increased transparency on the primary
2 market.

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

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

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

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

13 SENATOR SKOUFIS: Thanks very much,
14 Ms. Dooley.

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

17 DONALD VACARRO: Right, thank you, Senator.
18 Thank you for everyone on the panel.

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

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

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

1 protection than New York consumers have about
2 transferability.

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

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

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

15 That has to change.

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

19 That has to change.

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

22 Holdbacks will give clarity to the consumers.

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

1 raises the equilibrium price.

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

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

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

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

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

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

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

1 I don't know why.

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

4 My time is up.

5 So thank you for allowing me to speak.

6 SENATOR SKOUFIS: Thank you very much.

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

8 RYAN J. FITTS: Thank you.

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

12 Thank you for the opportunity to testify
13 today.

14 Vivid Seats is an online ticket marketplace.

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

18 We've been successful because we put fans
19 first.

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

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

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

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

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

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

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

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

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

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

1 do best: sending fans to events.

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

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

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

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

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

15 So that's what we're doing.

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

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

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

1 wants.

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

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

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

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

13 SENATOR SKOUFIS: Thank you very much.

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

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

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

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

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

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

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

12 So, thank you.

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

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

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

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

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

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

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

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

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

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

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

25 We ask that the pillar of the New York law,

1 ticket transferability, be observed, maintained, and
2 enforced.

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

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

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

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

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

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

24 In conclusion:

25 After a year of such incredible upheaval,

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

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

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

9 Thank you again for your time, and I'm happy
10 to answer any questions you might have.

11 SENATOR SKOUFIS: Thanks very much,
12 Mr. Berger, and to all the panelists.

13 I'll start.

14 The current statute requires that brokers be
15 licensed with New York State.

16 It's my understanding, through testimony --
17 written testimony from the Yankees, and others,
18 that, you know, there is an understanding that there
19 is a significant amount of broker activity that
20 happens without a license, and is thus illegal.

21 I guess, Mr. Berger, can you first answer
22 whether you can share with these committees in
23 con -- with a high level of confidence, that all of
24 your members are licensed?

25 And a question to the other panelists:

1 How do you all monitor on your platforms
2 whether brokers reselling tickets on StubHub, and
3 elsewhere, do have their proper licenses with
4 New York State?

5 JASON BERGER: Thank you, Senator Skoufis.

6 I can just answer the first part.

7 In terms of our members, we actually don't
8 have members.

9 The Coalition for Ticket Fairness is not a
10 membership-based organization.

11 SENATOR SKOUFIS: My apologies.

12 JASON BERGER: So -- well, no problem.

13 SENATOR SKOUFIS: You understand what I mean,
14 though?

15 JASON BERGER: Yeah, absolutely.

16 So we don't -- I mean, there are lots of
17 companies in New York, and any of them can support
18 us. Any individual fans, yeah, anyone, can support
19 the Coalition for Ticket Fairness.

20 So if you're asking me what would I feel in
21 terms of the number of people who are licensed
22 versus the number that would not be licensed,
23 I think there's a lot that goes into that.

24 I would like to personally see more people
25 licensed in the state, and I think that there is a

1 few reasons why that is not the case.

2 The New York State licensing fee for ticket
3 resellers is \$5,000. It's higher than any other
4 license in the state.

5 We actually have been told that medical
6 licenses in the state are less.

7 So in order -- that -- that barrier of entry
8 for someone, and I use the analogy of
9 cryptocurrency, if you ask someone who sells -- buys
10 and sells cryptocurrency, a lot of people that you
11 know might say, yes, I do it.

12 But, at what point does the person say that
13 they're a professional cryptocurrency trader?

14 At what point is a season ticket holder a
15 professional seller?

16 It's hard to make that distinction.

17 However, we would like to make that barrier
18 to entry lower, so that if the licensing fee was
19 lowered from \$5,000, we believe there would be a lot
20 of individual sellers and fans, who sold tickets on
21 a regular basis, who would say it would be worth
22 their time and investment.

23 So I think that that is one of the biggest
24 barriers right now in the state to enter the market
25 and become licensed.

1 And I do share your concern that there are
2 not enough people licensed in the state.

3 I think that's one of them.

4 And I also think that, also, the licensing
5 has a very antiquated reporting, where -- whereby
6 you actually have to report your sales in two
7 different times, January to June, and July through
8 December.

9 The filing, so let's say July through
10 December, it's due on December 31st, and it has to
11 include your sales that you make on December 31st.

12 So your report is actually due during the
13 time that you have to file it.

14 So there are some things that I would love to
15 work with your office and the committee members, to
16 discuss ways that we can improve that licensing
17 reporting to make it easier for small business.

18 Most of the people in our -- that we are
19 aware of in the state are small businesses, and it's
20 very hard to comply with a regulation like that.

21 SENATOR SKOUFIS: I appreciate that.

22 Before we hear from the others, I would just
23 note that the law does not distinguish, you know,
24 whether -- you know, if you're a professional or
25 sort of do this as a hobby, whether you need a

1 license.

2 It's pretty clear, as far as I can tell, as
3 to who needs to be licensed as a broker in
4 New York State, right down to, you know, qualifiers,
5 such as, if you own and operate an office or an
6 agency or a branch, you know, you must be licensed
7 in New York State.

8 If you participate in auctions, you have to
9 be licensed in New York State.

10 So, you know, it's not a matter of -- so
11 perhaps, you know, there are barriers, but they're
12 not optional.

13 If you conduct this activity in
14 New York State, whether you like the barriers or
15 not, whether the barriers are high or low, you need
16 to be licensed.

17 And so I do believe the statute is pretty
18 clear, and it doesn't offer really very much of a
19 gray area in terms of, oh, do I need to be licensed
20 in my profession or not?

21 But if we can hear from the other three as to
22 what you all do to ensure on your platforms that
23 brokers who participate are indeed licensed in
24 New York.

25 RYAN J. FITTS: I can start.

1 I mean, we do require professional sellers in
2 New York to disclose a New York license number to
3 us, so we can track that.

4 We also display it on the site.

5 SENATOR SKOUFIS: But do you have a means of
6 identifying folks who should be licensed, but are
7 not?

8 RYAN J. FITTS: I mean, we definitely know
9 who our sellers are. And so we -- if somebody's
10 offering a ticket professionally on the site, then
11 we do require a New York license.

12 SENATOR SKOUFIS: Otherwise, they cannot move
13 forward with that sale?

14 RYAN J. FITTS: Yeah, I mean, you can't -- if
15 we're -- if we don't know you, you can't sell
16 tickets on our website. We carefully vet ourselves.

17 SENATOR SKOUFIS: Okay.

18 Ms. Dooley?

19 LAURA DOOLEY: Sure.

20 I think similar to Ryan, we, similarly, when
21 the law was enhanced in 2018, notified our sellers
22 of this requirement, that their license should now
23 be published on our website as well. And worked
24 with them to collect that information and to publish
25 it.

1 I don't -- I think it might be a stretch too
2 far to say that we proactively police the sellers on
3 our site. We are a marketplace. But our user
4 agreement does require that they follow all laws of
5 the states in which they're selling.

6 So to the extent that we're made aware that a
7 broker isn't licensed in New York, we would take
8 issue with that. It would be a violation of our
9 policies, and certainly could result in the removal
10 from our site -- or, suspension from our site until
11 those situations were corrected.

12 SENATOR SKOUFIS: So have you identified
13 yourselves any brokers that are not licensed, or is
14 it really just a matter of you're just notifying
15 everyone, you need to be licensed?

16 LAURA DOOLEY: The latter.

17 To my knowledge, I'm not aware of any, like,
18 preemptive, like, situations where we policed that
19 on our own.

20 SENATOR SKOUFIS: Okay.

21 Mr. Vacarro?

22 DONALD VACARRO: If I'm correct, every
23 broker, everyone who sells a New York event ticket
24 on our system, is licensed.

25 I'll check it out and verify it.

1 We also display that license number, as
2 required by the law.

3 SENATOR SKOUFIS: Okay.

4 Senator Kaplan, do you have any questions?

5 SENATOR KAPLAN: I do. Thank you.

6 SENATOR SKOUFIS: Okay.

7 SENATOR KAPLAN: First of all, let me thank
8 the panel for joining us today and for their
9 testimony.

10 My first question is for
11 Mr. Donald Vacarro.

12 I recently read an article titled "How Is
13 This Legal," written by Byard Duncan.

14 I'm sure you're quite familiar with it, you
15 are quoted in the article.

16 You're actually quoted, stating that,
17 "Speculative market is a great thing, and it's very
18 pro consumer."

19 This article also says that your company
20 refunds those of your customers who don't receive
21 tickets, and that you propose to the attorney
22 general that anyone who did not get a ticket be paid
23 a 200 percent refund.

24 Do you stand by these words?

25 And what steps does your company take to

1 ensure consumers are made aware that they are not
2 actually guaranteed to receive a ticket?

3 DONALD VACARRO: Got it.

4 So I'll go through the 200 percent refund
5 first.

6 In the meeting with, I believe it was
7 Senator Squadron, who used to be a senator in
8 New York, we -- a group of folks in primary and
9 secondary gathered in the room, and we talked about
10 refunds.

11 And I believe, if I'm correct, all the
12 secondary marketplaces agreed that if consumers
13 somehow don't get the ticket they're guaranteed or a
14 better seat, that the consumers would get a
15 200 percent refund.

16 But, I also believe at the same time, the
17 primary ticketer said, no, we can't do that.

18 So that's what happened with the 200 percent
19 legislation.

20 As far as the disclosure on our website,
21 again, we put up all of the disclosures on the
22 website, as required. And we enforce it a little
23 bit more stringently, not only in New York, but in
24 other states, about it.

25 And as far as speculative tickets -- and it

1 depends on, everybody has a different definition of
2 "speculative tickets" -- but, anyway, anytime --
3 there's two things about it:

4 Anytime you add supply to the marketplace,
5 the equilibrium price goes down.

6 So you combine selling tickets before you
7 have them in hand, and consumer prices go down.

8 And the reason why they do is because of what
9 Senator Skoufis was bringing up, these massive,
10 massive, massive holdbacks of tickets create a
11 scarcity effect, which allows primary ticketers to
12 artificially raise the price that consumers pay.

13 That's why there's holdbacks in the system.

14 And if you ask them, and you find out, and if
15 you speak to someone a little bit more neutral,
16 you'll find out exactly what you said,
17 Senator Kaplan: When they add those holdbacks in,
18 and there's a scarcity, they raise the price.

19 SENATOR KAPLAN: Thank you.

20 DONALD VACARRO: Thank you.

21 SENATOR KAPLAN: You also mentioned in your
22 written testimony about the congressional hearing in
23 2020, addressing the ticketing industry, and a bill
24 by Congressman Pascrell, I believe.

25 Can you expand upon your comments a bit, and

1 explain what issues Congress was looking to address
2 the industry, and whether New York already made
3 those changes to address --

4 DONALD VACARRO: Okay.

5 SENATOR KAPLAN: -- [simultaneous speakers;
6 indiscernible] the 2018 amendments?

7 DONALD VACARRO: Thank you, Senator.

8 So their -- Congress, their biggest -- they
9 have two big issues in Congress.

10 One is, ticket transferability -- okay? --
11 because without ticket transferability, consumers
12 don't have a right to a product.

13 And there's some arcane notion that tickets
14 are universally licensed.

15 They're not.

16 In Connecticut, tickets are, statutorily,
17 property, and you can resell it.

18 And now the problem with transferability
19 is --

20 And I'm going to share with you some pretty
21 nasty stories, but, we'll have to go through it.

22 -- so sometimes with ticket transferability,
23 people try to stratify society.

24 There was a professional baseball team in
25 New York, who had some fans sitting right by the

1 field. And the team said, Those fans don't look
2 like they belong there.

3 Because they were low-income people who
4 bought a very expensive ticket at a low price in the
5 secondary market, much lower, and they sat down by
6 the field.

7 And I don't know if you saw John Oliver at
8 night. He made jokes of it and fun of it.

9 Two professional owners, two owners of
10 professional basketball teams, both said they don't
11 want people of a certain color in their venue.

12 Both owners had to divest from the teams.

13 So there's a lot of problems with tickets not
14 being transferable.

15 Congress knows that that's one issue.

16 The second issue is data.

17 Let's say, most venues are either -- a lot of
18 venues are 501(c)(3) which have government
19 protections, or state venues.

20 Can you believe, you're going to a state
21 venue that you paid for as a taxpayer. And in order
22 to buy a ticket, you have to share this incredible
23 amount of data with the primary ticketer, who then
24 sells it. Your personal phone number, your IP
25 address; everything they can possibly do to track

1 you, put things on your website, or on your browser,
2 to track you, and then they sell that data.

3 It's different if a private customer does
4 it -- or, a private company.

5 But the best thing I could ever say is, if
6 you saw Dick Durbin question Mark Zuckerberg, and
7 say, Mark Zuckerberg, do you want to tell me the
8 hotel you stayed at last night?

