

# “That’s the Ticket” Workshop

STAFF PERSPECTIVE | MAY 2020

## Introduction

Consumers spent about \$10 billion for online tickets to concerts, sporting events, theater, and other live events in 2019.<sup>1</sup> Unfortunately, deceptive advertising in the online event marketplace persists despite FTC and state attorney general law enforcement actions against ticket sellers and resellers.<sup>2</sup> Views on how to address these and other problems in the ticket marketplace vary considerably among the market’s many players, including artists, sports teams, promoters, venues, primary ticket sellers, ticket resale platforms, and brokers. To bring together these divergent views and explore possible solutions, the FTC hosted a public workshop, entitled “That’s the Ticket,” on June 11, 2019.<sup>3</sup>

In this staff perspective, we highlight key takeaways from areas covered by the workshop, including how the unique circumstance of intentional underpricing of primary market tickets together with the expansion of the internet has led to an online event ticket market ripe for opportunistic and deceptive practices. Many workshop participants advocated for federal legislation and enforcement to protect consumers and encourage a fair and transparent online event ticket market.

## The Ticket Market Is Broken

The workshop’s keynote speaker<sup>4</sup> acknowledged, “As an economist, it’s clear that the ticket market is broken in significant ways.” He explained that before the primary and secondary ticket markets moved to the internet, tickets were sold in localized markets with few economies of scale. A person could get only one spot in line to buy tickets, and only one person (e.g., a ticket scalper) could resell those tickets outside the venue. As event ticket selling has moved almost exclusively online, ticket buying and selling are no longer localized, but are transacted on a nationwide basis. Yet consumers have not necessarily realized the benefits of the resulting massive economies of scale.

The keynote speaker observed a phenomenon unique to the event ticket market – intentional underpricing. He explained that because concerts and sporting events are social events, artists and sports teams have incentives for underpricing tickets. Going to an event that is half-empty (because primary market prices were set too high) is not what artists, sports teams, promoters, or consumers want. In addition, artists and teams have long-term public relations goals to have fans perceive them as fair, especially die-hard fans who cannot afford pricey tickets. Artists and teams may choose to forgo short-term revenue for the long-term benefits resulting from preserving their reputations and fan bases.



This intentional underpricing means that the primary market offers tickets for sale at far less than their market value. The gap between the face value of a high demand ticket and its market value is seen as “free money” by those brokers who are able to scoop up underpriced tickets and resell them for substantial profit.<sup>5</sup> Despite changes in the law, brokers may use bots or other means to purchase these underpriced tickets before ordinary consumers can buy them at face value.

## **The Scarcity of Primary Tickets to Popular Events: Causes and Possible Solutions<sup>6</sup>**

### **THE ROLE OF HOLDBACKS AND STAGGERED SALES**

As Commissioner Slaughter noted in her opening remarks, consumers are often frustrated that they cannot buy tickets at face value to highly desired events on the primary market, and therefore must pay a much higher price on the resale market. Holdbacks – the practice of venues reserving tickets for later sale or for the use of performers, promoters, season ticket holders, and other select entities – likely contributes to this situation, both because it reduces the number of tickets available for the general public and because many of these tickets end up on the resale market at a higher price.

A New York Attorney General investigation revealed that promoters held back approximately sixteen percent of tickets for industry insiders, and in some cases artists held back as much as thirty percent of available tickets.<sup>7</sup> Some workshop participants strongly disputed the claim that artists and promoters routinely hold back large volumes of tickets, stressing that artists, promoters, and ticketing companies share a common goal to get as many tickets as possible into the hands of consumers in the most efficient manner.

Having a single public “on-sale” for an event, where primary ticket sellers make all tickets available to the public at once, is no longer the norm. Artists, teams, theater productions, and other event providers now make tickets available through a number of avenues geared to different customer types. For example, artists or promoters may choose to sell some tickets through fan clubs or to holders of particular credit cards. Workshop participants debated whether these specialized on-sales to limited audiences help or disadvantage ordinary consumers. Presales to fan clubs can benefit consumers by enabling artists and promoters to identify and reward dedicated fans with affordable access to events, while also deterring brokers and bot users. Artists and promoters typically publicize fan club sales on artists’ websites or in press releases. Panelists noted that credit card member-only on-sales also are well-publicized and open to large numbers of consumers; such sponsorship arrangements also can help to defray costs of live shows, making them more affordable to consumers.

