

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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B E F O R E:
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Chairperson

COUNCIL MEMBERS:
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G. Oliver Koppell
Leroy G. Comrie, Jr.

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CHAIRPERSON GARODNICK: Good

morning everyone. Welcome to the Consumer Affairs Committee of the New York City Council. Today is Friday, October 28th. My name is Dan Garodnick and I have the privilege of chairing this committee. I am joined today by Council Member Julissa Ferreras and Council Member Oliver Koppell, and we will be joined in a moment by Council Member Leroy Comrie and certainly others. Council Member Comrie is the sponsor of Intro 247, which is on today's agenda.

New Yorkers have been for years frustrated when trying to simply buy a ticket to an event because of controversial ticket sale practices that leave consumers without fair access to tickets priced for initial sale; that prohibit transfer of tickets once purchased, for even less than face value, in some instances; and that keep fans in the dark regarding the number of tickets made available to the general public.

Purchasing tickets just shouldn't be the extraordinary hassle that it has become. A fan wants to buy a ticket to see a favorite band, logs into Ticketmaster the moment the tickets go

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2 on sale, and in a nanosecond, those tickets are
3 all sold out. The fan wonders who is at work
4 here: Speculators, ticket bots, the artists,
5 Ticketmaster, all of the above? Still wanting a
6 ticket, the fan logs on seconds later to
7 TicketsNow or StubHub where tickets for the band's
8 performance are somehow now available, but all
9 priced much more than the price set for the
10 initial ticket sale moments earlier. Reluctantly,
11 the fan pays the original ticket cost, the
12 additional couple hundred bucks, the convenience
13 fee charge in the secondary market, and after
14 completing the purchase, finally has a ticket.

15 This is a scenario that plays out
16 again and again and happened with great fanfare
17 just last month when Radiohead performed at the
18 Roseland Ballroom. Trying to get tickets for
19 those concerts had Radiohead fans climbing up the
20 walls in frustration, as tickets were unavailable
21 just moments after going on sale to the general
22 public. Curiously, however, tickets did appear on
23 TicketsNow--Ticketmaster's proprietary secondary
24 market website--not only after tickets went on
25 sale, but reportedly before as well.

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2 To be clear, some artists insist on
3 will-call only tickets as a fan-friendly means of
4 preventing tickets from entering the secondary
5 market, thus, ensuring that consumers can purchase
6 tickets at the price set by the artist. However,
7 requiring fans to be present in order to claim
8 tickets is controversial because it restricts or
9 even denies a consumer's right of a ticket
10 transfer.

11 As for tickets that make their way
12 to the secondary marketplace just seconds after
13 the start of the public sale, of course, that's
14 not an occurrence that is specific to the
15 Radiohead concerts. LCD Soundsystem sold out
16 Madison Square Garden earlier this year within one
17 minute of tickets going on sale, leaving fans
18 tired of the tribulations associated with trying
19 to score high demand tickets when competing
20 against speculators and illegal automated ticket
21 purchasing software, or ticket bots, that eat up
22 all available tickets within minutes in order to
23 sell those tickets for wildly inflated prices on
24 the secondary market.

25 Kid Rock also posted on his website

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2 last week that, in times like these, they
3 continually try to thwart the efforts of scalpers,
4 such as when AC/DC adopted a paperless-only policy
5 for an entire tour. However, scalpers found a way
6 around that by using prepaid debit cards to
7 purchase the paperless tickets and then mailed the
8 prepaid debit card to the ticket buyer--which I
9 thought was particularly novel.

10 To provide a little history
11 regarding New York State's ticket sale law. In
12 2007, the long-standing price cap on ticket
13 resales was repealed, giving way to a legal
14 secondary market in New York. The impact of
15 deregulating ticket resales was striking. In
16 September 2007, just months after the price cap
17 repeal, tickets to all 54 Miley Cyrus concerts
18 sold out in 14 minutes, with brokers reselling
19 those tickets at more than 65 times the original
20 price. Bruce Springsteen tickets in February 2009
21 sold out on Ticketmaster with fans then redirected
22 to Ticketmaster's TicketsNow website where tickets
23 were available, but for several times the original
24 price.

25 New York State's ticket sale law,

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2 which will sunset on May 14, 2012 was amended to
3 regulate the use of a paperless ticket system,
4 without clear definition of paperless ticket
5 system. The law required that if paperless
6 tickets are used, consumers need to be able to
7 transfer them at any price, at any time, without
8 additional fees, and independent, of the operator
9 or operator's agent. The intent of the law is to
10 provide consumers with the right to transfer their
11 tickets. Tickets that may be transferred, or at
12 least refunded if a will-call system is employed,
13 should, very simply, be the right of every
14 consumer, and this committee will explore
15 legislation that would make that a requirement or
16 clarify otherwise unclear areas in the state law.

17 In addition, this committee will
18 consider legislation to address the current lack
19 of transparency in the ticket marketplace
20 regarding the number of tickets artists make
21 available to the general public. When tickets
22 sell out at a venue--whether the seating capacity
23 is 300 or 20,000--the general public may
24 reasonably assume that all of those tickets were
25 up for grabs. However, that is frequently not the

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2 case as artists often hold back tickets for VIPs,
3 fan clubs, and, increasingly, for initial sale in
4 the secondary market. That's right. As a number
5 of media outlets have reported, artists, including
6 Katy Perry and Neil Diamond, they are scalping
7 their own tickets. However, fans are often
8 unaware of this practice, as the secondary market
9 does not always identify the origin of a ticket.

10 Now, while it is not the role of
11 government to require artists to divulge the
12 number of hold backs for a particular event at
13 private venues, a different standard may be needed
14 for performances at venues that are supported, at
15 least in part, by taxpayer dollars. General
16 transparency and greater transparency in the
17 ticket marketplace will allow consumers to know
18 just how many tickets are out there for a
19 particular event, and may even shame artists into
20 adopting business practices that don't stick it to
21 the very people supporting their livelihoods.

22 The rest of today's hearing will be
23 spent discussing how to reconcile seemingly
24 competing interests, namely, how to provide
25 consumers with the right to transfer tickets while

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2 ensuring fair access to tickets priced for initial
3 sale. One potential solution we will discuss is
4 Council Member Comrie's Intro 247, a bill that
5 would require places of entertainment and their
6 agents--there he is, right on cue, Council Member
7 Comrie--to reserve for on-site box office sales
8 15% of tickets available for purchase. And in a
9 moment I'll give him a chance to introduce his own
10 bill.

11 But as a general matter, this
12 requirement would be restricted to venues with
13 seating capacity greater than 3,000 and would
14 exempt events that occur on a daily basis at the
15 same venues, such as Broadway and off-Broadway
16 shows. Individuals would be limited to the
17 purchase of no more than four tickets per day; and
18 recordkeeping requirements would be imposed on
19 operators and their agents, including documenting
20 the total number of tickets made available to
21 individual consumers at the box office. So--

22 [Pause]

23 CHAIRPERSON GARODNICK: --so now
24 I'd like to turn the microphone over briefly to
25 Council Member Comrie to hear his introductory

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2 comments on Intro 247, and then we will get into
3 the rest of the hearing. So, Council Member
4 Comrie, welcome--

5 COUNCIL MEMBER COMRIE: Thank you.

6 CHAIRPERSON GARODNICK: --the floor
7 is yours.

8 COUNCIL MEMBER COMRIE: Thank you,
9 Council Member Garodnick, and thank you for
10 putting this hearing together.

11 This hearing stems out of a few
12 issues. The original issue, why we brought the
13 bill to pass, was the phenomenon of Hannah Montana
14 and the inability of regular constituents to have
15 a shot at getting tickets. And because of that
16 issue, we started to look into the whole idea of
17 how the public can actually get a opportunity to
18 purchase tickets for events vis-à-vis the fact
19 that so many events are sold out within minutes of
20 them being advertised--of the event being
21 advertised.