9 And he said, No. I don't want to give you my
10 personal information.

11 So if you ask that same question to anyone in
12 the primary market, or stuff like that, "Would you
13 mind if we sold all your personal information?"
14 I think if they were being candid with you, they
15 would admit that they have a big problem with it.

16 SENATOR KAPLAN: Okay. Thank you.

17 DONALD VACARRO: Thank you.

18 SENATOR SKOUFIS: Are you finished,
19 Senator Kaplan?

20 SENATOR KAPLAN: Yes.

21 SENATOR SKOUFIS: Yeah, okay. Thank you.

22 I'll ask a few more questions, then.

23 Those of you who are brokers, or you engage
24 with brokers, can you tell me, say, you know, the
25 really hot tickets; the hot concerts, and sporting

1 events, playoffs, et cetera, what's the largest
2 number of tickets that you've seen a broker buy up
3 with intention to resell?

4 JASON BERGER: I mean, I don't -- I would --
5 I can answer --

6 SENATOR SKOUFIS: Ballpark. Obviously, I'm
7 not looking for an exact number here.

8 JASON BERGER: -- yeah, I mean I don't really
9 know how we would even be able to quantify that,
10 because we don't really have numbers like that.

11 I don't know. I really wouldn't have no
12 idea.

13 I would say, with an open transparent
14 marketplace, though, I mean, I don't think it's very
15 high.

16 I think there's a lot of companies
17 participating and competing, but I don't think that
18 number is very high.

19 But I don't have data like that, so
20 I couldn't really -- I wish I could help you.

21 SENATOR SKOUFIS: Certainly, you know, 100
22 right? -- I'm sure that's happened.

23 Has any broker ever bought 1,000 tickets to a
24 single event?

25 DONALD VACARRO: Senator Skoufis, if I may,

1 I think what's important here is to distinguish that
2 there are many event producers -- okay? -- and many
3 sports teams in the leagues, that sell directly,
4 thousands of tickets to brokers, or arbitragers, to
5 reduce the risk on their event, if they are not
6 contractually tied into the primary ticketer that
7 they have to sell them there.

8 And that's another issue too, as well, that
9 there's only a certain segment of the population, or
10 of the --

11 SENATOR SKOUFIS: If I could interrupt,
12 though.

13 But, certainly, there's no risk for, let's
14 say, a World Series game. You know you're going to
15 sell out.

16 DONALD VACARRO: I think there's a huge risk
17 to the World Series game, because what -- just to
18 share with you, sometimes when you have to buy that
19 World Series tickets, you might have to prepay, as a
20 broker, the full next season and you might have to
21 buy more expensive seats the next season to do it.

22 Also, in order to buy the World Series game,
23 you might have to buy all the playoff games before
24 it. And just, sometimes, people just don't want to
25 go to the playoff games.

1 You know, they get -- when the Yankees are
2 constantly winning, they don't want to go that much.

3 So there is a tremendous amount of risk with
4 something like that.

5 But anytime that there's --

6 SENATOR SKOUFIS: Risk for the broker; not
7 for the promoter or the venue. Right?

8 I mean, when you're talking about risk,
9 you're talking about for the broker?

10 DONALD VACARRO: Absolutely. The broker
11 takes --

12 SENATOR SKOUFIS: Yeah, just to be clear.
13 Okay.

14 DONALD VACARRO: -- a huge capital risk.
15 Right.

16 And, again, there's a lot of teams, leagues,
17 and promoters who want the brokers to take that
18 capital risk, because, you know what? That means
19 less advertising that they do. Less things that can
20 go wrong.

21 Because I know what you're saying about the
22 World Series. And years ago it was really true,
23 when the World Series tickets were cheap.

24 But now as that price goes up, if they're
25 forecasting rain -- you know what I mean? -- it

1 might not be as good anymore, and that price might
2 dive down.

3 SENATOR SKOUFIS: And so what you're
4 describing -- what you're describing, where the
5 team, or the promoter, the venue, they actively seek
6 out sales with brokers.

7 Give me a sense of how normal that is.

8 So, let's take MLB.

9 Does that happen with regular season games?

10 DONALD VACARRO: With all the major -- with
11 the four major leagues, almost -- all major leagues
12 have teams. All teams in the four major leagues
13 have a deal with what they call "brokers" or
14 "consolidators" to buy tickets, and then resell
15 them.

16 And we're talking, at that number, probably
17 with the four major leagues, league-wide, is well
18 over half a billion, maybe close to a billion
19 dollars, that's invested before those leagues go on
20 sale -- before those go on sale.

21 SENATOR SKOUFIS: And what percentage of
22 tickets are we talking about, on average, if that
23 happens?

24 DONALD VACARRO: I would probably think that
25 that's -- let's see.

1 Maybe 10 percent of the tickets.

2 SENATOR SKOUFIS: Do the rest of you agree
3 with that, that 10 percent?

4 JASON BERGER: I wouldn't have a way to know.

5 But I would like to add on something to
6 the -- what Don had mentioned, that, you know,
7 earlier we heard Ticketmaster talk about the
8 platinum sales, and how they hold tickets back, or
9 they sell them at various prices.

10 We're all independent and we all compete with
11 each other, and we all have multiple platforms that
12 we market our tickets from, whereas Ticketmaster
13 only sells exclusively.

14 So a performer, a team, or an artist would
15 have a great benefit to selling their tickets
16 through our exchanges as well. It gives it more
17 visibilty.

18 We, potentially, could have lower fees. We
19 have -- you know, we all compete with each other.

20 So I think that there's also -- there's a big
21 benefit. And that's why we're seeing a lot more of
22 these deals that Don Vacarro just mentioned, about
23 teams and performers going out to consolidators and
24 people in the secondary market, because it gives
25 them an alternate, rather than dealing exclusively

1 with Ticketmaster and exclusively with their terms.

2 SENATOR SKOUFIS: Got it.

3 Changing gears a little bit, and I'll
4 continue, since I don't see any of my colleagues'
5 hands raised in the Zoom.

6 Do any of you engage in reselling -- I don't
7 even know if that's the right word, given the
8 circumstance -- but I'll say, reselling tickets that
9 were free on -- on point of sale?

10 LAURA DOOLEY: Senator, I can jump in here.

11 StubHub has a policy, that we don't list
12 tickets for events -- tickets to free events.

13 So the example provided earlier about the
14 Pope's visit to New York, that's an event that just
15 wouldn't even be created on the StubHub platform.

16 And we hold that as the consistent policy
17 across any type of free events along those lines.

18 SENATOR SKOUFIS: So you -- is it -- is it
19 fair to say StubHub's position on making that
20 practice illegal, it would be favorable, or fine with
21 that?

22 LAURA DOOLEY: Yeah, certainly for free
23 events.

24 SENATOR SKOUFIS: Yeah.

25 LAURA DOOLEY: I think the nuance of

1 charitable events becomes a little bit more
2 difficult.

3 I'm certainly not opposed to regulating the
4 sale of charitable tickets; however, not every
5 charitable event is created equally.

6 You know, is it 1 percent of the proceeds?
7 Is it 100 percent of the proceeds?

8 We have policies in place to ensure that,
9 when we're at -- you know, the majority of proceeds
10 going to a charity, or -- we will not allow tickets
11 to be sold for that event, unless we are in
12 partnership with the charity, or we commit to
13 providing our own proceeds to the charity as well.

14 And I think just working through those
15 nuances for charitable events would be important.

16 But certainly, for free events, it feels very
17 simple, from our perspective.

18 SENATOR SKOUFIS: The rest of you?

19 RYAN J. FITTS: Yeah, I think I agree that
20 we're, philosophically, open to the idea that free
21 events shouldn't be resold.

22 I think that there might be the slight
23 danger, is what if it's a free ticket with a
24 \$50 T-shirt, or there's some kind of way to game
25 that by somebody.

1 But if we have, you know, clear guidelines as
2 to what is "free" and what is permissible,
3 philosophically, we would agree with that.

4 SENATOR SKOUFIS: So do you prohibit selling
5 free tickets on your [simultaneous speakers;
6 indiscernible] --

7 RYAN J. FITTS: We do.

8 I mean, the event that sticks out in my mind,
9 is I remember that tragedy [inaudible remote audio]
10 worked for at the Ariana Grande concert in London,
11 and they did a huge benefit for that. And we
12 weren't reselling that.

13 SENATOR SKOUFIS: Okay.

14 DONALD VACARRO: So I take a slightly
15 different take on this.

16 I would say this: Anytime there is an event,
17 where it's for some certain purpose, that it's free
18 for an ethical reason, yes.

19 I don't know of any free tickets that we ever
20 resell. And I haven't checked it, anything that.

21 But I know that sometimes we get
22 complimentary tickets that we resell.

23 I wouldn't want to get that bundled in.

24 Sometime there's tickets in other states that
25 don't have a price on it.

1 As far as charitable events, I take great
2 exception to not being able to resell them, and I'm
3 going to share with you why.

4 In Connecticut we have, every year, an annual
5 hundred -- the NAACP does a show, the 100 People of
6 Color, every year, and it's at the NAACP convention.

7 So two years ago they called me up. They
8 said, Look, we're doing a show. We want you to
9 buy -- we want you to pay for the artists, put up
10 the money. We'll give you the tickets, you sell
11 them, because we want the show to happen.

12 So there's a lot of smaller charities that
13 people really don't give that much to, whether it's
14 the National Action Network, the NAACP, which I'm
15 big supporters of both.

16 I actually did the show for them and paid for
17 them.

18 But, again, they needed my distribution to
19 sell those charitable tickets out there.

20 So as far as the charitable ones, I have a
21 big problem with trying to do -- make that illegal,
22 because I think, in a lots of ways, you're
23 disenfranchising charities who don't -- who don't
24 have the marketing wherewithal, and they don't have
25 the high-value donors.

1 SENATOR SKOUFIS: Mr. Berger?

2 And then I'll go to Senator Kaplan. I see
3 her hand raised.

4 JASON BERGER: Yeah, I would agree with what
5 Don had mentioned.

6 I've worked with nonprofits, we currently
7 work with nonprofits, and we help them in terms of
8 fundraising and marketing to our clientele.

9 So I think that the idea of working with
10 nonprofits.

11 Free tickets, you know, there's -- we talked
12 about the -- the Pope event. We didn't sell tickets
13 for that. We didn't sell tickets for these
14 high-profile free events.

15 SENATOR SKOUFIS: Is "Shakespeare in the
16 Park" -- "Shakespeare in the Park" is another event
17 in New York City, free tickets that are very
18 commonly resold?

19 JASON BERGER: Yeah, I don't remember selling
20 tickets for "Shakespeare in the Park." So I -- so
21 that's something that it's -- if we did sell it,
22 I can't tell you off the top of my head.

23 I don't think we did.

24 So I can tell you this, though: There are a
25 lot of people, when the market works well, and it's

1 regulated, it protects the buyers and the sellers.

2 If you're looking at "Shakespeare in the
3 Park," and people who do buy and sell those tickets,
4 and they go to Craigslist and eBay, those are the
5 kind of complaints that we see in the department of
6 consumer affairs consistently.

7 I'm not saying that that should be allowed.

8 Probably shouldn't be, and it should be
9 regulated.

10 But the idea, though, is that when there's a
11 free and open marketplace, and people are protected
12 and the players are regulated, I think it helps
13 consumers.

14 So the more -- the more cutouts that you put
15 on that, I think it creates barriers for customers
16 to get tickets at a fair -- at a fair point through
17 an online marketplace.

18 SENATOR SKOUFIS: Okay. Thank you.

19 Senator Kaplan?

20 SENATOR KAPLAN: [Inaudible remote audio]
21 2018 law put additional limitations on the sale of
22 the speculative ticketing; however, it appears that
23 some of those limitations may not be strong enough
24 to alert the consumers to the fact that they're
25 buying speculative tickets.

1 Can any of you speak a little bit about your
2 thoughts on whether these limitations on speculative
3 ticketing are sufficient in transparency to protect
4 the consumer?

5 RYAN J. FITTS: I can begin.

6 I mean, I think we definitely agree with the
7 principle that people should understand what they're
8 buying, there should be clear disclosure; and people
9 should get what they pay for, there should be
10 fulfillment.

11 And in 2018, you know, there was a law passed
12 in New York that really solidified that.

13 We supported that law at the time; we support
14 it now.

15 And, you know, we think we should let it play
16 out and see how things go. We really haven't had
17 events for the last 14 months.

18 But, we think that's a good law; we think the
19 law should be enforced.

20 SENATOR SKOUFIS: Do you all at all
21 communicate?

22 I know you're competitors, but do you
23 communicate with each other in identifying these
24 incidences, or do you just work alone on this?

25 LAURA DOOLEY: I think there are instances,

1 Senator, where we have received e-mails from the
2 primary market, suggesting that -- or regulators,
3 suggesting that some of the listings on our site are
4 speculative.

5 When we receive those, we just take a
6 standard practice of investigating, you know,
7 exactly what's going on; contacting the seller,
8 trying to understand if they appropriately sourced
9 that inventory.