### **WOULD MORE TRANSPARENCY ABOUT TICKET ALLOCATIONS HELP CONSUMERS?**

Workshop participants expressed divergent views on the benefits of providing consumers with transparency about: the number or percentage of tickets given to artists and promoters for their own use; the number or percentage of tickets allocated for fan club sales, credit card member-only on-sales, or public on-sales; how consumers qualify for specialized on-sales; and ticket release schedules, e.g., for staggered batch tickets or dynamically priced tickets (where prices change in real time depending on market demand). Federal and state legislators have proposed

legislation requiring such transparency. Brokers and resale market platforms assert that such information would help manage consumer expectations about their chances of obtaining tickets to particular events and assist in their buying decisions.<sup>8</sup> In contrast, workshop participants representing artists and the primary market opined that increased transparency about ticket allocations could simply provide a roadmap for brokers as to where they should focus their ticket purchasing efforts to scoop up the highest demand tickets at the lowest prices.

### **WOULD LIMITING TRANSFERABILITY OF SOME TICKETS HELP CONSUMERS?**

Some participants recommended allowing artists and teams to restrict the resale of some or all of their tickets. Artists and teams could continue to set low prices, but transferability restrictions would prevent brokers from buying up the underpriced tickets and reselling them at a substantial mark-up. Promoters and primary ticket sellers said such a practice would put affordable tickets in the hands of consumers – the true fans.<sup>9</sup> A workshop participant explained that in New York, which requires all tickets to be transferable, professional brokers often buy up to seventy-five to eighty-five percent of available lower-priced tickets. An Assistant New York Attorney General agreed that the ban on non-transferability has contributed to ticket unavailability to consumers, and he supported changing the law to allow content providers to make some tickets non-transferable.

Other participants argued that limiting ticket transferability may lead to higher prices and emptier venues. For example, a large percentage of Major League Baseball tickets are sold below face value across multiple platforms, allowing fans to get cheaper tickets and games to be better-attended. Restricting ticket transferability could impose artificial price floors for events that do not sell out, and would eliminate the role of brokers in off-loading risks for sports teams and entertainers by purchasing tickets up front, assuming the risk that some tickets will not be resold. Some participants argued that limiting ticket transfers or resales to a single platform could deter competition and ultimately harm consumers. Some participants instead suggested integrated ticketing systems so that consumers selling their tickets through different resale marketplaces could connect to the primary ticketing company to complete the transfer, protecting against ticketing error and fraud.

### **BOTS IN THE ONLINE TICKET MARKETPLACE<sup>10</sup>**

Bots are computer programs written to mimic human interactions on computers, sometimes at greatly accelerated speeds. As Commissioner Slaughter stated in her opening remarks, profit-seeking buyers use bots to tie-up and buy large volumes of tickets, thereby gaining an advantage over ordinary consumers who are unable to get tickets to high demand events unless they pay higher – sometimes exorbitant – prices on the resale market. An Assistant New York Attorney General pointed out that ticket resellers also evade ticket-purchasing limits by other means, including using hundreds of credit card numbers, proxy IP addresses, or other tools that hide their identities and make it appear that ticket purchases are unrelated to each other.

The Better Online Ticket Sales Act (“the BOTS Act”), passed by Congress in 2016, makes it illegal to use bots or other means to circumvent limits on bulk-ticket purchases. The BOTS Act also makes it illegal to *sell* tickets obtained in violation of the statute if the seller participated in the illegal purchase, or knew or should have known how the tickets were purchased. The Commission and State Attorneys General share enforcement authority under the BOTS Act.<sup>11</sup>

Workshop participants noted that thwarting bots and identifying the entities behind them still are not easy tasks, given both the continual innovation by bots developers and the large number of players and platforms involved in the ticketing markets. However, some panelists described recent industry efforts to defeat or deter them – such as the addition of virtual waiting rooms and fan verification programs. Workshop participants emphasized the need for coordination among the primary and secondary ticket markets, the technology sector, and law enforcement to mitigate these challenges.