22 Parents who are trying to get
23 opportunities for their children, people who are
24 trying to get the opportunity to come to an event
25 believe that there are so many tickets on sale,

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2 only to find out that the amount of tickets on
3 sale at any particular event at any particular
4 venue are flexible and rotating, according to the
5 desires of the producers, the desires of the
6 venue, the desires of the artist, and it's
7 becoming to the point where the general public has
8 no idea how many tickets are actually available to
9 the general public.

10 So we are looking to develop a
11 truth in advertising bill, a transparency
12 opportunity so that the public can actually know
13 that if a venue has an event, how many tickets are
14 actually available to the public, how many tickets
15 can the public actually have a real opportunity to
16 purchase. We are looking to set aside at least
17 15% of the tickets to be available so that people
18 can come to the venue.

19 And now there's a new issue of the
20 ability to actually purchase a ticket and use it
21 as a gift if necessary. If a person gets sick at
22 the last minute, how can they transfer a ticket
23 properly without losing money.

24 So hopefully, we can hear from all
25 of the folks about their issues on this, but we're

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2 looking to protect the public, we're looking to
3 give the public maximum access and opportunity to
4 have a free and unfettered right to purchase
5 tickets without having to run into ticket bots or
6 ticket brokers or ticket resalers as the only
7 market to purchase tickets for events.

8 So I am thankful that we can have
9 this hearing today. I look forward to hearing all
10 of the testimony from all sides, and I look
11 forward to a productive meeting. Thank you.

12 CHAIRPERSON GARODNICK: Thank you,
13 Council Member Comrie. And with that, we're going
14 to get right into it, invite the New York City
15 Department of Consumer Affairs to the witness
16 table.

17 COUNCIL MEMBER KOPPELL: Mr.
18 Chairman--

19 CHAIRPERSON GARODNICK: Yes,
20 Council Member Koppell.

21 COUNCIL MEMBER KOPPELL: --before
22 they speak, I would like to raise a point, if I
23 may.

24 CHAIRPERSON GARODNICK: Please go
25 ahead.

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COUNCIL MEMBER KOPPELL: They can go to the table, I don't want to stop them from doing that. First of all, you're very brave to take on this issue. I might mention that the issue of ticket scalping was one that I spent a great deal of time trying to deal with many years ago when I was Attorney General of the state. We tried to enforce the then-restrictions on scalping, which was both difficult to do and also very controversial.

Some people were very critical of our trying to enforce those rules, other people supported us in that. And the legislature, obviously, has had difficulty grappling with this issue because they have tried different approaches, and then they repealed all the restrictions, and some people think that's a good idea and others don't. So this is a very tough issue.

I do not see in the questions that we were presented the issue of the degree to which we have the right to regulate this, in light of the considerable state activity that's taken place. And I would appreciate everybody who

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2 testifies who has some thoughts on that, on
3 preemption--both legal preemption and also whether
4 we should do this on a local level. I think it
5 would be worthwhile to hear that.

6 CHAIRPERSON GARODNICK: Well thank
7 you, Council Member Koppell, and I certainly
8 appreciate those comments. And as we look to
9 possibly develop legislation in this committee and
10 certainly with the bill that is currently pending
11 before this committee, that is an important
12 question that we need to explore--preemption and
13 whether, as a municipality in New York State, we
14 should be taking this action or any action
15 ourselves. And we certainly appreciate your
16 presence on this committee, Council Member, as the
17 former Attorney General, and we look forward to
18 your input on all of this.

19 So with that, DCA, it's all you.
20 Come on up.

21 [Pause]

22 SERGEANT-AT-ARMS: Turn on the
23 microphone.

24 ERIK JOERSS: So good morning,
25 Chairman Garodnick, members of the Consumer

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2 Affairs Committee. I am Erik Joerss, Director of
3 City Legislative Affairs for the Department of
4 Consumer Affairs. Commissioner Mintz and I thank
5 you for this opportunity to comment on Intro
6 number 247, a bill that would require certain
7 places of entertainment to offer for sale a
8 proportion of tickets for specially scheduled
9 events directly at their box offices.

10 This bill seeks to effectuate the
11 understandable goal of ensuring that the general
12 public would have a direct opportunity to purchase
13 highly coveted tickets for limited engagements at
14 face value at the box office. It would require
15 venues to hold back a certain number of tickets
16 from bulk buyers and resellers. Specifically,
17 places of entertainment within New York City with
18 a permanent seating capacity of over 3,000 persons
19 would have to set aside at least 15% of tickets
20 made available for purchase to special events for
21 sale to individuals at the box office and limit
22 those individuals to four tickets each. It would
23 also require that the ticket have the time and
24 date of sale printed on its face and mandate the
25 maintenance of certain records.

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2 Intro 247 gives the department the
3 authority to enforce compliance with these
4 provisions by requiring the venues to make their
5 records available for inspection by the
6 commissioner and issue violations accordingly.
7 While the department is sympathetic to the
8 purposes of the bill, we do have significant
9 concerns about our ability to enforce its
10 mandates. Troublesome questions include: First,
11 the bill's requirement that 15% of tickets be made
12 available for purchase to be set aside needs
13 clarification--what seats for each performance are
14 counted as made available for purchase?

15 As anyone who's been to a show
16 knows, not all seats are created equal. Can the
17 15% be nosebleed seats? Can they be priced
18 differently? The bill does not specify how
19 tickets could be distributed without being counted
20 as made available for purchase. DCA would need
21 this information to determine whether a place of
22 entertainment was in compliance with the 15%
23 requirement. If the number of tickets that could
24 be distributed without being counted is made
25 available for purchase can vary with each

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performance, it becomes even more difficult to determine compliance.

Second, the bill does not specify for how long tickets reserved for individual sales would have to be held back at the box office before they can be sold through outlets other than the box office. Is it one day? Would it be one week? Should it be until the date of the performance?

Third--and perhaps most importantly from a regulatory perspective--the recordkeeping requirements of the bill just do not enable the department to assess compliance with the law. The requirement that venues maintain only records of the total number of tickets available for sale to individual consumers and the locations of the corresponding seats would not, upon audit, inform the department whether or not there was compliance.

If the Barclays Center--and we'll pick on them 'cause they don't really exist yet--if they say that a Black Eyed Peas show has room for 15,000 seats, but a Jay-Z show has such an elaborate set that only 12,000 are available, and

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2 Wilco can only fill 9,000 seats so they've covered
3 up the obstructed view seats, how does DCA know if
4 these numbers are accurate? The bill, as crafted,
5 would require us to take them at their word. And
6 an electronic recordkeeping requirement could help
7 solve the problem, but we are mindful that such
8 necessary electronic recordkeeping can be very
9 costly to the regulated entities.

10 And fourth, the department lacks
11 the docketing authority that would allow us to
12 hold those who violated the law accountable if
13 they chose to ignore adjudicated fines--a
14 particularly serious impediment to holding
15 accountable industries that are not licensed by
16 the department.

17 DCA appreciates the Council
18 Members' efforts to ensure that the public has the
19 opportunity to purchase tickets to special events
20 and performances at the box office and at face
21 value. We also appreciate tickets sellers
22 legitimate interest in selling their tickets, and,
23 while protecting consumers, we do not want to
24 unduly burden the marketplace.

25 We look forward to hearing

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2 testimony today from artists and ticket sellers in
3 both the primary and secondary markets regarding
4 their perspectives on both the fairness and
5 practicality of Intro 247.