10 And if we find that they have not, then that
11 inventory comes down from our site.

12 So it is a collaborative process, but the
13 collaboration I think happens more between ourselves
14 and the primary, as opposed to ourselves and other
15 secondary platforms.

16 I also think it's fair to say, like, the
17 two or three instances I can think of in my time at
18 StubHub where we have received an e-mail like that,
19 it has been for major events, like major headline
20 concert tours going through.

21 I think Mr. -- Mr. -- David talked to us
22 earlier about them not being able to maybe police it
23 as much as they would like, and we can appreciate
24 that perspective.

25 But, certainly, when those inquiries come in

1 we take them seriously.

2 SENATOR KAPLAN: Thank you.

3 SENATOR SKOUFIS: Thank you, Senator Kaplan.

4 I want to turn to fees.

5 In the document requests that most of you
6 returned to our committee last year, you spoke at
7 length about the service charges that your platforms
8 employ.

9 And you're just as -- just as sort to test,
10 I have used StubHub before, just as a refresher,
11 I went on this morning and looked -- looked up --
12 queued up a ticket for a Mets game this weekend.

13 And in the document request on StubHub --
14 from StubHub, you had noted last year that your fees
15 range from 20 to 30 percent.

16 And, sure enough, the fees -- the accumulated
17 fees here amounted to 27 percent on the tickets
18 I was looking at.

19 So a couple of things.

20 First, it's not one fee.

21 I'm looking at a service fee. I'm looking at
22 a fulfillment fee.

23 And I know for other platforms that is
24 common, where there is not just one fee, there are
25 multiple fees, assessed on tickets.

1 Can you explain to me what the difference is
2 between the service fee and the fulfillment fee; how
3 you come up with those charges?

4 And I guess, you know, we heard from a
5 previous witness that they do not believe that --
6 the "reasonableness" clause of Article 25 in the
7 state's ticketing laws, they do not believe it
8 applies to secondary markets.

9 I think there's a gray area, at best.

10 The statute refers the "licensees." It does
11 not refer specifically to primary marketplaces only.

12 And so I guess my question also extends: Do
13 you believe that you all are subject, in the
14 secondary marketplace, to the "reasonableness"
15 clause that governs these service fees?

16 And if so, how you determine
17 "reasonableness."

18 I know there are a lot of questions there,
19 but perhaps, Ms. Dooley, if you want to start?

20 LAURA DOOLEY: Absolutely.

21 So, fundamentally, the difference between our
22 service fee and our fulfillment fee is -- is how
23 they're determined.

24 Our service fee is dynamic. It is -- it
25 evolves.

1 And that's a pretty standard industry
2 practice, which is why, you know, we provided a
3 range, not a specific number.

4 That dynamicness of that fee is always a
5 percentage of the ticket price, but may fluctuate,
6 based on the type of event, the genre, or various
7 other factors.

8 The fulfillment fee is static.

9 And so that's a fee that will -- that is
10 determined, based on the type of ticket you're
11 buying.

12 So if you're buying a mobile transfer ticket,
13 or mobile ticket, it's always \$2.50.

14 If you're buying a hard-stock ticket, that
15 requires, you know, essentially, the seller to mail
16 it to the buyer, that is always a flat fee of,
17 I believe it's \$5.25, regardless of how much it
18 actually costs to make that shipment.

19 And so those are the differences between the
20 two fees, essentially.

21 I think, from our perspective, you know,
22 I have not -- I -- I certainly do not have a fully
23 informed opinion, and it's something we can
24 certainly ask our legal counsel, about whether or
25 not we're subject to that "reasonableness"

1 requirement.

2 But in establishing our fees, you know, we
3 need to be reasonable in order to earn customers.

4 And so, you know, if our fees weren't
5 competitive, or if we were consistently higher in
6 our fees than any of our competitors in the
7 secondary market, we would lose sales; we truly
8 believe that.

9 And so, you know, we believe our fees are
10 competitive.

11 We believe that our fees are always
12 displayed, and very -- and made very much aware to
13 our customers before they purchase.

14 And it's our, you know, assessment that the
15 more competition we have in the secondary market,
16 the more important it becomes for those fees to stay
17 competitive, because that is what will drive the
18 user experience, that's what will drive customers.

19 So [simultaneous speakers] --

20 SENATOR SKOUFIS: What does -- thank you for
21 that.

22 What does your fulfillment fee speak to?
23 Like, what is that cost related to at StubHub?

24 LAURA DOOLEY: So for -- I mean, it's very
25 evident for the UPS costs. Right? And they could

1 [simultaneous speakers; indiscernible] --

2 SENATOR SKOUFIS: For mail, that was evident.

3 LAURA DOOLEY: -- yeah, for UPS --

4 SENATOR SKOUFIS: I'm talking about the
5 electronic.

6 LAURA DOOLEY: -- right.

7 And just, for equitable distribution,
8 creating a service for any other type of, you know,
9 ticket delivery, it's -- again, it's static.

10 Sometimes it is like, you know, part of a
11 partnership deal that we may have, or something
12 along those lines.

13 But, again, it's -- it is, I think, all
14 intents and purposes, all fees go to the same
15 effort, which is the operation of our business, the
16 privilege of partnering with various marquee, like,
17 leagues, or teams, or whatnot. And it just,
18 essentially, funds our ability to provide a safe and
19 secure platform for our customers.

20 SENATOR SKOUFIS: Okay.

21 RYAN J. FITTS: If I can piggyback on what
22 Laura was saying, I think we care about fees and
23 prices, we care about competition; we care about
24 competition, we care about transferability.

25 So transferability is vital in this market.

1 It seems like whenever this bill comes up for
2 extension, there are elements in the primary sale
3 that try to push back on that notion.

4 But that's actually a really key thing to
5 keep prices lower.

6 Speaking to our fees, I mean, our fees are
7 used to support the services that we provide.

8 So we have a full-time call center that
9 operates to assist people, from 7 a.m. to midnight,
10 with any issues they might have.

11 We have a large antifraud team. You know, we
12 carefully vet our sellers before we put them on the
13 site.

14 I think the real distinction is that, you
15 know, change between now, and maybe between the
16 1990s when I was just moving to Chicago, you know,
17 if I wanted to see the Cubs, I had to go find a guy
18 on the street corner. He didn't have a guarantee,
19 you know, he didn't have selection.

20 But what we do is, we take that moment of
21 walking up to the gate, and we make sure people are
22 certain that they have what they need to get in.

23 We provide that assurance, we provide that
24 flexibility.

25 SENATOR SKOUFIS: Okay.

1 DONALD VACARRO: As far as TicketNetwork's
2 fees, 50 percent of our sites, that we have our
3 branded sites, do not charge any service charges.

4 100 percent of our sites allow consumers to
5 see the total final cost of the ticket before they
6 enter any personal identifiable information.

7 That was something that the FTC director
8 brought up, that she wanted to see all sites do.

9 If I'm correct, I believe StubHub has that
10 toggle, I believe, to see the service fees on there.

11 And it gets consumers the transparency of not
12 having to wait till the end of the transaction to
13 see how much they're paying.

14 And, we lose sales from it.

15 But, you know what? If a consumer is better
16 informed, you get a much better response from them,
17 and, hopefully, they'll repeat.

18 SENATOR SKOUFIS: Okay. Thank you for that.

19 Let me -- let me ask about markups on the
20 secondary marketplace.

21 And I guess, understanding and acknowledging
22 that many events obviously do not sell out; in fact,
23 many tickets that are resold are at or below face
24 value, or, you know, what the price was at point of
25 sale.

1 So with that acknowledgment, I want to speak
2 to the other events, the events that do sell out,
3 the events that produce a very hot ticket.

4 Do any of you -- I guess, let me start with
5 this:

6 Do you have sympathy for those fans who --
7 working, middle class, lower income, who would love
8 to see their favorite artist, would love to see, you
9 know, the marquee pitching matchup of their favorite
10 team;

11 The game is sold out, oftentimes within, you
12 know, literally, a minute, or a couple of minutes in
13 some cases;

14 And then, you know, in a desperate attempt to
15 try and get their son a ticket for their birthday,
16 the only place is the secondary marketplace;

17 And for those hot events, they have to now
18 pay, and they cannot afford, a ticket that is triple
19 or quadruple or 10 times the face value when it went
20 public -- when the event went public?

21 Do you have sympathy for those, what I'll
22 call, "average" fans that don't come from wealth,
23 that they would probably argue are locked out of
24 these types of events?

25 LAURA DOOLEY: You know, Senator, I think

1 it's a challenging market, and, certainly, you know,
2 we understand that not all consumers are able to
3 participate in.

4 You know, certainly, you know, there's
5 empathy for that.

6 I do believe, though, that what the secondary
7 market provides is additional access that may not
8 have been provided to them otherwise, regardless of
9 their socioeconomic status.

10 You know, the ticket-selling process is
11 opaque. You know, we've talked about that a lot
12 today, you know, regardless of whether it's possible
13 to highlight how many, like, the percentage, of
14 tickets that will be made available, and how many
15 won't.

16 You know, I think we can all agree it is
17 definitely possible to tell people how many tickets
18 are going on sale in any given moment, and how many
19 tickets will go on sale maybe next week, or the
20 following week, or the week after that.

21 And, unfortunately, like, what you end up
22 finding is this artificial notion that all of these
23 events are sold out, when, in reality, they're not.

24 We heard that today. Right? There's only a
25 few percentage of events that sell out.

1 When there is ample supply, secondary markets
2 provide an access point at a significantly reduced
3 rate. Right?

4 Like, it's not uncommon to find baseball
5 tickets for 8, 10 dollars on StubHub.

6 That's a great benefit for fans.

7 But on the flip side of that, with any
8 market, there are those, like premier events, that
9 will come at a heightened cost.

10 You know, StubHub isn't setting the price.

11 The price is being set by our sellers, and
12 they're pricing it to what the market can bear.

13 You know, if the market can't bear a high
14 number, those numbers will drop.

15 And I think, you know, the nature of our
16 business is that there is limited supply and there
17 is significant demand.

18 And I think the market forces create that
19 situation that you just described.

20 We're very aware of it.

21 And what we want to do, is make sure that if
22 a customer chooses to spend their hard-earned
23 dollars with StubHub, they are receiving a premier
24 experience, they have no regrets, and they'll come
25 back anytime that they want to kind of participate

1 with us again.

2 RYAN J. FITTS: And, you know, I'm a dad, and
3 I love taking my kids to games. I'm an alumni -- a
4 [indiscernible] alumni of [indiscernible]
5 university. I go a couple of times every year to
6 the basketball game.

7 And, you know, the one thing that resale
8 does, resellers/resell marketplace, is we provide
9 access.

10 So, you know, I mean, the New York Attorney
11 General reports that more than half of the tickets
12 aren't being offered to the public.

13 So, you know, we provide people with a way to
14 access. Like, we don't hold anything back. All of
15 our inventory is there, it's available, and we're an
16 equalizer.

17 JASON BERGER: Senator Skoufis, if I could
18 just chime in.

19 I want to echo what Laura Dooley and
20 Ryan Fitts said, but also want to go back to
21 something that the Times Union Center, Bob Belber,
22 said earlier, which is, you know, it -- it is a
23 finite resource. And it does become -- and I --
24 I do have empathy, first of all, first and foremost,
25 100 percent, I have empathy for, everyone wants to

1 be in the front row for a Bruce Springsteen concert,
2 or whatever their -- their -- their performer.

3 SENATOR SKOUFIS: I think there are plenty of
4 people who would be content in the back row of a
5 Bruce Springsteen concert, but the back row might be
6 going for hundreds of dollars.

7 And that's where that sort of comes from.

8 JASON BERGER: Yeah.

9 I think there's two things that go into that.

10 The first thing is, and as Laura and Ryan
11 said, the fact that there is a transparent and safe
12 marketplace for them to purchase, and know that
13 they're actually getting what they buy, that's a
14 very big thing because, when the black market was in
15 effect, which is what the Times Union Center
16 referenced, which is true, before the law, before
17 there was a marketplace in New York, people would go
18 to the black market.

19 We would -- there was tons of complaints.
20 And people would be going to Craigslist, and
21 out-of-state companies, and it was -- it didn't work
22 well for consumers.

23 That's the first thing.

24 And the second thing is, also, in terms of
25 transparency, we -- I support, I think we all

1 support, a better law, and a better way for fans to
2 know what they're buying, and how they're getting
3 their tickets.

4 I actually, recently, when we were trying to
5 get the COVID vaccine, you go online into New York
6 State, and it tells you, there's 14 appointments
7 available. And you're trying to get that one
8 appointment, and you say, Great. Okay, I got my
9 appoint. There was 14 available.

10 But when I see a thing that says there's
11 one appointment available, I'm not going to spend
12 20 minutes trying to get that one appointment.

13 The reason I bring that up is that, that
14 actual methodology is used in other countries for
15 ticket -- for ticket sales.

16 So when tickets go on sale, it will say,
17 there's X number of tickets in this block, in the
18 Price Level 1; this number of tickets in Price
19 Level 2.