## Obscuring the True Price of Tickets<sup>12</sup>

### TICKET COST TRANSPARENCY: ALL-IN TICKET PRICING

On most primary and resale platforms, the ticket price a consumer first sees is not what the consumer will pay. Mandatory fees, such as “venue” and “ticket processing” fees, bulk up the price – often by as much as thirty percent.<sup>13</sup> Consumers often do not see these fees until after they have selected their tickets, sometimes only after entering their payment information. The late disclosure of fees increases search costs for consumers and makes it harder to comparison shop. An economist<sup>14</sup> explained that price obfuscation (hiding) causes prices to go up and causes a misallocation of tickets. Tickets will not necessarily go to the consumers who value them the most because consumers make purchasing decisions before learning the actual cost. That economist views obfuscation as largely a problem of the resale market, where similar tickets (or the exact same ticket) to one event might be offered on multiple platforms. A consumer advocate asserted that price obfuscation also harms primary ticket shoppers who select the most expensive tickets they can afford but then incur substantial additional fees.

Among workshop participants, views varied on how best to display ticket prices and fees. One participant referenced a study showing that consumers prefer to see fees broken out, followed by a sum of the total cost. An economist noted research showing that when consumers are presented with a price broken into parts without the total sum, they often miscalculate.

As Commissioner Slaughter noted, it is difficult for any single platform to impose all-in pricing, as it would likely lose business to those who continue to hide true prices. The keynote speaker noted that this is exactly what happened to one resale platform that unilaterally launched an all-in pricing model.<sup>15</sup> This platform lost significant market share and abandoned the policy after a year because consumers perceived the platform’s advertised prices to be higher than its competitors’ displayed prices, which did not include fees. As a model for regulation, both the keynote speaker and Commissioner Slaughter pointed to the airline approach. Under the Department of Transportation’s revised Full Fare Advertising Rule, all mandatory fees must be included in the ticket display price.<sup>16</sup>

All of the workshop panelists who discussed the fees issue, including each participating ticket seller that does not currently provide upfront all-in pricing, favored requiring all-in pricing through federal legislation or rulemaking. A workshop participant stressed that any proposed legislation must include a robust enforcement component with meaningful penalties to deter violators. The participant explained that three Canadian provinces have adopted all-in pricing legislation but, due to lack of enforcement, many industry members do not comply. In her closing remarks, the Associate Director for Advertising Practices recognized that the all-in

pricing prisoner's dilemma makes this "a ripe area for legislation, followed by vigorous enforcement that would establish an even playing field where it would best protect consumers."

### **TICKET COST TRANSPARENCY: FACE VALUE OF TICKETS**

Although some have suggested legislation requiring ticket sellers to display the "face value" of tickets when listing them for sale, a number of workshop participants said that such a requirement would not be feasible or useful to consumers. One workshop participant explained that it is sometimes difficult to determine a ticket's "face value" because the price paid might depend on how many tickets were bought together, whether they were purchased as part of a package, or if they were dynamically priced. Ticket resale marketplaces are not necessarily in a position to verify whether the listed face value is accurate. Aside from accuracy concerns, the face value might not be useful to consumers, as the price originally set for a ticket might not reflect its true market value some months later. A consumer advocate opined that in some cases the price differential between the face value and asking price could alert consumers that they are not on a primary sale site.

### **When a Ticket Isn't a Ticket, or a "Primary" Seller is a Secondary Seller<sup>17</sup>**

#### **SPECULATIVE TICKET SELLING**

Some resale platforms allow "speculative ticket" listings – listings that are not for actual tickets but for the "option to buy" the listed (or comparable) tickets if a reseller can obtain them after a consumer's purchase. A recent New York Attorney General lawsuit alleged that more than \$91 million worth of speculative tickets were sold in New York state over approximately six years.<sup>18</sup> Workshop participants identified numerous problems with speculative ticketing: sellers do not clearly disclose that they do not have tickets in hand; even when sellers do disclose clearly, consumers still do not understand, and may pay more for speculative tickets than they would for available, actual tickets; and when sellers fail to deliver actual tickets, consumers may incur losses that significantly exceed the ticket price.