6 Thank you again for the opportunity
7 to comment on the bill. I'm happy to take
8 questions.

9 CHAIRPERSON GARODNICK: Thank you.
10 I am sure that Council Member Comrie has questions
11 for you on the bill, but let me just start off
12 with a more general question for you--

13 ERIK JOERSS: Yeah.

14 CHAIRPERSON GARODNICK: --about the
15 practices that I cited in my opening statement.
16 Does DCA get complaints via the 311 system about
17 problems, either with purchases at a venue,
18 purchases from one of the online sites, either
19 primary or secondary? What are you hearing--

20 [Crosstalk]

21 ERIK JOERSS: [Interposing] We look
22 back over the past, I believe it was five years,
23 to check our records, we had zero complaints on
24 this issue specifically--about being, you know,
25 tickets being scalped, tickets being overpriced,

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2 this sort of thing, or not being able to--we had a
3 total of 28 complainants as resulted--as in any
4 way, shape, or form connected with ticket sellers--
5 -not being able to obtain a refund, not being
6 delivered the tickets they thought they were
7 getting. But there's been zero--we have zero
8 calls on that we've taken on specifically the
9 issues raised in--

10 [Crosstalk]

11 CHAIRPERSON GARODNICK:

12 [Interposing] I mean, that's an interesting
13 statistic. I am certain it does not reflect the
14 consumer frustration, but it may reflect that
15 perhaps the City is not the first place that they
16 are calling as a result of their--

17 [Crosstalk]

18 ERIK JOERSS: [Interposing] Of
19 course, and we're not the oversight agency for it,
20 it's regulated by the state so...

21 CHAIRPERSON GARODNICK: Right, so
22 that makes some sense. On the concepts that you
23 did testify on, on Intro 247, just to go to
24 Council Member Koppell's point about
25 jurisdictional legality preemption, any reason to

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2 think that New York City could not do what we are
3 proposing in this legislation?

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ERIK JOERSS: Be honest, we have
5 not studied the preemption issue, we are very
6 happy and looking forward to hearing more about it
7 and whether it is appropriate for the city to get
8 involved in this, but at this point we don't have
9 an opinion on whether or not the city should be
10 involved in it, and legally we have not studied
11 the preemption issue.

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CHAIRPERSON GARODNICK: Do you wish
13 to weigh in preliminarily on concepts that we have
14 articulated already in this hearing, such as
15 requiring venues to be transparent in terms of the
16 number of tickets that they are offering to the
17 public?

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ERIK JOERSS: I think all of us are
19 in favor of greater transparency in most things,
20 and philosophically, that seems like the way to
21 go, but specifically, as this is not an issue that
22 DCA has regulated, it's not something that we have
23 looked into nearly enough for me to comment on
24 behalf of the agency. I learned more about this
25 in your opening remarks than I think I knew in my

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2 life leading up to it, so we would want to hear
3 more before offering opinions.

4 CHAIRPERSON GARODNICK: Okay. So
5 then I'm not going to push you on helping us to
6 interpret transferability of paperless tickets as
7 per the state law amendments, I probably will hold
8 that for--

9 [Crosstalk]

10 ERIK JOERSS: [Interposing] I
11 greatly appreciate that.

12 CHAIRPERSON GARODNICK: Not a
13 problem. And I'm going to turn to Council Member
14 Comrie for some questions.

15 COUNCIL MEMBER COMRIE: Well first
16 I would say that I'm disappointed that there was
17 no research done by the agency at all regarding
18 the bill. And I'm concerned that, in the light of
19 trying to create transparency, that DCA's lack of
20 desire to make some suggestions, only questions,
21 is a little--it doesn't surprise me, but
22 disappoints me.

23 But just to reaffirm a couple of
24 things. We talked about the idea of trying to
25 create transparency so that consumers can have

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2 real knowledge of what a venue is, and we are
3 asking that the venues be clear about how many
4 seats are VIP seats; how many seats go to, say,
5 American Express Black card owners; how many goes
6 to the promoters or the artists themselves so
7 that, if there is an artist that says as you--I
8 forgot which one you said was a 9,000 seat artist,
9 I didn't--

10 UNKNOWN VOICE: Black Eyed Peas.

11 COUNCIL MEMBER COMRIE: Black Eyed
12 Peas? No, I think that was the 15,000.

13 ERIK JOERSS: Very good, 9,000 was
14 Wilco.

15 COUNCIL MEMBER COMRIE: Yeah, Jay-Z
16 was 15,000, so, you know, let's just use 15,000 in
17 Jay-Z. You know, we would expect that, you know,
18 these venues would have at least some honesty in
19 the amount of seats that they're actually
20 offering. I can understand that there would be
21 some artists that they wouldn't want the nosebleed
22 seats included or the seats that have no clear
23 vision of the stage, but there are other
24 opportunities where they want every available seat
25 done, but that reporting could be done

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2 electronically. And we would be looking for the
3 venues to be honest, we're looking for honesty in
4 reporting here, and I would hope that DCA would
5 want to take this up to try to protect consumers.
6 I would hope that DCA would want to try to find
7 out what we can do to ensure that our consumers
8 that are looking to get an opportunity to purchase
9 a ticket understand what their real opportunities
10 are, and that if they can purchase the ticket
11 directly, they would prefer to do that, rather
12 than going through a secondary or tertiary market
13 to purchase tickets. And that if a venue is
14 providing an event, that they would be clear about
15 how many tickets are actually available to the
16 public versus how many tickets are going to VIPs.

17 So just to, you know, talk about
18 this in specific, I think there is a major role
19 that DCA can play in addressing this particular
20 problem, and I would hope that DCA would work with
21 us after this hearing to really drill down into
22 what we can do to create an opportunity.

23 I'm not going to go in depth since
24 you did say that you just heard about it on
25 Council Member Garodnick's presentation today, but

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2 I will say that I'm disappointed that DCA didn't
3 do more to prepare for the hearing.

4 So I'll leave it at that. I'm
5 going to give you a pass and send you on a mission
6 to do some research so that when we have our
7 meeting after this, we can have some real answers
8 from the agency, since we have other people who
9 want to testify.

10 CHAIRPERSON GARODNICK: Thank you
11 very much, Council Member Comrie. And I also do
12 wish to echo the sentiments that we do want to
13 make sure that you guys are fully briefed and
14 prepared as our partner in all of this and we'll
15 look forward to working with you in greater detail
16 down the line.

17 Council Member Ferreras.

18 COUNCIL MEMBER FERRERAS: Good
19 morning.

20 ERIK JOERSS: Good morning.

21 COUNCIL MEMBER FERRERAS: Just for
22 the record, I know that you said that you've
23 gotten zero calls, but let's say once this goes up
24 and it's made public and someone decides I want to
25 call the Department of Consumer Affairs to be able

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2 to file a complaint because of whatever process
3 that they went through, what happens to that call
4 when it comes in?

5 ERIK JOERSS: Well if somebody
6 called, they would probably call through 311 and
7 the call would come in, in a case like this, it
8 would likely go to our consumer--if it was
9 appropriate for DCA, it would go to our Consumer
10 Services division, get recorded, and then there
11 would be a decision on whether or not this was
12 something that DCA had authority over and whether
13 or not we would docket it and try to mediate the
14 complaint for the consumer.

15 COUNCIL MEMBER FERRERAS: So as it
16 stands right now, that decision would be that it
17 does not, as the legislation speaks right now?

18 ERIK JOERSS: We don't have
19 authority over ticket sellers right now.

20 COUNCIL MEMBER FERRERAS: Okay.
21 And then what does that complainant get from DCA?
22 How do they know that that's what was determined?

23 ERIK JOERSS: They would get either
24 a phone call, I believe, a phone call or a letter
25 from us saying that we're sorry, but this is not

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the appropriate place, this is not the appropriate agency to handle your complaint.

COUNCIL MEMBER FERRERAS: Are they told what the appropriate agency is?

ERIK JOERSS: Yeah.

COUNCIL MEMBER FERRERAS: Yes, in this letter--

ERIK JOERSS: Yeah.

COUNCIL MEMBER FERRERAS: --or call.

ERIK JOERSS: And as I said, you know, the calls that came in, like, you know, of those ones that came in, because DCA enforces the Consumer Protection law, if it is that this consumer--there was false advertising and this consumer was not given what was promised, that is the kind of case that DCA would be able to take. But specifically on the idea of somebody in the secondary market tried to overcharge me or this, that's not something we have any jurisdiction over.

COUNCIL MEMBER FERRERAS: Okay.
Thank you.

ERIK JOERSS: You're welcome.

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CHAIRPERSON GARODNICK: Thank you,
Council Member. With that--

COUNCIL MEMBER COMRIE: Council,
that raises some questions--

CHAIRPERSON GARODNICK: Go ahead.