20 And that number starts diminishing as the
21 time goes on.

22 It goes on sale at 9:00.

23 By 9:05, there's nothing in Block 1. There's
24 half the tickets in Block 2.

25 And you can start tempering your expectation,

1 and say, You know what? I'm not going to try this
2 anymore.

3 So the idea, I think, is that it would be
4 better to have a better way for consumers to have a
5 better expectation of what they're getting out of
6 live entertainment, both in the primary and the
7 secondary market.

8 SENATOR SKOUFIS: Okay.

9 DONALD VACARRO: Senator Skoufis, if you
10 wouldn't mind me just chiming in.

11 SENATOR SKOUFIS: Sure.

12 DONALD VACARRO: And I'll emphasis that we
13 all empathy for folks like that.

14 But there is one way to address your concern,
15 which a lot of folks have actually brought up; and
16 now that way would be, and you hit the nail on the
17 head before, with the holdbacks to credit card
18 companies.

19 There's some credit card companies who only
20 sell those tickets to the top echelon of the public.

21 And now we're talking, and it's astronomical,
22 about how -- how homogenous that crowd is.

23 And I'm sorry, I'm the White male, it's for
24 me, it is, it is what it is, that we get those
25 advantages because we have that money.

1 And these are publicly-financed buildings.

2 I mean, I saw some of the tax credits that,
3 like, in New York, that was the Presidential
4 Candidate Yang that was railing against them the
5 other day. That one thing, he was getting huge tax
6 credits in New York, and not even making the tickets
7 available to the public.

8 So I think one way to do that is with the
9 whole back thing. But ...

10 SENATOR SKOUFIS: Ticketmaster claimed that
11 it's only about 5 to 10 percent of tickets that are
12 held back.

13 You disagree?

14 DONALD VACARRO: Okay. See -- I absolutely
15 disagree.

16 And I'll share with you, too, to Mr. Hoover's
17 comment, from the Shubert -- The Shubert
18 Organization runs a much different thing -- okay? --
19 a much different program.

20 There's not that many real complaints about
21 theater in proportion to concerts.

22 So concerts are the big problem. Okay?

23 They don't consider -- sometimes they do,
24 sometimes they don't, sales for these thousands of
25 tickets that they hold back for these credit card

1 companies, they don't consider those holdbacks.

2 Sometimes they don't consider the thousands
3 of tickets that a venue has for its staff,
4 holdbacks.

5 So, yes, I absolutely disagree about the
6 number of concert holdbacks, and it's a little bit
7 different from my angle, because we are also a
8 concert promoter too.

9 I also have a small primary ticket operator,
10 a smaller -- small primary ticket software.

11 So I see from the other side what people do.

12 I see why promoters hold back.

13 Promoters hold back to create a scarcity, and
14 drive the ticket price up, to mislead consumers
15 about the amount of tickets available.

16 And, legislatively, in certain states,
17 legislatures have -- has taken action on -- on
18 products where either the manufacturer or the retail
19 outlet says they have a product available, but
20 didn't have a sufficient enough quantity to meet
21 demand.

22 There used to be those old newspaper flyers,
23 when we used to read the newspaper 20 years ago.

24 You know, when a big chain store would have this
25 TV on sale for \$49, well, they had one per store,

1 and they just used it to drive people in. You know?

2 SENATOR SKOUFIS: Right, right.

3 Hey, thank you for that.

4 And so in the interest of time, I just want
5 "yes" or "no" from each of you on a couple of sort
6 of lightning-round questions here.

7 So, in light of what I just heard, yes or no,
8 do you believe that we should either be barring or,
9 at a minimum, strictly limiting holdbacks --

10 DONALD VACARRO: Yes.

11 SENATOR SKOUFIS: -- in New York State?

12 DONALD VACARRO: Or disposing it.

13 Yes.

14 LAURA DOOLEY: I think we would suggest, we
15 should be transparent about it, but allow the
16 practice to happen, as long it's, certainly, you
17 know, available to the customer to digest.

18 RYAN J. FITTS: Disclosure is a key piece of
19 the supply and demand.

20 JASON BERGER: I actually have a -- I'm
21 sorry, I can't answer yes or no.

22 I have an idea, though.

23 If Ticketmaster is saying it's usually
24 5 percent, maybe disclose it if it's about
25 10 percent, automatically disclose it, because then

1 I think people would have an idea that this is the
2 number of tickets that are held back for that
3 Justin Bieber concert example, which happens I think
4 a lot more frequently than we all think.

5 SENATOR SKOUFIS: Uh-huh. Okay.

6 DONALD VACARRO: You know, just to add on to
7 Jason's thing, Senator Skoufis, and I hate to do it,
8 technologically, it's simple to do.

9 This is probably one of the most simple
10 things in the world for a primary vendor to do
11 technologically.

12 You just have to say: Here's the status of
13 the tickets.

14 It's very, very simple.

15 SENATOR SKOUFIS: Right.

16 And I guess, you know, this is a two-parter:

17 So, yes or no, do you all engage in
18 speculative ticket sales?

19 And, yes or no, do you believe that we should
20 be banning speculative ticket sales in New York?

21 RYAN J. FITTS: We have zero tolerance for
22 undisclosed speculative ticket sales.

23 We think that the New York law was well
24 considered in 2018.

25 SENATOR SKOUFIS: Yes, the 2018 law just

1 speaks to disclosure, correct.

2 I'm, you know -- so, (a) do you engage in it
3 at all, even if it's disclosed? (b) do you think
4 that the 2018 law should take the next step forward,
5 if you will, and prohibit the practice?

6 RYAN J. FITTS: Yeah, I mean, our -- our --
7 we have a zone program that sells tickets, that are
8 guaranteed to a particular section. We carefully
9 vet those participants, and we only allow a certain
10 subset.

11 And that program is, of course, compliant
12 with New York law, and so [indiscernible].

13 DONALD VACARRO: I guess I would say,
14 generally, I agree with what Ryan has said.

15 I think, the disclosure, I actually think
16 it's a good provision in the law. And I think
17 everyone adhere to it. I think the customers see
18 transparency.

19 And, as far as the practice, with whatever
20 you consider them, yes, it's good, because it
21 increases the supply, it lowers the equilibrium
22 price.

23 JASON BERGER: I would say, we do
24 participate, and we actually tell consumers that we
25 are preselling.

1 And people do come to us and ask us to help
2 them with presale -- help them with inventory that
3 is not available in the marketplace.

4 How can you find this ticket for us for the
5 Super Bowl?

6 The tickets are not released until two weeks
7 before.

8 Can you help us obtain tickets for an
9 overseas match that's not available?

10 So as long as there's disclosure, I think
11 it's important to have that ability for consumers,
12 because limited supply in the marketplace drives
13 prices up.

14 SENATOR SKOUFIS: Don't you think that, you
15 know, the practice gives a leg up to higher-end
16 consumers who have the wherewithal to go through a
17 broker?

18 You know, the average consumer is likely not
19 trying to get a hot ticket through a broker.
20 They're trying to get it through sort of the
21 traditional means of the primary marketplace.

22 And so what you're describing, Mr. Berger, is
23 sort of an add-value -- or, value added, I should
24 say, that you're able to provide, that is not
25 readily available to, you know, probably 98 percent

1 of fans. Fair?

2 JASON BERGER: I actually see it a little
3 differently.

4 I see it, that increased supply decreases
5 prices.

6 So I don't necessarily see it the same way,
7 that only a specific percentage of clients can
8 participate, and buy a ticket for an event.

9 Zone pricing is available on a lot of
10 marketplaces, and it helps consumers when there's
11 nothing available.

12 There's also the -- you know, when there's --
13 when there's nothing available, I think that zone
14 pricing helps.

15 In other countries, it's -- that's how a lot
16 of tickets are sold, and it drives prices down.

17 So I do actually believe it's, increased
18 supply decreases prices.

19 SENATOR SKOUFIS: Okay.

20 And, Ms. Dooley?

21 LAURA DOOLEY: Yeah, I would align with what
22 we've heard here.

23 Certainly supportive of the existing law.

24 Certainly supportive of continuing the
25 conversation to tighten it where it needs to be

1 tightened.

2 SENATOR SKOUFIS: Okay. Very good.

3 You're all off the hot seats.

4 Thank you very much for your participation.

5 You gave some great incite, and we're
6 grateful for it.

7 So, thank you, and we'll be in touch with
8 you.

9 (All panel participants say "Thank you.")

10 SENATOR SKOUFIS: Okay. And we're up to our
11 finale, our fourth panel.

12 We have, John Breyault, vice president -
13 public policy, telecommunications, and fraud, from
14 the National Consumers League;

15 We have, from Consumer Reports, Anna Laitin,
16 director of financial fairness and legislative
17 strategy;

18 From NetChoice, Carl Szabo, vice president
19 and general counsel;

20 And from Sports Fans Coalition, Brian Hess,
21 executive director.

22 Welcome, everybody.

23 JOHN BREYAULT: Thank you.

24 SENATOR SKOUFIS: Mr. Breyault, do you want
25 to go first?

1 JOHN BREYAULT: Sure. Thank you.

2 Good afternoon, Chairman Skoufis,
3 Chairwoman Kaplan, and members of the committee.

4 My name is John Breyault, and I'm the
5 vice president of public policy, telecommunications,
6 and fraud for the National Consumers League,
7 America's pioneering consumer-advocacy organization.

8 I appreciate this opportunity to appear
9 before the committee, and provide testimony in
10 support of your investigation of the live-event
11 ticketing industry.

12 My testimony today will focus on two of the
13 areas where you have an opportunity to address --
14 to strengthen consumer protections in the
15 industry: ticket holdbacks and ticket-buying bots.

16 First, holdbacks, also known as
17 "allocations," are one of the dirty little secrets
18 of the live-event industry.

19 As the 2016 report by the New York Attorney's
20 General's Office -- New York Attorney General's
21 Office found, only 46 percent of tickets to popular
22 events, on average, are ever made available to the
23 general public.

24 Those findings were recently corroborated by
25 a 2020 audit by the Honolulu City Council, which

1 found that promoter and venue holdbacks were the
2 primary reasons that consumers could not access
3 tickets to events there.

4 Instead of tickets being made available to
5 the general public, they are diverted to connected
6 insider groups, like fan clubs, credit card rewards
7 programs, artists, venues, and promoters, who often
8 work with brokers to increase their profits by
9 reselling tickets on the secondary market at
10 inflated prices.

11 To be clear, we do not oppose holdbacks in
12 principle.

13 Primary ticketers, whether they be
14 Ticketmaster or box offices, artists and concert
15 promoters, they should be free to distribute their
16 tickets as they see fit.

17 However, we believe it is an unfair and
18 deceptive practice to advertise an event, lead
19 customers to believe they have a reasonable chance
20 of getting a seat at face value, trumpet the
21 artificially engineered quick sellouts, and then
22 point the finger and blame at the secondary market,
23 or even fans themselves, when tickets are scarce.

24 The best antidote to ticket-holdback
25 practices -- to deceptive ticket-holdback practices

1 is more transparency.

2 We support legislation requiring primary
3 ticket sellers to disclose on their websites, and at
4 the box office, the total number of tickets to be
5 made available to the general public no less than
6 seven days prior to the date on which tickets go on
7 sale.

8 The second issue my testimony will address
9 today is the use of ticket bots by unscrupulous
10 ticket brokers.

11 Ticket bots are sophisticated programs used
12 to electronically jump the line to buy hundreds or
13 thousands of tickets in a matter of seconds. Those
14 tickets are then resold on the secondary market,
15 typically, at greatly inflated prices.

16 To address this, New York should take steps
17 to address -- sorry -- to increase penalties for
18 violation of its existing anti-bot statute.

19 We also urge you to pass legislation,
20 requiring entities, such as primary ticketers,
21 venues, promoters, or other actors in the live-event
22 ecosystem, who have knowledge of illegal bot use to
23 report such activity to the attorney general's
24 office.

25 Senator Skoufis, I believe you were getting

1 at this earlier in your line of questioning to
2 Mr. Marcus from Ticketmaster.

3 Finally, in addition to our recommendations
4 regarding ticket holdbacks and ticket bots, we
5 support many of the other comprehensive solutions
6 I anticipate you will hear from our colleague
7 organizations today, such as prohibiting undisclosed
8 speculative ticketing, reigning in drip pricing,
9 prohibiting white-label ticket websites that defraud
10 fans, requiring refunds for canceled or rescheduled
11 events, and requiring ticket sellers to provide
12 toll-free numbers for customer support.

13 Chairman Skoufis, Chairwoman Kaplan, thank
14 you for giving the National Consumers League the
15 opportunity to provide testimony on this important
16 issue.

17 We look forward to answering any questions
18 that you or other members of the committee may have.

19 SENATOR SKOUFIS: Thank you very much.

20 Next we'll hear from Ms. Laitin.

21 ANNA LAITIN: Thank you, Chair Skoufis and
22 Chair Kaplan, ranking members, and distinguished
23 members of both committees for inviting
24 Consumer Reports to testify at this important
25 hearing.