Speculative ticket listings typically look like a listing for an actual ticket, displaying a zone, section, and/or row. Prices and fees, especially for popular events, are often higher than listings for actual tickets offered simultaneously on the primary market. Some resellers post speculative listings for events before actual tickets are available to consumers on the primary market. Many consumers do not realize they are not purchasing actual tickets. Even if a reseller discloses that a listed ticket is not in hand, consumers may mistakenly believe the reseller is the primary seller or has an agreement with the primary seller to get exclusive tickets. Unfortunately, many consumers learn the truth only weeks or months after purchase, when the seller cancels their order or otherwise fails to deliver tickets.

Several workshop participants supported federal legislation like the proposed Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act, which would require resellers to provide clear disclosures when tickets are not in hand. However, other workshop participants asserted that similar state legislation, which requires resellers to provide a written notice when they do not possess or have a legal right to a ticket,<sup>19</sup> has been ineffective. Venues in states that

require such disclosures continue to receive consumer complaints about cancelled speculative ticket orders that consumers thought were for actual tickets.

Given the ineffectiveness of disclosures regarding speculative tickets, some participants advocated restricting or outlawing the sale of speculative tickets. Nevada prohibits all speculative ticket sales, and one workshop advocated that Congress adopt similar legislation. At a minimum, some participants argued, it should be illegal to sell speculative tickets before actual tickets go on sale.<sup>20</sup>

For consumers who purchase speculative tickets and never receive actual tickets, refunds may be insufficient to make them whole. Such consumers lose not only the (difficult to quantify) opportunity to see their favorite artist or sports team, but also may have incurred transportation or lodging expenses. While one participant pointed out that many ticket resellers provide consumers a 200% refund if they fail to provide valid tickets in time for an event,<sup>21</sup> a venue participant criticized this as an arbitrary amount that fails to compensate some consumers for their actual losses.

### **TICKET RESALE WEBSITES THAT USE DECEPTIVE WEBSITE URLS AND DESIGNS**

Despite Commission enforcement efforts,<sup>22</sup> numerous ticket resellers continue to use deceptive website URLs and landing pages that are difficult to distinguish from those of venues, artists, or other primary ticket sellers.<sup>23</sup> Workshop participants recommended federal legislation and increased law enforcement, opining that self-regulation is unlikely to deter resellers who engage in deceptive practices by making themselves look like primary sellers. Although some states have passed legislation, participants agreed that stronger, more consistent legislation is needed. A venue participant opined that New York's law, which penalizes resellers that intentionally mislead consumers when using venue or event names in URLs,<sup>24</sup> has been ineffective in preventing consumer deception in this area. Another participant suggested the need for federal legislation similar to laws in states like Maryland and New Jersey, which prohibit resellers from using venue, event, or similar names in website URLs unless authorized by the primary ticket seller.<sup>25</sup> One panelist noted that only federal legislation could ensure consistent protections for consumers regardless of where a consumer, venue, seller or reseller is located. While acknowledging the need for strong federal legislation, one participant urged the Commission to pursue more law enforcement actions under its current authority.

### **Post-Workshop Developments: Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act of 2019**

FTC staff notes that two days after its workshop, on June 13, 2019, U.S. Representatives Bill Pascrell, Jr. and Frank Pallone, Jr., and Senator Richard Blumenthal reintroduced the Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act, commonly referred to as the BOSS ACT.<sup>26</sup> The proposed legislation seeks to enhance transparency about ticket allocations, pricing, and face value. First, the proposed legislation would prohibit persons who receive tickets due to their affiliation with venues, artists, or promoters from selling acquired tickets on the resale market at a price higher than the primary sale price for such tickets. Second, it also would require that primary ticket sellers disclose, a week before the public on-sale, the total number of tickets available to the general public. Third, the proposed legislation would



prohibit restrictions on the resale of tickets purchased from a primary seller, prohibit primary sellers from setting minimum prices at which tickets can be resold, and prohibit sanctions against persons who sell or purchase tickets through a resale market. To improve transparency in ticket pricing, the proposed legislation would require ticket sellers to disclose all mandatory fees before a consumer selects a ticket and would prohibit sellers from changing the ticket's price during the purchase process.