COUNCIL MEMBER COMRIE: --for me.
But wouldn't DCA want to have the authority or
autonomy if there was a ticket scalping situation
and her consumer is to have some oversight in this
particular opportunity?

ERIK JOERSS: Well, as I mentioned,
Council Member, it's not that we don't think that
the businesses necessarily--that we don't think
that it's a bad--that we think it's a bad idea for
the city to be involved in this. What I mentioned
in the testimony was that we can't depend on the
ticket sellers, we can't depend on their honesty
in order for us to enforce the law. That we
actually need a--we would need, if we were going
to regulate, we would need a system where we could
verify, rather than have to take them at their
word. If we could come up with such a system, we
would, of course, like to discuss that and pursue
it further.

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2 COUNCIL MEMBER COMRIE: Okay. So
3 you would like to explore looking at a system that
4 would give DCA the autonomy to protect the
5 consumers dealing with these particular issues.

6 ERIK JOERSS: We're happy to look
7 into it further; if it's appropriate for us to do,
8 we would want to take it on.

9 COUNCIL MEMBER COMRIE: Okay. All
10 right, thank you. Thank you, Mr. Chair.

11 CHAIRPERSON GARODNICK: Thanks very
12 much for your testimony. And we're now going to
13 call up George Fertitta--

14 ERIK JOERSS: Thank you.

15 CHAIRPERSON GARODNICK: --of New
16 York City and Company; John--forgive me--Breyault
17 of the National Consumers League; and Gary Adler
18 of the National Association of Ticket Brokers as
19 our first official panel here. And, George,
20 whenever you are ready, you can kick it off.

21 GEORGE FERTITTA: Great.

22 [Pause]

23 GEORGE FERTITTA: Good afternoon,
24 my name is George Fertitta, I'm CEO of NYC &
25 Company, the city's marketing and tourism

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2 organization. I would like to thank the Council,
3 Chairperson Garodnick, and the entire Consumer
4 Affairs Committee for allowing me to participate
5 this morning on this very important topic.

6 As you know, New York City is
7 renowned all over the world for its mix of people
8 and cultures and its spectacular array of unique
9 and exciting things to see, to do, and to
10 experience. Even the current global financial
11 climate has not dampened the enthusiasm and demand
12 for travel to the five boroughs. In fact, a
13 record 48.8 million visitors came to New York City
14 in 2010, and we are on pace for another record-
15 breaking year in 2011. One major draw of the city
16 is the wide range of events that take place in the
17 city on a daily basis, particularly large-scale
18 events that have interest on the national and even
19 international audiences.

20 Of course, these events are not
21 just for visitors but also for our 8.4 million
22 residents. NYC & Company, in fact, focuses a
23 portion of our programming and our website to
24 encourage New Yorkers to actively participate and
25 immerse themselves in many of the activities that

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2 are available to them. To this end, we support
3 the spirit of Intro 247. We want both our
4 residents and our visitors to enjoy these
5 offerings at a reasonable price. However, we are
6 concerned that the bill will not significantly
7 address this issue; rather we feel that it will
8 impose unfair restrictions on New York City
9 businesses and venues and not solve the illegal
10 scalping problem.

11 The legislation immediately raises
12 several questions regarding restraint on trade.
13 It is the right of venues such as Madison Square
14 Garden, Radio City Music Hall, the Metropolitan
15 Opera, Citi Field, Yankee Stadium and others--and
16 these are the ones that are 3,000 seats or more--
17 to make a fair profit at market value in the
18 majority events they are able to procure and
19 produce. This legislation runs the risk of
20 impairing their ability to maximize the attendance
21 by requiring them to limit where, when, and how
22 they can sell tickets. Furthermore, this
23 limitation could prove an impediment for these
24 venues as they recruit events to the city.
25 Competing venues in other cities could take

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2 advantage of the restriction and use this as a
3 selling point for large-scale shows, and
4 performances or games.

5 Beyond our philosophical concerns
6 about the bill and its potential limitation on
7 trade, there are also some implementation
8 concerns. Will venues be compensated or have
9 means to recoup lost profits if they cannot sell
10 out the 15% allotment to walk-ups? Will there be
11 a requirement to make available a certain amount
12 for each ticket price point that was mentioned
13 before? Will there be security support for venues
14 when lines build up due to last-minute walk-up
15 consumers? You mentioned Miley Cyrus and people
16 like that, I can only imagine the chaos that
17 somebody like Lady Gaga could potentially create
18 in that environment. How will the bill curb
19 third-party operators from hiring people as stand-
20 ins to buy tickets in bulk? Will this be a
21 deterrent for consumers visiting the city for
22 events, even if they can't guarantee themselves
23 seating? How do we handle the huge consumer
24 disappointments as online and telecharge tickets
25 sell out even faster?

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2 Finally, it is also the protective
3 right of legal third-party operators to resell
4 tickets. If demand allows them to raise the
5 price, it is really not the role of ourselves or
6 government to restrict them under the free market
7 principles.

8 We believe overall Intro 247
9 represents more challenges than solutions as it's
10 presented. We sincerely appreciate the
11 committee's role in protecting the consumer
12 interests and we want to make sure that New York
13 City events are affordable and available to
14 everyone. However, we do not believe that Intro
15 247 will help curb ticket prices or lessen illegal
16 price gouging in the market.

17 In our view, the real issue is
18 illegal black market scalping--a dangerous
19 condition for consumers that costs the city
20 millions in tax revenue. Whether through a
21 consumer awareness campaign or better
22 collaboration with the venues, NYC & Company would
23 welcome the opportunity to help the Council
24 address this issue.

25 And thank you for the opportunity

1
2 to testify. Although we oppose 247, we at NYC &
3 Company share many of the same goals and interests
4 with the Council. We look forward to working with
5 the Council to find ways to keep events affordable
6 and conveniently available to all New Yorkers and
7 visitors.

8 And I should point out, Mr.
9 Chairman, that, you know, your presentation was
10 enlightening to me, and it's hard to argue with
11 almost everything. And I think that, you know,
12 Councilman Comrie, the same thing, this is the one
13 area that we have a lot of difficulty is, is the
14 allocation of 15%.

15 CHAIRPERSON GARODNICK: Okay. Well
16 thank you, we appreciate the testimony. I'm going
17 to start with Council Member Comrie, but I have a
18 few questions for you by the way. So I also want
19 to also probe a little further on the broader
20 questions and how NYC & Company would respond to
21 those. But before we do any of that, let's just
22 go through the panel and we'll get to that after.
23 So welcome.

24 JOHN BREYAULT: Good morning, Mr.
25 Chairman, and members of the Committee. My name

1
2 is John Breyault and I am the Vice President of
3 Public Policy, Telecommunications and Fraud for
4 the National Consumers League. I appreciate this
5 opportunity to appear before the committee to
6 provide the consumer point of view on live event
7 industry business practices.

8 Founded in 1899 here in New York
9 City, NCL is the nation's oldest consumer advocacy
10 organization. Our non-profit mission is to
11 promote social and economic justice on behalf of
12 consumers and workers in the United States and
13 abroad.

14 NCL is a strong supporter of pro-
15 consumer ticketing protections at the state and
16 national levels. In 2010, we organized a broad
17 coalition of public interest groups, businesses,
18 and more than 10,000 consumers in opposition to
19 the Ticketmaster-Live Nation merger. We continue
20 to pursue consumer-friendly policies in the live
21 event industry today.

22 My testimony focuses on three
23 significant problems consumers experience when
24 buying live event tickets. First, there's a lack
25 of transparency and, as a result, consumers are

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2 misled by artists, event producers, and ticketing
3 agencies; second, ticket buying bot software harms
4 consumers; and third, restrictive ticketing
5 eliminates competition and denies consumer choice.

6 First, transparency. Purchasing an
7 event ticket is frequently a confusing and
8 frustrating experience. Too often, consumers are
9 at the mercy of ticketers, promoters, and artist
10 managers who control the supply of tickets and
11 profit handsomely from ticket sales that occur
12 outside public sales channels to VIPs, fan clubs,
13 ticket brokers, and elite credit card rewards club
14 members.