1 My name is Anna Laitin, and I'm the director
2 of financial fairness and legislative strategy at
3 Consumer Reports, based in Yonkers.

4 This hearing is taking place at a unique
5 time.

6 As the worst of the pandemic appears to be
7 behind us, artists, venues, and fans are all hopeful
8 that we will be able to attend live events and share
9 experiences again.

10 But we urge you to ensure that we do so in a
11 marketplace that works for consumers, one that
12 eliminates unfair and deceptive practices that
13 target ticket buyers.

14 As you well know, Americans have long
15 expressed frustration with online ticketing.

16 In 2018 Consumer Reports reached out to our
17 members, asking them to share stories about
18 ticketing and ticket fees. And more than
19 6600 consumers, including more than 500 New Yorkers,
20 wrote back.

21 Many gave concrete examples of frustrations
22 with hidden fees, raising the price of a ticket well
23 beyond what the individual had understood to be the
24 price; with bait-and-switch tactics that left them
25 uncertain about what they had bought, and whether

1 the tickets were even legitimate; and with the
2 opaque operations of the secondary ticket market.

3 It became clear from these stories that the
4 online event-ticketing marketplace is not
5 transparent. It does not operate in a manner that
6 enables consumers to make informed purchase choices.
7 Hidden fees can increase the price of a ticket by as
8 much as 30 to 40 percent, and consumers find
9 themselves spending more than they intended in order
10 to buy tickets, or they simply back out and decide
11 not to bother with attending an event that they
12 cannot afford.

13 The ticket sellers know what they are doing
14 when they set their prices in this way.

15 In December 2016 the National Economic
16 Council issued a report, "The Competition Initiative
17 and Hidden Fees," which notes that these fees are
18 generally structured as they are, quote, in order to
19 drive down the perceived price, and lure consumers
20 to make purchasing decisions based on information.

21 Go on to say, that these fees are, at worst,
22 quote, fraudulent or deceptive. At a minimum, they
23 make prices unclear, hinder effective consumer
24 decision-making, and dull the competitive process.

25 New York has taken steps to protect consumers

1 in its marketplace with the enactment of laws
2 requiring transparency disclosures, as well as by
3 prohibiting the most egregious white-label websites
4 that fool consumers into thinking that they are
5 buying from the venues.

6 These protections have made a difference, and
7 Consumer Reports urges you to renew these expiring
8 protections, but we also urge to you take additional
9 steps.

10 I use my time today to urge you to ban hidden
11 fees and require all end pricing for all tickets.

12 If a fee is certain to be charged to a
13 consumer in order for that consumer to receive a
14 ticket, that fee should be included in the base
15 advertised rate. It is a simple straightforward
16 change that would improve consumer welfare.

17 The ticket sellers have made clear that this
18 is not a change that they will make on their own
19 absent a mandate.

20 You have the opportunity to set that mandate.

21 Thank you, and I look forward to your
22 questions.

23 SENATOR SKOUFIS: Thank you very much.

24 We'll next hear from Carl Szabo, NetChoice.

25 Welcome.

1 CARL SZABO: Good afternoon.

2 My name is Carl Szabo. I'm vice president
3 and general counsel of NetChoice. I'm also an
4 adjunct professor at the George Mason Law School.

5 Now, we've heard a lot about the problems in
6 the ticketing market.

7 And one of the things I always look for is,
8 what is the root cause?

9 And I was looking around on the Internet, and
10 I was just curious to see how much the COVID
11 outbreak has impacted the events market and the
12 ticket market.

13 And, it's hit everyone hard, except for one
14 company in particular: Live Nation.

15 Live Nation's stock price today is not only
16 higher than it was before the pandemic started a
17 year ago, it's the highest in its history.

18 And why is that?

19 Well, we have to unpack the onion and look at
20 the root cause.

21 But before we jump into that, I'm going to
22 ask that we do three important things.

23 One, renew the existing New York Consumer
24 Protection Law;

25 Two, require transparency on how many tickets

1 are available;

2 And, three, encourage your state AG to
3 investigate the antitrust violations of Ticketmaster
4 and its parent company, Live Nation.

5 Now, we heard, well, if we just give people
6 transparency, it's not going to change consumer
7 buying habits.

8 So, really, there's no logical reason why you
9 shouldn't disclose it.

10 It's kind of like my kids holding something
11 behind their backs, and saying, Oh, don't worry,
12 dad. It's nothing bad.

13 Should I believe my kids?

14 Probably not.

15 If it's nothing bad, show it to me.

16 One of the things that is also worth
17 analyzing is the antitrust violations by
18 Ticketmaster and Live Nation.

19 Now, I spent an inordinate amount of time
20 dealing with [indiscernible].

21 Under today's laws, the Supreme Court has
22 never found an antitrust violation when the
23 controller has less than 75 percent of market.

24 But you heard from Ticketmaster today that
25 they represent 80 percent of the primary ticket

1 sales in the U.S., well above the Supreme Court
2 threshold.

3 But Ticketmaster isn't just the ticket
4 issuer. They complained about how it's the artists
5 and venues that are causing them to adjust the
6 tickets. But their parent company, Live Nation, is
7 the lead promoter.

8 So that's the artists that they work with,
9 through Live Nation, setting the prices that
10 Ticketmaster sells.

11 And, by the way, Live Nation and Ticketmaster
12 own dozens of venues across the country.

13 So if the complaints are the artists and the
14 venues, they're really complaining about their own
15 ticketing practices.

16 You now see Ticketmaster using their size and
17 control to seize control of the secondary market.

18 You've heard them talk about creating pricing
19 models that increase their service fees and prices.

20 I mean, this is a slam-dunk case on
21 antitrust.

22 And that's why I am excited to see
23 Chairman Nadler and several members of the
24 U.S. House of Representatives, including
25 Representative Pascrell, ask the Department of

1 Justice and FTC to enforce against this monopoly.

2 Your state AG could take similar steps.

3 Now, the important thing is also on
4 transferability.

5 States are running to catch up with
6 New York's transferability laws.

7 Today, Colorado, Utah, Virginia, Connecticut
8 have caught up to New York.

9 New York should continue to lead the way, and
10 give consumers the protections that they deserve.

11 SENATOR SKOUFIS: Thank you very much.

12 Last, but not least, we'll hear from
13 Brian Hess, Sports Fans Coalition.

14 Welcome.

15 BRIAN HESS: Thank you, Chairman Skoufis, and
16 members of the committees.

17 I'm Brian Hess. I'm the executive director
18 of Sports Fans Coalition.

19 SFC was founded in 2009, and we're a national
20 nonprofit advocacy group devoted to representing
21 fans wherever public policy impacts the games we
22 love.

23 New York tickets resale laws are strong,
24 promote competition, and they're good for the
25 consumer.

1 If the New York Senate were to do anything
2 following today's hearing, it should extend the
3 sunset provisions, preferably indefinitely.

4 Today I will focus on a few areas of public
5 policy that impact the ticket-buying consumers,
6 protecting transferability, price controls that harm
7 fans, white-label websites, and requiring
8 affordability of primary tickets for tax-funded
9 venues as a good idea for consumers.

10 Transferability must be the cornerstone of
11 any pro-consumer ticketing law.

12 As the industry's dominant primary ticketer,
13 Ticketmaster's embrace of nontransferable ticketing
14 practices does nothing more than to create burdens
15 for consumers, limiting the ability for fans to
16 transfer, give away, or resell their tickets that
17 have been rightfully purchased.

18 It is also highly anticompetitive.

19 The consumer groups in this panel aren't
20 alone in this concern.

21 This week Chairman Jerry Nadler and four
22 other congressmen sent letters to the DOJ and FTC,
23 asking them to open an investigation into
24 Ticketmaster and Live Nation for all of the
25 anticompetitive practices they engage in.

1 I would like to quote from that letter.

2 "Not satisfied with its near monopoly of the
3 primary sale of tickets, Live Nation Entertainment
4 has tightened its grasp on the secondary market,
5 making it one of the largest ticket resellers in the
6 United States.

7 "The company is now leveraging its position
8 in the primary channel, to drive out competition in
9 the resale market, and allowing for, potentially,
10 unfair and deceptive practices."

11 While Ticketmaster claims their barriers
12 prevent ticket scalping, they are often designed to
13 control resale and ensure it occurs on platforms
14 aligned with the primary ticketing company.

15 Designated resale exchanges allow
16 Ticketmaster to double-dip the fees on both their
17 initial sale of the ticket and secondary sale.

18 Despite claims that these restrictions
19 protect consumers, they do the exact opposite.

20 I urge the committee to protect New York's
21 right to transfer in any legislation that it
22 considers.

23 Buying tickets is also an investment in
24 fandom.

25 When the ticket is to a single game or an

1 entire season, a fair and open ticket market spurs
2 investment among the fan base.

3 To restrict the cost of that secondary ticket
4 site stifles that investment.

5 If I'm a season ticket holder in the Yankees,
6 and I want to sell my ticket to the Red Sox games,
7 to either recoup my costs for the package, pay an
8 unexpected medical bill or a parking ticket, or
9 anything, I should have the right to do so.

10 Stifling that does little to stop bad actors
11 who will just go to other platforms, or back on the
12 street corners, and they will always find a way to
13 skirt the law.

14 Sports Fans Coalition advocates against any
15 legislation or regulation that attempts to control
16 ticket prices artificially.

17 Lastly, many other people today have talked
18 about white-label ticket sites and how they defraud
19 fans by using similar iconography, URLs, names.

20 So I won't dive in too deeply on that, but
21 New York has lead the nation in prohibiting this
22 practice.

23 To stop that today, or this year, would
24 really hurt the industry efforts that have been --
25 coincide by state regulations, and companies, such

1 as Google's ad word policy, that have largely
2 addressed the practice, though it still
3 proliferates.

4 I see my time has expired, and so I will ...

5 SENATOR SKOUFIS: Thank you.

6 I'm sure there will be more opportunity to
7 flesh out your remaining comments as we go to
8 questions now.

9 So a common theme from many of you in your
10 testimony was the need for additional disclosure.

11 And I think you'll find few, if any,
12 arguments against that amongst our two committees
13 here.

14 I guess my question is:

15 Is it enough -- you know, if you have a bad
16 practice, or, an unsavory practice maybe is a better
17 characterizing, like holdbacks -- excessive
18 holdbacks -- Mr. Breyault, I think you described it
19 as the industry's dirty little secret -- is it
20 enough to just -- to just require stakeholders to
21 let the public know, hey, we are engaged in these
22 bad practices? Or, should we be taking the next
23 step in regulating those bad practices?

24 Do any of you, do all of you, think that we
25 should not just disclose the fact that these

1 holdbacks are taking place, and locking average
2 New Yorkers out of events?

3 Do you think we should be limiting, or
4 perhaps even banning holdbacks here in New York
5 State, as we look at potential future reforms?

6 JOHN BREYAULT: Senator Skoufis, thank you
7 for that question.

8 From NCL's point of view, we don't believe
9 that banning holdbacks is appropriate at this time.

10 However, I think I share your desire that
11 they would hold back fewer tickets, and make more
12 tickets available to the general public at face
13 value.

14 And I think transparency would start to get
15 us there.

16 I think that artists, in particular, value
17 the relationship that they have with their fans.
18 And they don't want to be seen as -- as bidding --
19 selling off their tickets to the highest bidder;
20 giving them to connected insiders; only the people
21 who have the super-Platinum American Express card
22 can get access to our pre-sales.

23 But the fact that they can get away with
24 that, or that venues or promoters can get away on
25 their behalf, or on the side, in this opaque system,

1 where so many tickets are held back from general
2 resale, that means that they can get away with that
3 without repercussions or any kind of consumer
4 knowledge.

5 I think consumers armed with the information
6 that they would get from holdbacks -- from
7 transparency and holdbacks would actually decrease
8 the incentive to hold back tickets in the first
9 place.

10 And so I often talk about the harm that comes
11 to consumers from undisclosed holdbacks in
12 four ways, and I hope you'll excuse me for going
13 down the list.

14 But, first, consumers waste time.

15 When I'm online at 10 a.m. on a Saturday
16 trying to get tickets, when I think that there may
17 be, you know, most of the tickets of the 20,000-seat
18 Madison Square Garden are available. But, in fact,
19 if there are only a very small percentage that are
20 available, then I might not have wasted that time.

21 Number two, when tickets to Justin Bieber
22 sell out in 30 seconds for MSG, then I think it's a
23 hot ticket.

24 I'll go to secondary market, and I'll see a
25 price for tickets there and think, that's the market

1 price for that ticket, and I may even pay it.

2 In fact, as I think Mr. Vacarro alluded to
3 earlier, that price may only reflect
4 artificially-engineered ticket scarcity.

5 Number three is, when a consumer pays that
6 price, we -- it's often seen that the tickets will
7 be made -- more tickets will be made available
8 closer to the date of the event at face value.

9 So now a consumer has paid above face for
10 tickets they could have gotten for face value in the
11 first place.

12 So I think for all of those reasons, this is
13 a practice that would benefit from more
14 transparency.

15 If a consumer knew, for example, that they
16 only had a shot at 10 percent of the tickets for
17 Justin Bieber at MSG, they probably wouldn't waste
18 their time.