With regard to speculative ticketing, the proposed legislation would require resellers to disclose to consumers if they do not possess a ticket listed for sale.<sup>27</sup> It also would require resale websites to provide a full refund (including the ticket price and fees) to consumers to whom they fail to provide a purchased ticket. The proposed legislation would address deceptive resale website URLs and landing pages by prohibiting ticket resale marketplaces from representing an affiliation with a venue, team, or artist without consent. These marketplaces also would be required to notify consumers that they sell resale tickets.<sup>28</sup>

The proposed legislation gives the Commission rulemaking authority and gives enforcement authority to both the Commission and state attorneys general. It also provides a private right of action.

## Conclusion

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Throughout the workshop, participants suggested federal legislation, together with strong enforcement and meaningful penalties, to address various practices in the primary and resale ticket marketplaces that cause consumer injury. Should Congress enact federal legislation to address consumer protection concerns in the ticket marketplace, FTC staff recommends the legislation give the Commission authority to engage in notice and comment rulemaking and civil penalty authority to comprehensively address unfair and deceptive practices in the online ticket market.

## Endnotes

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<sup>1</sup> IBISWorld, *Online Event Ticket Sales in the U.S.: Market Research Report* (Mar. 2019), <https://www.ibisworld.com/industry-trends/specialized-market-research-report/online-retail/lifestyle-services/online-event-ticket-sales.html> (estimating \$10 billion in event ticket sales for 2019).

<sup>2</sup> *FTC v. Ticketmaster, L.L.C.*, No. 1:10-cv-01093 (N.D. Ill. Feb. 18, 2010) (stipulated order) (challenging practices of failing to disclose to consumers when they are directed from a primary ticket website to a resale website and when resellers do not possess or have rights to tickets listed for sale); *FTC v. TicketNetwork, Inc.*, No. 3:14-cv-01046-RNC (D. Conn. Aug. 12, 2014) (“*TicketNetwork*” stipulated order) (challenging resellers’ use of search engine ads, URLs, and website pages designed to look like those of venues and artists to deceive consumers); *FTC v. SecureBoxOffice, LLC*, No. 3:14-cv-01046-RNC (D. Conn. Aug. 13, 2014) (“*SecureBoxOffice*” stipulated order) (same as *TicketNetwork*); and *FTC v. Ryadd, Inc.*, No. 3:14-cv-01046-RNC (D. Conn. Aug. 12, 2014) (“*Ryadd*” stipulated order) (same as *TicketNetwork*). (The *TicketNetwork*, *SecureBoxOffice*, and *Ryadd* stipulated orders resolved joint FTC and State of Connecticut actions.)

<sup>3</sup> Videos of the workshop are available at <https://www.ftc.gov/news-events/events-calendar/2019/03/online-event-tickets-workshop>.

<sup>4</sup> Eric Budish is a Professor of Economics at the University of Chicago, Booth School of Business, Co-Director of the Initiative on Global Markets and Chicago Booth, and a Research Associate at the National Bureau of Economic Research. His research is on market design, including the design of event ticket markets.

<sup>5</sup> Professor Budish explained that dynamic pricing (pricing that varies to reflect the changes in market conditions, such as increased demand) with market-clearing prices helps avoid ticket underpricing; however, it may make primary tickets less affordable to consumers.

<sup>6</sup> *Other Consumer Protection Issues Around Ticket Availability*, Panel 1-B, included participants: Gary Adler, Executive Director and Counsel, National Association of Ticket Brokers; Russell D’Souza, Cofounder, SeatGeek; David Marcus, Executive Vice President, Head of Ticketmaster Music, Ticketmaster; Jeff Poirier, General Manager of Music, Theatre & Performing Arts, StubHub; Joe Ridout, Manager of Consumer Services, Consumer Action; Bob Roux, President of United States Concerts, Live Nation Entertainment; and Noah Stein, Assistant Attorney General, Bureau of Internet & Technology, New York State Attorney General’s Office.