15 This problem is widespread. For
16 example, at a 2009 Taylor Swift show in Tennessee,
17 only 1,600 of 13,300 tickets were made available
18 for general public sale. Similar incidents have
19 occurred at Keith Urban and Miley Cyrus shows, and
20 more recently Katy Perry was found to have
21 included in her touring contract a provision that
22 permits her to withhold as many tickets as she
23 chooses from public sale so that she can sell them
24 directly to consumers on resale markets for
25 inflated prices.

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2 Consumers are hurt when they are
3 misinformed and misled. Consumers unable to
4 purchase tickets for a performance may erroneously
5 believe that high demand or evil scalpers led to
6 the quick sellout, but in reality the quote
7 unquote sellout was just as likely to have been
8 caused by artificially low supply engineered by
9 the artist, promoter, and venue. Increasing
10 transparency would reduce this information gap and
11 give consumers a fighting chance in the ticket
12 marketplace.

13 Several states have considered
14 legislation that would do just this. For example,
15 Massachusetts recently held a hearing on a bill
16 that will require venues and ticket sellers to
17 publish in advance of an event the percentage and
18 number of tickets made available to the general
19 public.

20 Second, ticket buying bot software
21 is the bane of consumers, artists, and ticketing
22 companies alike. These programs bombard online
23 box offices with thousands of simultaneous
24 purchase requests, and thereby jump ahead of
25 legitimate consumers who are diligently waiting

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2 their turn to purchase tickets. We believe that
3 these bots violate one of consumers' basic rights:
4 The right to fair access to events. For example,
5 in one case, a Nevada-based company known as
6 Wiseguy Ticketing used bot programs to purchase
7 more than 1.5 million tickets between 2002 and
8 2008 for shows by artists like Bruce Springsteen,
9 Miley Cyrus, Kenny Chesney, and Bon Jovi.

10 We submit that the Wiseguys are
11 just the tip of the iceberg when it comes to bots.
12 That Radiohead felt the need to embrace the
13 extreme tactic of requiring all tickets to be
14 picked up at the will-call window for their
15 September shows at the Roseland Ballroom is just
16 the latest proof that more should be done to
17 control this program. Perhaps the Committee can
18 ask Ticketmaster and venues to deliver empirical
19 evidence of bot usage to the Committee so that you
20 can review this documentation and turn it over to
21 law enforcement.

22 Finally, with regard to ticket
23 transferability, we submit that consumers have
24 generally benefited from the growth of the online
25 secondary market. Unfortunately, Ticketmaster has

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2 seized on the problem of ticket bots to promote
3 increasingly restrictive ticketing practices that
4 are in reality thinly-veiled attempts to control
5 one of the last parts of the live event industry
6 that it does not dominate.

7 Instead of them embracing a
8 competitive resale market that benefits consumers,
9 primary ticketers, event producers, sports teams,
10 and venue owners are seeking to monopolize it and
11 eliminate consumers' choice of where to buy and
12 sell tickets.

13 Onerous ticketing rules and anti-
14 consumer restrictions can be used to prohibit
15 ticket transfers and resale, or to force consumers
16 to a single resale market where there is no
17 competition and where fair market prices are often
18 constrained.

19 In conclusion, given the importance
20 of the live event industry to New Yorkers, it is
21 no surprise to us that the city and state have
22 historically been at the forefront of protecting
23 the ticket buying public. On behalf of the
24 National Consumers League and New York consumers,
25 I want to thank you for the opportunity to discuss

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2 this important issue; I applaud your leadership on
3 this issue; and I look forward to answering your
4 questions. Thank you.

5 CHAIRPERSON GARODNICK: Thank you
6 very much.

7 GARY ADLER: Yes, good morning,
8 Chairman and other esteemed members of the
9 Committee, my name is Gary Adler and I am the
10 general counsel of the National Association of
11 Ticket Brokers, the NATB. I have acted in that
12 capacity since the NATB was formed in 1995--

13 CHAIRPERSON GARODNICK:
14 [Interposing] Let me interrupt you just for a
15 second and make sure that you don't have any
16 written testimony for this--

17 GARY ADLER: I do have--

18 CHAIRPERSON GARODNICK: You do.

19 GARY ADLER: --testimony, yes.

20 CHAIRPERSON GARODNICK: That you've
21 copied and handed out?

22 GARY ADLER: I have not handed out,
23 I was going to give it to the Sergeant-At-Arms,
24 but--

25 CHAIRPERSON GARODNICK:

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2 [Interposing] Now is a good time, actually. We're
3 going to ask the Sergeant to come grab it from you
4 and we will--

5 COUNCIL MEMBER FERRERAS: So we can
6 [Off mic].

7 CHAIRPERSON GARODNICK: Yeah, you
8 know, we'd like to follow along as you go.

9 GARY ADLER: Absolutely.

10 CHAIRPERSON GARODNICK: Okay.
11 Gary, I'm sorry.

12 GARY ADLER: No, thank you, thank
13 you, Chairman. As I was saying, I'm the general
14 counsel of the National Association of Ticket
15 Brokers, or NATB, and I've acted in that capacity
16 since the NATB was formed in 1995. The NATB was
17 formed by a group of concerned ticket brokers who
18 had the foresight to recognize the importance of
19 self-governance in cleaning up the industry. The
20 number one primary purpose of the NATB since its
21 inception was to represent the interests of
22 legitimate ticket brokers by promoting consumer
23 protection measures and educating the public about
24 the secondary market. One of the foundations of
25 the NATB is assuring that the public that when

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2 they deal with an NATB member, they are working
3 with an honest, reliable businessperson who will
4 deliver what is promised.

5 Through self-governance, the NATB
6 has provided enhanced protections for ticket-
7 buying consumers. We've worked with law
8 enforcement agencies, state and federal
9 legislators, local legislators, Broadway
10 producers, and professional sports leagues and
11 teams. The NATB has enacted basically since it's
12 inception a lengthy and detailed code of ethics
13 that is more stringent and copious than any
14 consumer measures I have seen in any of the state
15 legislations.

16 I've submitted written testimony so
17 I'm not going to read from that, I think I'm just
18 going to maybe talk a little bit about some of the
19 trends. And I've had an interesting perspective
20 on the secondary market in that I'm not a ticket
21 broker, but I've been involved in it since 1995
22 when, at that time, there were probably 20 states
23 that outlawed or severely restricted or put caps,
24 including New York, on the resale of tickets and
25 we've seen a revolution, a tidal wave of free-

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2 market--one of the king linchpins of the NATB has
3 been free and open markets. And we've fought
4 against any artificial restrictions, any caps, or
5 any illegality. We've recognized, my people have
6 recognized, and now a lot of people recognize that
7 you're never going to legislate ticket brokering
8 out of existence; if you try to legislate it out
9 of existence, what you're going to do is hurt
10 consumers because there's going to be same demand
11 and less supply and prices are going to go up, and
12 you're going to drive the business back to the
13 back alleys and out of the back of cars.

14 At the same hand, we've always
15 advocated consumer protection measures. We have
16 been on the forefront of consumer protections in
17 the secondary market. We have, as I mentioned
18 before, a code of ethics that if you don't deliver
19 what you promised, you can't just refund that
20 money, that's not good enough, you have to give
21 200% of the contracted price or the contracted
22 price of and \$1,000--so severe penalties.

23 Fortunately, ticket brokers, my members, have done
24 what they've promised, and the complaints that we
25 get, as the same as the DCA, are few and far

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between.

So we've watched the secondary market explode. We understand the advent of the Internet and companies like StubHub have legitimized the secondary market, but we also have been given praise, and I think we deserve some credit for regulating, self-regulating, and doing the right thing.

I've talked to legislators before, and when they have a problem arises, 'cause invariably there's going to be a problem at some point, very infrequent, but they go--you know, I said, if every problem there is 10,000 good stories of people who are getting tickets at good prices or below face value or getting what they want, they're living their dream, they're getting them, and the legislators always say, well we know that 'cause whenever there's a problem, we hear about it. So ticketing and the ticket industry, and this is something that engenders a real passion and I recommend and I commend you all for looking at ways to improve or enhance consumer protection measures.