19 If they went to StubHub or Vivid or one of
20 the other resellers that was testifying before us,
21 and said, Oh, I see these tickets are on sale for
22 three or four times face. But I know that there's
23 still thousands of tickets out there, unaccounted
24 for, they may wait.

25 Mr. Marcus talked earlier about sort of

1 that spike in the first 12 to 24 hours of demand,
2 followed by a decrease.

3 If consumers knew how many tickets were out
4 there, they may be able to make the decision to
5 purchase that ticket further on down that curve,
6 closer to the date of the show.

7 SENATOR SKOUFIS: Sure.

8 JOHN BREYAULT: So I think all of those ways
9 would benefit consumers for more transparency.

10 SENATOR SKOUFIS: Yeah, very good. Thank
11 you.

12 In the interest of time, does anyone have the
13 opinion that we should be considering steps beyond
14 transparency, or do you all agree that that is the
15 solution here?

16 CARL SZABO: I think transparency is a
17 good --

18 [Simultaneous speakers; indiscernible.]

19 CARL SZABO: -- yeah, transparency is a great
20 start.

21 I think, that, coupled with maintaining
22 transferability, will let us better understand how
23 the market operates.

24 And, frankly, it may stop the idea of bots,
25 because now you know how many tickets were

1 available, if they were grabbed by humans, or were
2 they grabbed by -- or were they never available to
3 begin with?

4 BRIAN HESS: I agree with Mr. Breyault and
5 Mr. Szabo.

6 SENATOR SKOUFIS: Ms. Laitin, do you agree
7 with [simultaneous speakers; indiscernible] --

8 ANNA LAITIN: I agree as well.

9 SENATOR SKOUFIS: -- yeah.

10 Okay. Great.

11 Senator Kaplan, do you have anything?

12 SENATOR KAPLAN: Yes.

13 So this is to anyone who wants to take the
14 question.

15 If ticket sellers were required to disclose
16 the total ticket price, including fees, up front,
17 also known as "all-in pricing," and not at the end
18 of that purchase when fees are usually added, how do
19 you think this would impact consumer purchasing
20 habits?

21 CARL SZABO: So, Senator --

22 [Simultaneous speakers; indiscernible] --

23 CARL SZABO: -- oh.

24 Go ahead, please.

25 ANNA LAITIN: I'll just take a little bit,

1 and then turn to Carl.

2 I think it would dramatically improve
3 consumer welfare.

4 What we hear from consumers is that they
5 choose tickets based on the price they see, and are
6 consistently surprised by the increased price.

7 If it's a highly in-demand concert, or other
8 event, they may feel trapped.

9 If they go backwards, they may not be able to
10 choose the cheaper ticket; they might not have time
11 if the tickets have sold out.

12 So buy a ticket they can't afford, or simply
13 not go to concert.

14 What we have heard from the industry
15 repeatedly is that there's a competitive
16 disadvantage to them for doing it on their own.

17 This is one of those things that does require
18 governmental action.

19 They will not do it on their own; they'll be
20 at a competitive disadvantage.

21 But if all of them are required to do it,
22 then it would be a more fair marketplace, and
23 consumers would understand what they're getting.

24 SENATOR KAPLAN: Levels the playing field for
25 all of them.

1 CARL SZABO: So one of the things that you'll
2 likely see is an initial dip in purchasing, just
3 because people will be surprised. But then they'll
4 become accustomed to it.

5 One of the things that we've seen is, this is
6 not limited just to the ticket markets. This is in
7 all aspects.

8 We see it in, for example, hotels.

9 You get to the hotel, and they say, Oh, we
10 have something called a "resort fee" that you now
11 have to pay that you're here.

12 Can I not take the resort fee?

13 No.

14 So we see this in many different markets.

15 I think getting the idea out front is
16 important, but as was noted, this has to be done
17 across the board, because you do see some businesses
18 stepping up and saying, we are going to make this
19 disclosure available.

20 But by the same token, they're competing with
21 people who only show you the final all-in price at
22 the end.

23 This should apply not only for second
24 secondary ticket sellers, but primary ticket sellers
25 as well, because if I'm looking at prices on, for

1 example, Ticketmaster -- it seems to be one of the
2 only places to find anything -- then I need to know,
3 should I line up virtually; or, am I going save
4 about \$50 for a family of four by just going to the
5 box office?

6 JOHN BREYAULT: And, Senator Kaplan, if I may
7 add to what my colleagues have said, such a
8 requirement for all-in pricing is not unprecedented
9 in the industry.

10 If you look at, for example, airline tickets,
11 airlines are currently required, under federal
12 regulation, to advertise the full fare. So that is
13 the cost of the ticket plus all ancillary fees that
14 are required.

15 So this is something that New York would not
16 be sort of going outside the mainstream to require
17 such all-in pricing.

18 And I think, as others have alluded to,
19 you've been the leader on things like
20 transparency -- sorry -- transferability, on
21 anti-bot practices.

22 So I think it would continue your state's
23 leadership to require all-in pricing for tickets.

24 SENATOR KAPLAN: In your experiences, does
25 the establishment of price floors negatively impact

1 consumers in multiple ways?

2 For example, late in a sports' team season,
3 the team -- one team is playing really poorly, and
4 the original ticket holder doesn't want to go to the
5 game, and just wants to offload their ticket.

6 A consumer who usually cannot afford a game,
7 they want to go and catch a game. It's priced at
8 the right number for him, and he would enjoy it.

9 So won't pay face for it, but would like to
10 purchase it.

11 Are they getting a deal?

12 BRIAN HESS: So with price floors, in
13 particular, the New York Attorney General found a
14 few years ago that it was anticompetitive; launched
15 an investigation into the NFL and their designated
16 resale exchange that put this kind of price floor
17 onto the ticket.

18 And they found it does artificially -- it
19 does hurt consumers by artificially raising the
20 price, actually.

21 So we would definitely recommend against
22 allowing for price floors, or, you know, any kind of
23 price controls, for that matter, because we do find
24 that it ends up hurting the fan more in the long
25 run.

1 CARL SZABO: Senator, could you imagine price
2 floors at a yard sale?

3 I mean, it violates our notion of two-party
4 transactions, where I want to sell it at a price
5 that's fair to me and you want to buy it at a price
6 that's fair to you.

7 You go to a yard sale, and you go to buy a
8 used up fold-up chair, and, suddenly, you have to
9 pay \$20 because the company who made the fold-up
10 chair put a price floor on it.

11 It's an absurd rule, and it's bad for
12 everyone.

13 SENATOR KAPLAN: Thank you.

14 I'm good, Senator Skoufis.

15 SENATOR SKOUFIS: Oh, okay. Thank you.

16 Let me see if there is anyone else.

17 I'll jump in, I don't see any other hands.

18 I'll ask the same yes-or-no question of each
19 of you that I asked the last panel.

20 We have -- we have disclosure requirements
21 related to speculative ticketing here in New York,
22 as of 2018.

23 Do you believe that the practice should exist
24 at all?

25 Should we ban speculative tickets; yes or no?

1 CARL SZABO: When you don't have a
2 contractual right to those tickets, yes.

3 The risk is, however, if, for example, I have
4 a full season of tickets that I have already
5 pre-ordered, and you don't yet have those tickets in
6 hand, that, then, yes, you should be able to give
7 away those tickets if you know you're not going to
8 be able to make the game six months down the road.

9 But, overall, if you don't a license -- or,
10 right to those tickets, then I think that's a
11 reasonable step.

12 BRIAN HESS: Agreed.

13 A lot of the speculative language that we end
14 up seeing in draft form, that prohibits speculative
15 ticketing, ends up accidentally incorporating sport
16 season ticket holder.

17 You know, I have season tickets to the
18 Washington Nationals, and so I know that I'm going
19 to have a game on May 11th that I can go to. Right?

20 Even though I don't physically have that
21 ticket in my hand yet, but I know it's coming,
22 I should be able to resell that if I wanted to, or
23 transfer it however I wanted to.

24 That should not -- if you were writing any
25 kind of spec ban, you need to make sure that you

1 include that season ticket holders are not counted
2 in that realm of speculation.

3 SENATOR SKOUFIS: But save for season
4 tickets, your organization would be supportive of
5 the ban?

6 BRIAN HESS: Yes. I do not support
7 speculative ticketing if I don't have the knowledge
8 that I will be receiving that ticket in the near
9 future, that I can then pass off to --

10 SENATOR SKOUFIS: Okay.

11 JOHN BREYAULT: Senator Skoufis, from our
12 point of view, we don't believe that speculative
13 ticketing has value for consumers.

14 And what we would also say is, that if you
15 were to ban speculative ticketing, the way I would
16 look at this, is to ban it prior to the public
17 on-sale.

18 What we saw at places like the FTC's
19 ticketing workshop a couple of years ago, was where
20 consumers and venues were seeing tickets go on sale
21 before they were even on sale at the box office.

22 That presents a very great danger, that a
23 consumer would be confused, and purchase a ticket
24 that they think is actually a real ticket, when, in
25 fact, it's just a speculative ticket, even with the

1 disclosures that are currently required.

2 So I think if you're looking to ban
3 speculative ticketing, I would focus on speculative
4 ticketing that may occur before the public on-sale.

5 SENATOR SKOUFIS: Okay.

6 ANNA LAITIN: I agree almost entirely.

7 I think we have seen some examples, where
8 tickets were already on sale, and white-label sites
9 were selling speculative tickets when, they did not
10 own the ticket, they did not have the ticket, but
11 tickets were still available at the venue.

12 So I think there are -- it's -- speculative
13 tickets are a huge problem. There do need to be
14 some carve-outs for things -- for things like season
15 tickets, and, potentially, other elements.

16 But, yes, agree that they -- a ban is
17 appropriate.

18 SENATOR SKOUFIS: Okay.

19 Thank you.

20 I want to talk, you know, there's been some
21 discussion with this panel, about the perceived
22 monopoly of Ticketmaster in the primary market.

23 And short of -- I guess my question is, short
24 of regulators, or prosecutors, coming in and
25 breaking up the monopoly, are there any steps that

1 we as a legislature can take to inject better
2 competition in the primary market here in New York?

3 For example, one idea that comes to mind,
4 should we bar these exclusivity arrangements between
5 Ticketmaster and event organizers, venues?

6 Should there not be exclusivity allowed?

7 Perhaps a more radical idea: Should there
8 be, effectively -- if there is no way to inject more
9 private competition, because Ticketmaster has just
10 taken it over almost completely, should there be a
11 public option when it comes to the primary market?

12 You know, perhaps it's, again, a little bit
13 out of left field.

14 But, what can we do to address the
15 anticompetitive existing nature of the primary
16 marketplace?

17 CARL SZABO: Senator Skoufis, I think the
18 first thing that you can do, is to reauthorize the
19 existing law, because one of the things that you are
20 very likely to see --

21 SENATOR SKOUFIS: Transferability,
22 understood.

23 CARL SZABO: -- transferability, number one,
24 because they're going to extend their vertical
25 merger into a horizontal merger and take over

1 secondary markets.

2 Second step could be in the vein of
3 self-dealing.

4 Now, one of the challenges that we're seeing
5 is, because there is a vertical monopoly between
6 Live Nation and Ticketmaster being the same company,
7 with the artists, the venues, and the ticket --
8 primary ticket sellers, there might be a way to
9 write in requirements to prohibit the internal
10 self-dealing within that vertical infrastructure.

11 So, for example, if Live Nation owns the
12 venue, and owns the artist, they can't then tell the
13 artist, you have to use Ticketmaster.

14 SENATOR SKOUFIS: Thank you.

15 Anyone else?

16 JOHN BREYAULT: Senator Skoufis, we opposed
17 the Ticketmaster-Live Nation merger back in 2009.
18 We thought it was a bad idea for all the reasons
19 that Carl just elaborated on.

20 I think we've been proven right.

21 Even the assistant attorney general for
22 antitrust who reviewed the merger has said that he
23 thinks that that consent order did not improve
24 competition.

25 So we would be supportive of steps that

1 New York would take, either regulatory, through
2 regulation or legislation, to inject more
3 competition into this marketplace.

4 CARL SZABO: Senator, may I make one last
5 recommendation?

6 SENATOR SKOUFIS: Sure.

7 CARL SZABO: So one of the things that you
8 see under a monopolist is prices either remain the
9 same or go up, because there's a derth of
10 competition as a fundamental sign of the existence
11 of a monopoly.

12 With respect to Ticketmaster, can anyone on
13 this panel say that service fees have gone down for
14 tickets?

15 No. They've either stayed the same or
16 they've gone up.

17 That is the sign of monopolistic control
18 where competition doesn't exist.

19 So this may get into limitations on the
20 primary ticket seller's service fees that they can
21 charge, and availability of other ways to make the
22 purchase with other services.