<sup>7</sup> “Obstructed View: What’s Blocking New Yorkers from Getting Tickets,” Office of the New York State Attorney General Eric T. Schneiderman (Jan. 2016), [https://ag.ny.gov/pdfs/Ticket\\_Sales\\_Report.pdf](https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf).



<sup>8</sup> For example, a workshop participant suggested Ontario's recently amended Ticket Sales Act as a model for improving transparency in the U.S. market. Ontario's law requires ticket sellers to disclose how many tickets in total will be available, and, if tickets will be sold in batches, to disclose in advance the date, time, and number of tickets in each batch.

<sup>9</sup> Professor Budich explained that prohibiting ticket reselling completely also would prevent rent-seeking and get affordable primary tickets in the hands of consumers.

<sup>10</sup> *Bots and the BOTS Act*, Panel 1-A, included participants: Gary Adler, Executive Director and Counsel, National Association of Ticket Brokers; Rami Essaid, Co-founder, Chief Product Officer, Distil Networks; David Marcus, Executive Vice President, Head of Ticketmaster Music, Ticketmaster; Jeff Poirier, General Manager of Music, Theatre & Performing Arts, StubHub; Joe Ridout, Manager of Consumer Services, Consumer Action; and Noah Stein, Assistant Attorney General, Bureau of Internet & Technology, New York State Attorney General's Office.

<sup>11</sup> 15 U.S.C. § 45(c). The BOTS Act, which applies to event tickets for public concerts, theater performances, sporting events, and similar activities at venues with seating capacities of over 200, prohibits the circumvention of a security measure, access control system, or other technological control measure used online by a ticket issuer. It also prohibits selling or offering to sell an event ticket obtained through such a circumvention violation if the seller participated in, had the ability to control, or should have known about the violation.

<sup>12</sup> *The Adequacy of Ticket Price and Fee Disclosures*, Panel 2, included participants: Laura Brett, Director, National Advertising Division of Better Business Bureau National Programs; Russ D'Souza, Co-founder, SeatGeek; Sara Fisher Ellison, Senior Lecturer, Massachusetts Institute of Technology's Economics Department; Anna Laitin, Director of Financial Policy, Consumer Reports; John Lawrence, Counsel, StubHub; Tamara Mendelsohn, Vice President and General Manager of Consumer, Eventbrite; and Patti-Anne Tarlton, Executive Vice President of Venues and Promoters, Ticketmaster.

<sup>13</sup> Government Accountability Office, *Event Ticket Sales: Market Characteristics and Consumer Protection Issues* (Apr. 2018) (GAO-18-347), [www.gao.gov/products/GAO-18-347](http://www.gao.gov/products/GAO-18-347) ("GAO Report") (finding that primary and resale ticket companies charge total fees averaging 27 percent and 31 percent, respectively, of the ticket's price.) The GAO noticed that, for most events it reviewed, consumers could not figure out fees until selecting a seat, clicking through additional screens, creating a user name and password (or logging in), and clicking an "Order Details" icon. Moreover, fees were often displayed in fonts significantly smaller than those used for ticket prices.

<sup>14</sup> Sarah Fisher Ellison is a Senior Lecturer, and award-winning instructor, in the Massachusetts Institute of Technology's Economics Department. Her best-known research in the area of ecommerce examines search and obfuscation.

<sup>15</sup> In 2014, StubHub unilaterally made its fees transparent through an all-in pricing model, while its competitors did not change their practices.

<sup>16</sup> 49 U.S.C. § 41712, with implementing regulations at 14 C.F.R Part 399. The rule mandates that whenever a carrier or its ticket agent states a price for air transportation, the advertised price must be the full price that the customer will pay. If the total cost of the ticket exceeds the advertised price, then the advertisement likely violates the rule.

<sup>17</sup> Panel 3, *Consumer Confusion: What and From Whom Am I Buying*, included participants: John Breyault, Vice President for Public Policy, Telecommunications, and Fraud, National Consumers League; Gilbert Hoover, Vice President and General Counsel, The Schubert Organization; Katy McCabe, Senior Policy Advisor, Global Product Policy Team, Google; Michael Marion, Chairman, International Association of Venue Managers; and Don Vacarro, Founder and Chief Executive Officer, TicketNetwork.