From my view, the industry, there

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2 are a few issues that should be looked, and again,
3 the concept of free and open markets is important
4 to us, even at the disadvantage to some brokers
5 who probably had a competitive advantage when
6 there wasn't as much competition. There's much
7 information for consumers to go search around.
8 But what we're seeing now, as this industry has
9 become legitimized, people, you know, big 800
10 pound gorillas and others are coming and trying to
11 make a mouse trap, capture this market, and we
12 think the number one responsibility or focus of a
13 legislature should be to make sure that
14 competition remains free and open.

15 And we see different vehicles being
16 used under the guise of getting--you know, of
17 helping consumers, such as restricted, paperless
18 ticketing. I use the example that we would see,
19 oh, restricted paperless ticketing, you can't
20 transfer it and then all of a sudden there would
21 be a way to transfer it, but you'd have to go back
22 and pay a VIP fee or get a VIP ticket or pay some
23 fee to transfer it. So we commended the New York
24 State legislature for enacting the law that really
25 has to give an option for restrictive paperless

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ticketing.

So to me, the number one issue is restrictions on competition that are being used by primary sellers. I think a good example is this Radiohead issue with will-call only. In the vast majority of instances I've seen, the design is not to protect consumers, but to funnel the secondary sales into a specific single site, rather than free competition. And in those rare instances where those efforts are well-meaning, they may be well-meaning but the intention results in higher prices for the consumers because the supply is distorted.

As far as bots, I've read--one of the reasons I'm testifying today is I saw the comments in the legislative intent section about the use of automated devices. Let's be clear, the National Association of Ticket Brokers long ago took a position on this: We do not countenance the use of automated devices; we've never opposed legislation that makes them illegal; we have not seen a whole lot of evidence that that's the problem. And in fact, what we have seen is it has been used as a means of diverting public attention

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2 from the real problem. And I'll give you an
3 example, Councilman Comrie mentioned Hannah
4 Montana. Well we had, of course, when Hannah
5 Montana came out and there was tickets were sold
6 out, people couldn't--politicians and other people
7 couldn't get--or nobody could get tickets, we got
8 blamed, but then it turns out, lo and behold,
9 Attorney General--

10 CHAIRPERSON GARODNICK:

11 [Interposing] Let me just be [off mic] I was so
12 frustrated.

13 [Laughter]

14 GARY ADLER: But so Attorney
15 Generals were frustrated too and investigations
16 were done and, lo and behold, it wasn't bots that
17 were the reason. And 'cause my brokers were
18 going, we didn't buy up all these tickets, this
19 is--and it turned out there was a gigantic hold
20 backs, there was, I would say, an artificial, you
21 know, frenzy because all of a sudden, when the
22 Attorney Generals got involved, tickets became
23 available. Where were those tickets? Never got
24 the answer to that.

25 So to be clear, the use of

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2 automated devices is something that is a perfectly
3 legitimate target of legislation. I don't believe
4 it's the problem that is causing, but we would not
5 oppose measures that outlawed the use of bots.

6 You know, transparency is the other
7 key element in our view of a free and open market.
8 My members are transparent about the fact that
9 they resell tickets. They are, again, a lot of
10 the times, it's not the best business to be in
11 because of the competition, and the margins are
12 low, and lots of tickets are sold below face
13 value. So transparency on the part of primary
14 sellers is something that we've always advocated
15 because we're the easy target when we're not
16 really the responsible party so...

17 CHAIRPERSON GARODNICK: So thank
18 you for your testimony, and you all have raised a
19 number of different and very interesting issues.
20 Let me just jump in with a couple questions right
21 off the bat, and, Mr. Adler, I'm going to start
22 with you since you were the last to speak. We
23 appreciate what you said about the bots, they are
24 now illegal in New York State, but we have no
25 sense, sitting here today, as to how the relevant

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2 sellers are preventing the use of bot software.
3 It's one thing for it to be illegal, it's another
4 thing for it actually to be stopped. Can you give
5 us any sense from your perspective as to what your
6 members have done to be able to prevent the use of
7 bot software, or any measures that you know of
8 that actually have been employed successfully to
9 keep bots from being used?

10 GARY ADLER: Well I don't know if I
11 can approach it from that perspective because,
12 again, we have not received any complaints about
13 our members using bots. But, having said that, I
14 think the criminal enforcement of the Wiseguy case
15 that Mr. Breyault mentioned is a great deterrent
16 against the use of bots.

17 You know, a lot of my members get
18 harmed as well by the use of bots because they're
19 competing for the purchase of tickets just like
20 consumers are. You know, so I have no real
21 evidence or anything to share with you on how to
22 combat that other than enforcement of laws, and I
23 know that the primary seller, Ticketmaster, is
24 pretty good at--has pretty good security and has
25 pretty good means of addressing that. So I would

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2 leave it to--if it was me, I would leave it to
3 them to enforce that.

4

CHAIRPERSON GARODNICK: You
5 represent the National Association of Ticket
6 Brokers which, presumably, has members that are
7 based right here in New York City and New York
8 State, correct?

9

GARY ADLER: Yes, sir.

10

CHAIRPERSON GARODNICK: How many
11 members do you have based in New York City?

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GARY ADLER: I don't have that
13 exact--we have 220 members nationwide; in New York
14 City, we probably have a dozen, I would guess. A
15 lot more now, you know, since New York legalized
16 it. So I would say, I can look that up and get
17 back to you, but my guess is from my experience
18 and being involved basically in the day-to-day
19 operations, there's anywhere from 6 to 12--

20

CHAIRPERSON GARODNICK:

21

[Interposing] Okay. So it's not a huge number.

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GARY ADLER: Not huge.

23

CHAIRPERSON GARODNICK: Give us a
24 flavor of how your members secure the tickets that
25 they ultimately resell.

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2 GARY ADLER: Mm-hmm. And again, as
3 the association, we don't get too much into the
4 business of our members, but I've--they get
5 tickets from mostly from purchasing season
6 tickets. We've had at our national convention
7 lots of sports teams that have come there. In
8 fact, the president of the Washington Nationals
9 was a keynote speaker and he said, you know,
10 people think we hate brokers, we love brokers.
11 The Brooklyn Nets, the Nets were a vendor at our--
12 you know, we are a good source for the sale of
13 season tickets, both in sporting events, and then
14 you buy with that the right to buy tickets to
15 other events. Anyone with a ticket now is that--
16 one of the problems you see with this, the problem
17 of the public getting tickets is, I think, a
18 result of the fact that it's an international
19 world now, that there are people buying tickets to
20 New York events that are never intending to go to
21 it, they're somewhere in California or somewhere
22 else, and they just see--I have hundreds of
23 friends who have lost a lot of money thinking that
24 they could do this.

25 So you know, I think there's a lot

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2 of people that have tickets that want to sell
3 those tickets, sometimes the price becomes too
4 good to refuse, so instead of putting it on the
5 market or putting it on eBay or paying the fees
6 that are associated with it, they come to my
7 members, and my members hopefully buy the tickets
8 for less than they sell them for. So the idea
9 that, like for a Super Bowl, its face value, let's
10 say, \$1,000, if it's \$2,500, the idea that NATB
11 members made that markup is misplaced, there's a
12 whole wholesale level of sale with people who have
13 tickets and things like that. So--

14 CHAIRPERSON GARODNICK:

15 [Interposing] So it sounds like from your
16 experience, that the vast majority of the tickets
17 are secured through complete season of purchases
18 and then made available on the resale market.

19 GARY ADLER: You know, I don't know
20 if I'd say, but I'd say in the sports, sports is a
21 little bit different than concerts and I would say
22 in sports that--

23 CHAIRPERSON GARODNICK: So that's--

24 GARY ADLER: --a lot of my members
25 make huge investments in sports tickets.

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CHAIRPERSON GARODNICK: And how
about for concerts?