23 SENATOR SKOUFIS: Okay.

24 Before I continue, Senator Kaplan, do you
25 have anything more?

1 SENATOR KAPLAN: I'm good. Thank you.

2 SENATOR SKOUFIS: Okay. Thank you.

3 I'll keep going, then.

4 Thanks.

5 Let's talk about the service fees.

6 Should -- you know, we've talked a little bit
7 about price controlling in the secondary market,
8 generally. And I'll save -- I've got a question or
9 two on that.

10 But, should there be some controls within
11 these fees?

12 JOHN BREYAULT: Senator --

13 SENATOR SKOUFIS: Some -- it appears to me --
14 now, most -- most primary and secondary platforms do
15 seem to charge, or develop, their fees as a
16 percentage of the tickets.

17 However, that's not across the board.

18 There are some platforms that charge a flat
19 fee, which by its very nature is regressive.

20 However, as I shared in, I think, with the --
21 with the first panel, with Ticketmaster, an example
22 from, you know, a ballgame I looked at this morning,
23 whereby the cheap seats, you know, your fees
24 amounted to 40 percent of your ticket costs. But
25 the field-level seats, they were, I think, it was

1 only 15 or so percent of your total ticket costs
2 were the fees.

3 Should there be some controls in this area?

4 ANNA LAITIN: Well, I'll jump in quickly and
5 say, there's a couple of issues here.

6 One is, if it's truly a service fee, it
7 doesn't make sense. If it's an amount that it costs
8 to process a ticket, it doesn't make sense for it to
9 a percentage.

10 Does it make it -- or -- so, one of the
11 things we found, one of the stories that came into
12 us, this was from a gentleman who bought three
13 tickets from the same venue, same seller, to three
14 different concerts, and the fee structures were
15 completely different.

16 So there's no predictability to the fees.

17 What we have argued for at Consumer Reports
18 is less focus on the fees themselves than the price.

19 There's a lot of -- there seems to be a lot
20 of movement within the pricing of making the ticket
21 look cheaper, so increasing the service fees.

22 And we don't know precisely where all those
23 service fees go.

24 So the consumer sees one price, and it's the
25 ticket plus all the fees, and that's all they see.

1 We're less concerned about what the -- what
2 the service fee is as compared to the price, as long
3 as the consumer knows what they're being charged.

4 And then that can be worked out between the
5 venue, the seller, the performer, and whoever else
6 is getting a piece.

7 So, now, if there isn't all-in pricing, then
8 there's a larger call to deal with, sort of,
9 transparency, visibility, of these fees.

10 But I don't know that limitations on the fees
11 is exactly the right way to go.

12 SENATOR SKOUFIS: Thanks.

13 [Simultaneous speakers; indiscernible] --

14 CARL SZABO: Go ahead, John.

15 JOHN BREYAULT: Yeah, I would -- I would --
16 just to build on what Anna just talked about, an
17 all-in pricing requirement would address the
18 service-fee issue.

19 The cost of a ticket is the cost of a ticket,
20 and artists or theater owners are going to set it
21 where they want to.

22 By giving consumers the visibility at the
23 front end, when that fee -- when they first see the
24 price of going to that event, whether that fee is
25 10 percent of the face value, plus 90 percent

1 service fees; or 50/50; or some other combination,
2 I don't think consumers really care.

3 They just want to know how much it's going to
4 cost to get in the door.

5 So an all-in pricing requirement would
6 address the service-fee issue that you and other
7 members of the committee have raised today.

8 CARL SZABO: Senator, I think service-fee
9 requirements are most important when there's no
10 competition in the marketplace. That is where the
11 service-fee abuse is ripe to occur.

12 When you have multiple secondary platforms on
13 which to sell, I mean, you heard several different
14 ones on the prior panel, they're going to fight over
15 the same consumer base. They're going to fight over
16 service fees, prices, and the like.

17 What you don't see is the competition in the
18 primary ticket selling, which to many of the points
19 that were just made, I -- it seems incoherent to
20 have a different price from the face value and the
21 service fee when you're the one printing and handing
22 the ticket at the box office.

23 That service fee, like all other fees that
24 you're charging, whether it's cleaning the theater,
25 setting up the lighting, should all be encompassed

1 in that face value.

2 So when it comes to primary ticket sales, it
3 doesn't even make sense to charge a service fee.

4 SENATOR SKOUFIS: So how would you address
5 that?

6 Would you bar service fees in the primary
7 marketplace?

8 CARL SZABO: So if you did that, what would
9 happen is, service fees then just become the face
10 value.

11 SENATOR SKOUFIS: Is that what you suggest
12 happen? Or, what's your recommendation, I guess is
13 my question here?

14 CARL SZABO: I think my recommendation,
15 especially when it comes to primary ticket sellers,
16 that they should be required to have all-in pricing.

17 When it comes to secondary ticket sellers,
18 one of the challenges that they're going to face is,
19 they're dealing with venues all across the country.

20 That's something that should be addressed,
21 and should be done at the federal level.

22 When it comes to a venue in New York, they
23 know the laws in New York better than almost anyone,
24 because they live there.

25 When it comes to a service, where you've got

1 sellers across the country, it's a little different.

2 So I think it should be addressed, but it
3 should be addressed at the federal level for the
4 secondary ticket market.

5 Primary ticket sellers, the all-in pricing
6 should be when you go and buy the ticket.

7 SENATOR SKOUFIS: Okay.

8 Let me -- unless, Brian, you have anything to
9 add here, let me turn to price controls on -- in the
10 secondary market.

11 I agree with the sentiment completely that we
12 shared before when it comes to price floors.

13 So I want to focus on price ceilings.

14 I know, Mr. Hess, you -- in your opening
15 remarks, you made your position very clear that you
16 and your organization are concerned with that
17 concept.

18 If there's more to add, feel free, but I'm
19 interested in, thus, the other three on the panel.

20 And, you know, I posed this question a couple
21 of panels ago, and it was met with silence, which
22 was interesting to me. This was the Broadway panel
23 and the Times Union panel.

24 And the question is: Do you think that the
25 secondary marketplace should be completely

1 free market, should be completely open-ended; if
2 there is demand to purchase a ticket that is
3 100 times the face value, God bless, and have at it?

4 Or, do you think there should be some
5 reasonable controls, such that the average
6 New Yorker who is a working-class person, a
7 middle-class household, who is, from their
8 perspective, maybe locked out of these hot tickets
9 because, within 30 seconds, they weren't able to
10 jump into the primary market for that Justin Bieber
11 ticket; and, now, by God, you know, if I want to go
12 to this concert with my family, it's, you know,
13 \$500 a ticket, whereas it would have been, you know,
14 \$80 a ticket if I were one of the lucky few that got
15 in within 30 seconds when it opened up?

16 Do you think that there should be reasonable
17 controls vis-a-vis a price ceiling?

18 Or, do you think in some ironic way, perhaps
19 that is anti-consumer?

20 JOHN BREYAULT: So, Senator Skoufis, I'll
21 take that one.

22 You know, I think I share the frustration
23 that I think you elaborated on, of people who can't
24 get access to tickets at a fair price.

25 I know there are many shows I would like to

1 see, that I just can't afford to go to because my
2 budget doesn't allow it.

3 But price caps is a difficult issue, because
4 I don't think they work, to be honest with you.

5 I think what you'll -- what you would see is,
6 if you put a ceiling on -- on the price of tickets,
7 either on the primary or the secondary market, is
8 you would see, number one, more tickets go to
9 unregulated marketplaces.

10 So the street scalpers, for example, where
11 consumers have no guarantee of a refund if the
12 ticket ends up being bogus and doesn't get them in
13 the door.

14 Number two, I think you would find the
15 brokers were very adept at getting around price caps
16 when they existed in other states in past decades.

17 They would do things like say, okay, the face
18 value of the ticket is \$100, the market value is
19 \$500. We're going to sell you a \$500 steak dinner,
20 plus you get this \$100 ticket on the side.

21 So I think they would be adept at getting
22 around price caps.

23 I do think that in this case that, for
24 pricing of the ticket itself, the market seems to be
25 the best way to address that.

1 So, I -- we would not support price caps.

2 BRIAN HESS: There are also a lot of
3 instances on which you can find a ticket below the
4 face value on a secondary platform.

5 SENATOR SKOUFIS: Of course, of course.

6 CARL SZABO: Senator --

7 BRIAN HESS: But if you add in caps and
8 controls, it prevents the market from fluctuating
9 the way that it naturally would.

10 CARL SZABO: Senator, to flip it on its head,
11 one of my good friends, he's a season ticket holder
12 for Maryland basketball, University of Maryland.

13 It used to be more valuable in the past; not
14 so much anymore.

15 And there is one rabid fan, but there's one
16 game he would sell every year, and that's Maryland
17 versus Duke, their number-one rival. He would sell
18 it every year, and he would sell it above face
19 value.

20 You know what that would do?

21 That would cover the cost of his entire
22 season of tickets.

23 SENATOR SKOUFIS: Sure.

24 CARL SZABO: I, for example, likewise, was
25 able -- lucky enough to go see "Hamilton" in

1 Chicago. It was the last-minute ticket. And it had
2 been running for a while, so I got the ticket well
3 below face value.

4 Well, if I had come here, come back to D.C.
5 where I live, the Kennedy Center said, Well, you've
6 got to buy the entire season of Kennedy Center
7 tickets to have a shot at "Hamilton."

8 One of the things I considered doing was
9 buying that, and then selling the "Hamilton" ticket
10 to somebody who really wanted it, and then just pay
11 for an entire season of Kennedy Center tickets,
12 which I otherwise would never have, like, thought of
13 spending the money on.

14 So it does work in both directions as well.

15 There is a consumer benefit, because I was
16 able to, essentially, pay for something that
17 I otherwise couldn't afford, by selling a ticket
18 that I didn't necessarily want.

19 BRIAN HESS: Yeah, any kind of price cap will
20 affect the fans' decision when they choose doing the
21 best in the -- a season ticket. Right?

22 So a 42-game season ticket pass to a baseball
23 season is a lot of games that you have to commit to,
24 also, as a fan right out of the gate.

25 And I don't know if, you know, my grandmother

1 is going to pass, and I have to go to her funeral
2 that weekend.

3 I don't know if, you know, maybe I do have an
4 unexpected medical bill at some point, that selling
5 a ticket for 200 bucks, if that's what the market is
6 selling those tickets for, might help me with.

7 SENATOR SKOUFIS: I guess the question is --
8 sorry to interject.

9 I guess the question is:

10 No doubt about it, and I agree with what's
11 been said about season ticket holders, and how, you
12 know, this is advantageous and pro-consumer for
13 those that are engaged in season tickets.

14 My question is, for every one season ticket
15 holder that benefits, how many lower-income
16 New Yorkers are disadvantaged by there not being
17 caps?

18 You know, is it -- you know, for every one
19 season ticket holder who sells that Yankees ticket,
20 where, you know, they've got a big matchup against
21 the Red Sox, you know, are there 5 or 10 or
22 50 average New York families who cannot access that
23 Yankees versus Red Sox game because you have a flood
24 of tickets on the secondary market way above face
25 value?

1 ANNA LAITIN: I think, Senator, you make an
2 interesting point.

3 And I think some of the things you're talking
4 about, on limiting bots and others, where they
5 really jack up the prices, that could help with some
6 of this.

7 I think the problem is, for the instance
8 you're talking about, whatever you put the cap at is
9 where those really exciting tickets are going to end
10 up.

11 SENATOR SKOUFIS: Sure.

12 ANNA LAITIN: And then the lower-income
13 New Yorkers still won't be able to afford them,
14 because you can't -- it would be unfeasible to put
15 the cap low enough, probably, to make the
16 marketplace work.

17 So I think better than going for those caps
18 is to look for ways to eliminate the bots, and get
19 more real people buying the tickets at the front
20 end, so that when we're dealing with the secondary
21 market, we're dealing more with the instances that
22 Carl and Brian are talking about, of people selling
23 their tickets, rather than it being a market
24 completely overrun by the industry that is invested
25 in buying tickets solely for the purpose of resale.

1 BRIAN HESS: And -- but to Anna's point
2 with -- you know, if we get real people, real fans,
3 selling individual tickets more often than an
4 industry of bots doing it, so, if you price cap it,
5 you're just sending all of those tickets that are
6 being bought up by bots on the unregulated
7 marketplace, like Craigslist, which is going to put
8 those low-income fans that you're rightly concerned
9 about at a far greater disadvantage, where they have
10 no protections or guarantees or oversight from
11 larger platforms, or even in the public's eye of
12 what's going on.

13 The other way you can address your concern
14 about making sure that low-income or working-class
15 New Yorkers can get access to games is through the
16 Professional Facilities Act that's in New York right
17 now, which would give -- which would create a class
18 of tickets for afford -- of -- that's affordable to
19 the ZIP code in which the stadium is located to
20 fans.

21 And that's one way.

22 We have long supported that if a stadium is
23 tax-funded, there should be a litany of benefits
24 that the local communities get from that, because
25 seldom do tax-funded stadiums ever yield economic

1 results for localities.

2 One of those benefits we often times advocate
3 for is that the local community should get discounts
4 on tickets, or there should be a local rate for
5 community of people in that community to get a
6 less-expensive ticket.