<sup>18</sup> The State of New York and the ticket resale companies settled these allegations in July 2019. The resale companies agreed to pay a \$1.55 million monetary judgment and clearly and conspicuously disclose to consumers in future ticket listings when they do not possess tickets. "Attorney General James Announces Settlement With Ticket Resale Companies For Selling Tickets They Never Owned," New York Attorney General Press Release (Jul. 10, 2019), <https://ag.ny.gov/press-release/2019/attorney-general-james-announces-settlement-ticket-resale-companies-selling>.

<sup>19</sup> For example, New York's legislation prohibits a reseller from selling tickets for which the reseller has no possession or contractual right unless the reseller clearly and conspicuously provides written notice to consumers that the reseller "does not have possession of the ticket, has no contract to obtain the offered ticket . . . , [and] may not be able to supply the ticket at the contracted price or range of prices, and requires such purchaser to expressly confirm prior to completing the transaction that the purchaser has read such notice." New York Senate Bill 8501B § 25.10 (*amendments adopted* May 9, 2018), <https://legislation.nysenate.gov/pdf/bills/2017/S8501B>.

<sup>20</sup> A participant representing a foreign consumer protection agency discussed a law enforcement action the agency brought against a resale ticket website. Among other things, the agency's final order obligates the resale ticket website to require its brokers to provide an actual seat number for each ticket listing (under the theory that the broker can provide such if she or he owns or has the rights to the ticket) and confirm that they have purchased or have a right to purchase a ticket. The resale ticket website is prohibited from setting up an event page until ensuring that event tickets have been released on the primary market.

<sup>21</sup> The National Association of Ticket Brokers requires that all its members provide a 200% money-back guarantee for tickets cancelled for any reason.

<sup>22</sup> *FTC v. TicketNetwork, Inc., FTC v. SecureBoxOffice, LLC, and FTC v. Ryadd, Inc.*, *supra* note 2.

<sup>23</sup> A participant from a popular search engine platform discussed policies the company implemented in response to complaints that its users were unable to distinguish primary from resale ticket sellers. The policy requires resale ticket websites to disclose that they are a resale marketplace within the top twenty percent of each web page and in at least the same size font as the majority of text on the page. The policy also prohibits resale websites from using venue or artist names in their search-ad URLs and prohibits use of the term "official" unless authorized by the primary ticket seller. While workshop participants applauded these efforts, they noted that deceptive URLs and websites mimicking primary sellers remain prevalent, especially on other search engine platforms that do not restrict what resale ticket websites display in search ads.

<sup>24</sup> New York's legislation requires ticket resellers to post a clear and conspicuous notice that they sell resale tickets. New York Senate Bill 8501B § 25.23, *supra* note 19. One section of the bill also prohibits resellers from using the name of a venue, event, or similar language in a website URL "with the intent to mislead or deceive." However, this section provides an exception for resellers "acting on behalf of, and with the consent of the ... event, artist or sports team." *Id.* § 25.34.

<sup>25</sup> Maryland's legislation prohibits resellers from using the name of venues or events, or substantially similar names unless acting on a venue's behalf. Maryland House Bill 740 (*enacted* May 26, 2018 under Art. II § 17(c) of the Maryland Constitution – Chapter 825), <https://legiscan.com/MD/text/HB740/id/1804343/Maryland-2018-HB740-Chaptered.pdf>. New Jersey's legislation prohibits resellers from advertising tickets to New Jersey residents through a ticket website with a URL that includes the venue or event name unless authorized by the venue. Senate Bill 2665 (*approved* Jan. 31, 2019 under P.L. 2019, Chapter 8).

<sup>26</sup> H.R. 3248, <https://www.congress.gov/bill/116th-congress/house-bill/3248>. Representative Albio Sires also cosponsored the proposed legislation.

<sup>27</sup> As written, the proposed legislation appears to require resellers to make this disclosure even if they have a contractual right to the tickets, for example resellers with season ticket agreements.

<sup>28</sup> As written, the proposed legislation does not appear to place the same requirements on unscrupulous brokers or other resellers who may deceptively design their website URLs or landing pages to look like those of primary ticketing websites.