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GARY ADLER: In concerts, I think
some of it is from your ownership of a suite or
from an investing in a sports team, you get the
right to purchase tickets, and with that comes the
right to buy tickets to concert events. I think
that there are people who work hard to buy tickets
legitimately through Web, I think there are. But
I think a large portion of it is a wholesale
market of people who get tickets, see that they
can make money on those tickets and don't want to
go out on the open market and go wholesale them to
ticket brokers.

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CHAIRPERSON GARODNICK: Let's talk
about will-call for a second. You noted that
will-call was, from your perspective, where
tickets are only available for pick up and entry
at will-call are particularly difficult, certainly
for brokers, but it's difficult in some cases for
consumers. Just to push you on that a little bit
because, obviously, some artists decide to employ
will-call only for the purpose of making sure that
brokers are not involved and that fans are able to

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2 buy their ticket, show up, walk in the door, and
3 there's no complication or confusion there, and
4 less resale on the open market--and that is fully
5 deliberate and intended by the artists to be a
6 protective mechanism for their fans. Is the
7 problem with will-call only just the fact that you
8 can never transfer your ticket? Is that the
9 problem from your perspective?

10 GARY ADLER: Well it's the same
11 with paperless ticketing, there's nothing wrong
12 with paperless ticketing, it's when you use it to
13 restrict the transferability of the ticket that
14 the problems arise. If you use will-call only to
15 restrict the transferability of a ticket, you're
16 going to have problems. Now, in most instances
17 that I've seen, there is a way to get around it if
18 you pay a fee or you join a VIP. I've seen a few
19 rare instances where the artists were well-
20 meaning, genuinely intended to try to somehow keep
21 the resale of their tickets from happening and I
22 think it's something that is very dangerous, it's
23 not going to help consumers, it's not going to
24 work, and all of these efforts are--well even if
25 they're well intended, they're going to raise

1
2 prices for consumers and it's impossible to--it's
3 going to create nightmares at the box office--

4 [Crosstalk]

5 CHAIRPERSON GARODNICK:

6 [Interposing] Well I'm sorry, just to take a step
7 back, why does that raise prices for consumers,
8 the will-call only scenario?

9 GARY ADLER: Because what we've
10 seen in every attempt to try to limit the
11 restrictive--to restrict the transferability of
12 tickets or to restrict the free and open secondary
13 market results in that. There are--

14 CHAIRPERSON GARODNICK:

15 [Interposing] Well results in any tickets that are
16 able to be transferred end up being much more
17 expensive because there are fewer of them.

18 GARY ADLER: There are fewer of
19 them.

20 CHAIRPERSON GARODNICK: Right, but
21 there are many more people who buy their tickets
22 themselves and walk directly into the venue
23 presumably. Is that correct?

24 GARY ADLER: Presumably,
25 presumably.

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2 CHAIRPERSON GARODNICK: Okay. All
3 right, so it sounds like there are others who want
4 to address the issue, and, you know, obviously
5 that was what happened at, you know, the recent
6 example at Roseland, although it was not just
7 that, it was not just the lack of transferability,
8 it was the fact that tickets suddenly were
9 available on the secondary market, just
10 contemporaneous with the primary market, but go
11 ahead.

12 JOHN BREYAULT: Sure, Mr. Chairman,
13 in will-call only, I mean, certainly as a consumer
14 group, we are in favor of artists trying to make
15 sure that their fans get to see the show at an
16 affordable price. That said, will-call only, it
17 poses a problem. For example, at the Radiohead
18 show, I believe, was a prompt for this hearing, we
19 know of numerous instances where, for example, a
20 parent bought a ticket as a gift for their child
21 and they had to go down to the Roseland Ballroom,
22 stand in line, present the credit card and an I.D.
23 in order for their child to get the ticket and
24 then go in. So in that sense, will-call only is,
25 on face, it sounds like it's a pro-consumer thing

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2 for an artist to do, to want to have. That said,
3 we think there are significant consumer
4 inconveniences that come along with the will-call
5 only scenario. So I think that needs to be taken
6 into account before we start depending on will-
7 call.

8 Second, frankly, the reason that my
9 organization became involved in ticketing issues
10 is because our executive director went to buy a
11 ticket at a box office and was outraged at the
12 incredible service fee that she was charged on top
13 of the face value of the ticket--buying it at the
14 box office. And I think that's what many
15 consumers think that they can do when they buy a
16 ticket at a box office: It's a way to save money,
17 versus having to pay for things like printing your
18 own ticket at home, which is one thing that
19 Ticketmaster charges, or paying inflated prices on
20 the secondary market potentially. So depending on
21 will-call is not necessarily, I think, a panacea
22 for fixing the consumer frustrations that I
23 describe in my testimony.

24 CHAIRPERSON GARODNICK: On the
25 subject of paperless ticketing, there appear to be

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2 a few different categories today of types of
3 tickets that are out there--paperless tickets; e-
4 tickets; and tickets, regular, old paper tickets.
5 Am I missing any category of tickets that are out
6 there that anybody knows about today? No. Okay.

7

8 So as I understand them--well we
9 all understand what a regular paper ticket is--an
10 e-ticket is the ticket that you can actually
11 download, print, whether it's for a fee by
12 Ticketmaster or if a friend has a season ticket
13 and they say, okay, I'm going to e-mail you your
14 ticket, meet me at the seats, that's an e-ticket.

15

16 Paperless ticket, this is where it
17 gets a little more confusing for this committee,
18 and perhaps even for the city and state. Is the
19 Radiohead example an example of a paperless
20 ticket?

21

22 JOHN BREYAULT: Mr. Chairman, to my
23 knowledge, the Radiohead show was not an example
24 of a paperless show. In a paperless show, the
25 consumer does not actually present a paper ticket,
whether it be a ticket that they received in the
mail directly from the primary seller or one that
they printed off at home. Instead, they are

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2 required to present some form of token at the
3 venue, usually it's a credit card, sometimes it's
4 combined with some sort of I.D. The problem with
5 that, from our point of view, is number one, that
6 it restricts transferability of the ticket; and
7 number two, you also run into the inconvenience
8 factor that I described before where, for example,
9 the parent or a grandparent in California, let's
10 say, wants to buy a ticket for their grandchild in
11 New York and the child cannot pick up the ticket
12 because--

13 CHAIRPERSON GARODNICK: Okay.

14 JOHN BREYAULT: --they don't have
15 the right--

16 [Crosstalk]

17 CHAIRPERSON GARODNICK:

18 [Interposing] So New York State law allows for a
19 paperless ticket, provided that it can be
20 transferred at any time, at any place, anywhere,
21 something like that, without any additional fees,
22 etc.

23 JOHN BREYAULT: As I understand the
24 law, in New York there is a paperless option, so
25 an artist may sell a paperless ticket, but the

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consumer must be given the option to--

[Crosstalk]

CHAIRPERSON GARODNICK:

[Interposing] Correct, if you decide to go with the paperless ticket, then the consumer has to have the ability to transfer it.

JOHN BREYAULT: Well I think that it being--

CHAIRPERSON GARODNICK: In New York, in New York.

JOHN BREYAULT: Okay.

CHAIRPERSON GARODNICK: So I guess my question for you is this: How does one do that?

JOHN BREYAULT: Typically, as I understand the transferability of a paperless ticket, one of the ways that consumers are forced, frankly, to do that is by using only the resale ticket network that is provided by the primary ticketer. So for example, Ticketmaster is the major primary ticketer in the ticketing market today. They also operate a number of [off mic] their own resale marketplaces. I don't have direct experience with trying to transfer a

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2 paperless ticket via one of their networks, but I
3 understand that that is an option. That said, we
4 still believe that that is not a pro-consumer
5 business practice. We believe consumers deserve
6 choice as to where they wish to resell their
7 ticket and how they transfer it, they should not
8 be forced onto the monopoly primary ticketer's
9 resale market where Ticketmaster sets the prices
10 and the fees.

11 We think the history of
12 Ticketmaster's business practices and the
13 increasing service fees that consumers have
14 historically experienced is proof that it's not a
15 company that has the consumer interest in mind.
16 And in fact, if you ask Ticketmaster who their
17 customers are, they will typically tell you that
18 it's not consumers, it's venues that they sign up
19 to be the exclusive ticketing agent for. So I
20 would not submit that the consumer interest is
21 number one in Ticketmaster's mind.