7 And there are ways you can craft that law as
8 well, to prevent scalpers from buying up those
9 local, you know, less-expensive tickets, and jacking
10 up those.

11 I mean, there's other ways that we can work
12 on crafting that kind that legislation, to make sure
13 the implementation of it serves the need -- the
14 purpose.

15 SENATOR SKOUFIS: Okay. Thank you.

16 Do you all believe that the state can --
17 I guess it's a two-parter -- can, and should, if you
18 think that we can, prohibit primary marketplaces
19 from engaging in a secondary marketplace as well?

20 Of course, the obvious company here being
21 Ticketmaster.

22 Do you think the state can, basically,
23 prohibit that double-dipping that, Mr. Hess, you
24 described?

25 And if so, do you think that we should?

1 CARL SZABO: So under the Sherman Act,
2 I think you do have that power. It's federal law
3 applicable by the states.

4 And I wouldn't do it just wholesale, because
5 I think that could get a little sticky.

6 You do have smaller venues that maybe do want
7 to engage in that. I don't know.

8 I think it should be done once a business has
9 achieved a certain percentage of control of the
10 primary ticket sales.

11 I think that's really going to be your
12 trigger. That way, you can craft it in a way that's
13 not overinclusive.

14 Do I think you have the power?

15 Absolutely.

16 You absolutely have that power, under your
17 existing state consumer protection law; or,
18 literally, you're the lawmakers, you can write that
19 law. Your state Constitution would allow it.

20 But I do think it should be predicated, based
21 on dominance of the primary ticket market.

22 SENATOR SKOUFIS: Okay.

23 And do the rest of you agree? disagree?

24 JOHN BREYAULT: Senator Skoufis, yes, I agree
25 with Carl on this point.

1 And I do -- I would underscore that the
2 transferability protections that you're discussing
3 would also address this issue.

4 I think it's clear to us that primary
5 ticketers, like Ticketmaster, are trying to use
6 transferability restrictions, not to eliminate
7 resale, but to direct that resale to exchanges that
8 they control, where they set the fees and the
9 prices.

10 BRIAN HESS: Exactly.

11 SENATOR SKOUFIS: We talked a little bit
12 about the fees.

13 As you all may know, we have a
14 "reasonableness" clause in Article 25, as it
15 pertains to ticket sales.

16 Seems to be a self-defining statute, as we
17 heard from Ticketmaster much earlier on today.

18 Do you think that we need to better define
19 that "reasonableness" provision?

20 JOHN BREYAULT: Senator Skoufis, I mean,
21 I think that the all-in pricing issue that we talked
22 about would be a way --

23 SENATOR SKOUFIS: That covers it?

24 JOHN BREYAULT: -- would cover it.

25 SENATOR SKOUFIS: Right.

1 JOHN BREYAULT: I mean, I think that that's
2 the best way.

3 I would, however, point out, I can't help but
4 note that Mr. Marcus on the first panel was very
5 quick to point the finger at venues and artists and
6 promoters who set the fees that they end up
7 charging.

8 I think what he neglected to mention to you
9 was that, those same promoters and venues and
10 artists, and Ticketmaster itself, are all owned by
11 the same company, Live Nation Entertainment.

12 So those fees do -- do end up trickling up to
13 the parent company regardless of who they're set by.

14 I thought that that was a fairly disingenuous
15 comment on his part.

16 SENATOR SKOUFIS: Do you all agree that
17 all-in would cover this issue?

18 [Simultaneous speakers; indiscernible.]

19 SENATOR SKOUFIS: Yeah. Okay.

20 What about platinum tickets; your thoughts?
21 Should we be regulating those specifically,
22 or those types of tickets, banning them?

23 If we're talking about price controls, maybe
24 price controls on these type of tickets?

25 What are your thoughts on what I view -- and,

1 you know, it's -- and I meant to quote

2 Ticketmaster's website when Mr. Marcus was here.

3 They, on their website, claim, quote, They
4 give fans fair and safe access to some of the best
5 seats in the house, unquote.

6 Those are the platinum tickets that they
7 provide.

8 I think most consumers who look at this
9 objectively would dispute that, you know, Seat 10-A
10 priced at \$10,000, platinum ticket, next to
11 Seat 10-B, the same seat, basically, priced at, you
12 know, a third of that, is not exactly fair.

13 And so my question to you is: What should we
14 do about these platinum tickets, if anything?

15 CARL SZABO: I think what you can do is,
16 just, I think transparency is going to be the first,
17 most important, step.

18 When it comes to the idea of platinum
19 tickets, I -- look, I'm a free-market guy, so
20 I appreciate maximizing profit. But trying to
21 pretend that it's good for the consumer is not
22 accurate.

23 When you're setting up a show, you know your
24 total overhead costs are going to be.

25 You know how much the venue is going to

1 charge, your electricity, your law enforcement,
2 people who clean it up.

3 And you take all that, divide by the number
4 of total seats you think you're going to sell, and
5 that's the face value of the ticket.

6 If you don't think you can get that face
7 value, then you don't have the show.

8 These are the basic economics that every
9 promoter goes into a show with.

10 So the basis that a platinum ticket is good
11 for a consumer doesn't hold water.

12 But I do think making clear the number of
13 tickets that are being used for this behavior will
14 really help make clear what's going on, more so than
15 just, when I sit down at an event, and I turn to the
16 person sitting next to me, and find out they paid
17 \$200 less than I did, that's not what you want to
18 do.

19 I think being transparent at the front end is
20 going to be really key to ameliorating a lot of
21 these problems.

22 SENATOR SKOUFIS: The rest of you, any
23 thoughts?

24 JOHN BREYAULT: And, Senator, just to
25 clarify, when you're talking about platinum tickets,

1 I believe that you're referring to dynamic pricing?

2 Is that correct?

3 SENATOR SKOUFIS: So, in effect, that's what
4 it is, yes.

5 But it's a -- you know, it's a specific
6 practice that Ticketmaster engages in.

7 You know, they disputed my characterization
8 as, you know, a certain number of tickets being
9 reserved for platinum tickets; but, in effect, that
10 is what it is.

11 And they're put on sale shortly after the
12 main pool of tickets is sold out; and, you know,
13 thus, they come at a premium for some of their
14 higher-echelon clients, if you will.

15 But, yes, effectively, it's dynamic pricing.

16 JOHN BREYAULT: So I think what concerns me
17 most about dynamic pricing is, what signals are
18 being used to show a certain price to a certain
19 consumer?

20 The FTC, later this month, will be holding a
21 workshop on so-called "dark patterns."

22 This takes in idea -- you know, how a certain
23 price is provided to a certain consumer.

24 Is it because I have more Twitter followers
25 that I got this price?

1 Is it because I clicked on an ad at some
2 point that I got the price?

3 Is it because they know that I have a
4 higher-limit credit card that I'm getting that
5 price?

6 It's all very much a black box, in terms of
7 why a particular consumer is provided with a certain
8 price.

9 Now, some of that may be addressed through
10 all-in pricing requirements. If that's the price
11 that you're going to charge me, just let me know up
12 front.

13 But it's -- I think that more -- more
14 transparency into how these prices are being set is
15 something that would help the industry right now.

16 As to whether \$10,000 is enough to see
17 Justin Bieber, I can tell you what I think about
18 that as a fan of punk rock.

19 But I -- but is it -- what -- is it -- is it
20 what the market would bear? I really couldn't tell.

21 But I can tell you that the signals that go
22 into setting that price are entirely opaque and
23 unclear to consumers.

24 SENATOR SKOUFIS: Okay.

25 My last question, because I have gone on for

1 long enough here, is:

2 Do you -- and this came up a little bit
3 earlier, or I alluded to it.

4 Do you believe that these platforms should be
5 required to report bot activity to prosecutors?

6 We heard pretty clearly that, yes, it sounds
7 like they respond when the AG or other prosecutors
8 ask about bot activity.

9 But they, unprompted, do not -- do not
10 forward those referrals to prosecutors when they
11 discover them.

12 A. Do you believe that they have the
13 wherewithal, technology, infrastructure, et cetera,
14 to very clearly, and relatively easily, identify
15 when there is bot activity?

16 And, B. Do you think they should be mandated
17 to report it?

18 BRIAN HESS: Yes, and yes.

19 CARL SZABO: So, Senator, I'm going to
20 disagree with some of my colleagues on the mandate
21 for reporting when discovered, because one of the
22 things that this would do, it would actually create
23 a disincentive to seek them out.

24 Remember, if I'm a primary ticket seller,
25 what's my number-one goal?

1 My number-one goal is to sell tickets.

2 At the end of the day, I don't care if it's
3 one person buying 1,000 tickets, or 1,000 people
4 buying one ticket.

5 In fact, the former is often easier than the
6 latter.

7 By, essentially, criminalizing failure --
8 duty to report, it gives even more of an incentive
9 to lower the guard against bots, because, now, if
10 I'm doing a great job protecting against bots, and
11 I neglect to report it, now I'm on the hook.

12 I think an alternative could be, an annual
13 report on the number of referrals that were made.

14 That way, you're not criminalizing the
15 monitor and the failure to report, but you're making
16 transparent the number of referrals that occur.

17 That way, when, for example, you, Senator,
18 ask the vice president of Ticketmaster in charge of
19 ticketing, how many referrals he made to your state
20 AG, and he says, "I don't know," he might actually
21 have access to that information.

22 I think that would address it.

23 SENATOR SKOUFIS: John and Anna, what are
24 your thoughts?

25 JOHN BREYALULT: Senator, I'm going

1 respectably disagree with Carl on this one.

2 CARL SZABO: Okay.

3 JOHN BREYAULT: I do think that -- as
4 I mentioned in any remarks, that they should be
5 required to report this.

6 As Ticketmaster never fails to talk about,
7 they invest ten of millions of dollars in fighting
8 bot usage.

9 Why wouldn't they want to report this
10 information to allies, like the New York Attorney
11 General's Office?

12 We had a federal "bots" statute on the books
13 since 2016.

14 And this January was the very first time that
15 the Federal Trade Commission, and, in fact, as far
16 as I know, any enforcement body, has brought a case
17 against a ticket bot since probably the wise-guys
18 case, which was mid-2000s. And that wasn't even
19 under federal "bot" statute.

20 So they should have every incentive to report
21 this.

22 Why they don't, I have my suspicions.

23 But I think, given the harm that illegal bot
24 usage poses to consumers, I do think that the
25 organizations that have the data to show that use,

1 Ticketmaster, other primary ticketers, the venues,
2 who have access to things like the ticket manifest,
3 should be required to provide that, and they should
4 be more willing to do so than pushing back against
5 requirements that they are required to do so.

6 BRIAN HESS: And they do have the ability.

7 And I think what demonstrates that is what
8 the "Toronto Star" uncovered a couple of years ago,
9 when they found out that Ticketmaster, on their
10 resale, was actually helping brokers use bots to
11 circumnavigate the bot detection technology to
12 resell their tickets.

13 SENATOR SKOUFIS: Hmm.

14 BRIAN HESS: Ticketmaster has been engaged in
15 this.

16 That's -- that's -- my opinion, why they
17 aren't actively referring the detections over, is
18 they want to be in this space; they want to make
19 all -- you know, take all the sales they can,
20 regardless of if it skirts the law or not.

21 ANNA LAITIN: I'll jump in and say an
22 absolute yes on, they can do it.

23 On this question of the mandate, I actually
24 haven't given it enough thought, and I would like to
25 spend some more time on that, because I understand

1 what Carl is saying; but, at the same time, they are
2 not doing now.

3 And if a mandate is what it takes, then that
4 may be the case.

5 SENATOR SKOUFIS: Okay.

6 Senator Kaplan, have you cultivated any
7 questions as I've rambled on here, or are you good?

8 SENATOR KAPLAN: No. I've actually enjoyed
9 listening to everybody.

10 Thank you so much for your testimony.

11 I think you highlighted, really, transparency
12 I think is very -- is key.

13 And you all brought very good points.

14 And, again, thank you for coming in, and
15 testifying.

16 SENATOR SKOUFIS: Yeah, and I'll echo that.

17 I want to thank each of you.

18 You all provided a lot of great information
19 and insight.

20 I suspect that we will be in touch in the
21 weeks ahead as we contemplate the sunset that --
22 that's due on July 1st.

23 But, you know, this is -- this has been
24 terrific testimony.

25 Thanks to each of you.

1 And thanks to everyone who has hung in there
2 with us over the last few hours.

3 This concludes our hearing.

4 I want to, in particular, thank, from my
5 office, Evan Gallo, as well as Tara McCoy; and
6 central staff for assisting with the technological
7 capabilities here as we have conducted the hearing;
8 and all my colleagues as well who participated.

9 Thanks very much, everybody.

10 Enjoy the rest of the day.

11 JOHN BREYAULT: Thank you, Senators.

12 ANNA LAITIN: Thank you.

13
14 (Whereupon, at approximately 1:54 p.m.,
15 the public hearing held by the joint committees
16 concluded, and adjourned.)

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