22 CHAIRPERSON GARODNICK: Okay. So
23 it sounds like in those examples where paperless
24 tickets were employed and transferability was
25 included it was only able to be done through the

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site from which it initiated.

JOHN BREYAULT: If a consumer within a show that has a paperless option, the consumer can still download the paper ticket and transfer it normally--and we think that's a good thing. If they wished to transfer the paperless ticket later on, I believe they would have to go through Ticketmaster's own resale network. But if they chose to get the paper option, they would have the ability to transfer that to whomever they wish or resell it on the resale market of their choice.

CHAIRPERSON GARODNICK: Got it. I mean, obviously we want to keep up with the technology here, right? I mean, we may end up all with paperless tickets someday and they may, you know, you may think about entry and somebody will be able to scan your brain and you'll know whether you paid for it. We want to be able to keep up, but I think that your point is that, so long as you have the ability to transfer it or gift it or whatever, then there's nothing inherently wrong with paperless; but it's the fact that today there's no real mechanism for ease of transfer, is

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that fair?

JOHN BREYAUULT: Yes, that's true.

To be clear, NCL does not oppose a paperless system as long as there is the option. So we would oppose a restrictive paperless where consumers must go with paperless only, but if they are given the option, as they are in New York, to get a paper ticket, we do not oppose that.

CHAIRPERSON GARODNICK: Thank you.

I'm going to go to Council Member Comrie, and I have a number of questions in addition, but want to give the Council Member a chance.

COUNCIL MEMBER COMRIE: Great.

Just to be clear, the paperless ticket, if there is an option for a person to gift it at purchase, wouldn't that make sense? The paperless ticket, if there's an option--if you're going online to purchase a paperless ticket and you're Grandma Smith buying for your cousin, for your nephew, John, doesn't it make sense in that option there be a field to say that John could pick up the ticket, and shouldn't that be something that these companies should want to do for people since they're trying to encourage ticket sales to an

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event? I'll ask all three of you that question.
Whoever want to go first.

JOHN BREYAULT: Yeah, well it certainly would, I think, be a consumer benefit, if that was possible. Unfortunately, as we understand paperless ticketing today, the consumer who purchases the ticket has to arrive at the venue with, typically, their credit card.

COUNCIL MEMBER COMRIE: Is the paperless ticket market dominated by just Ticketmaster? 'Cause the three of you seem to keep bringing up Ticketmaster as the only paperless ticket broker.

JOHN BREYAULT: Well Ticketmaster is the number one by a large percentage a primary ticketer, and, yes, they are the company that is at the forefront of trying to push this restrictive paperless ticketing.

COUNCIL MEMBER COMRIE: Okay. So well, again, we're clear, I think all of us agree we don't want restrictive paperless ticketing, and that's not a part of the New York Law so we would want to move past that. Is ticketing--I'm sorry, what is the basics of membership to be a member of

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the National Association of Ticket Brokers?

GARY ADLER: Thank you, sir. You have to have the brokering of tickets to be your primary business, you can't be a mom-and-pop, it can't be a part-time business; you have to have been in the business for over a year; you have to have a permanent business address, business telephone; you also have to have the sponsorship, not just recommendation, of two NATB members.

The ticket brokering community is, you know, ticket brokers that are the permanent-- this is their full-time business, it's a pretty small community.

COUNCIL MEMBER COMRIE: So these are all individuals, this is not Live Nation or Ticketmaster or MSG or--

GARY ADLER: No--

COUNCIL MEMBER COMRIE: --the Broadway League or--

GARY ADLER: --this is ticket brokers.

COUNCIL MEMBER COMRIE: They're all individual ticket brokers.

GARY ADLER: Well companies, sir,

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yes, but individual ticket broker firms.

COUNCIL MEMBER COMRIE: But none of them are the large, New York City & Company is not a member or--

[Crosstalk]

GARY ADLER: [Interposing] No, a company called Broadway.com is a member--

COUNCIL MEMBER COMRIE: Okay.

GARY ADLER: --which is a secondary site to buy Broadway tickets.

COUNCIL MEMBER COMRIE: But that's a secondary site.

GARY ADLER: Correct, all of our members are secondary sites.

COUNCIL MEMBER COMRIE: Okay. And you said that you don't know how they obtain their tickets in your testimony?

GARY ADLER: I don't get too--I don't get--

COUNCIL MEMBER COMRIE:
[Interposing] There's no code of conduct or there's no regulation on how they should obtain their tickets?

GARY ADLER: Well as I mentioned,

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2 the code explicitly states that you can't use
3 automated--you know, the use of automated devices
4 is not consistent with our code of ethics. An
5 automated device is defined of, you know,
6 inundating a site so that the consumers can't
7 purchase tickets and it gives you an unfair
8 advantage. There's also, you know, we've never--
9 the code doesn't allow the bribery of box office
10 people.

11 COUNCIL MEMBER COMRIE: Okay.

12 GARY ADLER: So it does have, you
13 know--but when I'm asked how my members
14 specifically buy tickets, I do not as an--or the
15 association does not delve into that too much,
16 unless there's some inquiry about it or--and I
17 just have this kind of, having done it since 1995
18 and having sold tickets to brokers for events that
19 I have tickets, you know, I do have some knowledge
20 of how they purchase tickets, I just I don't want
21 to speak for them, for each individual broker of
22 how they buy tickets. But I will say I know that
23 they make large investments and take the risk for
24 purchasing inventory for a lot of things that turn
25 out not so well.

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2 COUNCIL MEMBER COMRIE: Okay. And
3 then you were talking about the issue of resale
4 and the cost of tickets for the public for a
5 particular venue. I think one of the primary
6 reasons why I wanted to do a 15% ticket hold back
7 for customers is that so many tickets are sold on
8 secondary market at higher prices. One of the
9 things that I was grappling with is that, if the
10 higher price is the standard price for an event,
11 why isn't that price initially charged for the
12 ticket? Because it seems like they're
13 deliberately under-pricing the tickets, then
14 they're holding the tickets, creating a demand for
15 actually a real price that they allow to get to.
16 Why don't they just charge the real price up
17 front, as opposed to creating an artificial demand
18 by holding 90% of the tickets away from the
19 consumer?

20 GARY ADLER: Well I think that's an
21 excellent question and it's been studied by
22 economists, smarter people than me, about, you
23 know, why that is and there's all sorts of reasons
24 for it and there's all sorts of efforts to maybe
25 try--you know, the great example is the San

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2 Francisco Giants who have sold out their stadium
3 for, I think, for a couple of years now. They
4 were revolutionary in the ticket industry by
5 creating ways to try to remedy that. For example,
6 they recognized that a game against the Los
7 Angeles Dodgers on a Saturday night is not the
8 same value as a game against the Washington
9 Nationals on a Tuesday night, so they started
10 something called variable pricing and we hear
11 efforts about dynamic pricing, where it's going to
12 be more like airline tickets. So, you know, I
13 think that how I answer that is that's what makes
14 what my members do such a difficult job.

15 And let's be clear, there are a
16 significant number of tickets that are not sold
17 above face value. Last data I saw was 40%; in my
18 experience, I think it's more now, although that's
19 just my--

20 COUNCIL MEMBER COMRIE:

21 [Interposing] That were sold under face value?

22 GARY ADLER: Under face value.

23 COUNCIL MEMBER COMRIE: Forty
24 percent.

25 GARY ADLER: Like tremendously

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under face value. I have--

COUNCIL MEMBER COMRIE: For most--

GARY ADLER: --brokers in

Washington invested in sports teams like the
Wizards or the Nationals, and you could, you know--

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[Crosstalk]

COUNCIL MEMBER COMRIE:

[Interposing] But you're talking about sports
events now, as opposed to--

[Crosstalk]

GARY ADLER: [Interposing] And

concert events.

COUNCIL MEMBER COMRIE: --special--

and concert events?

GARY ADLER: Oh, tremendous number

of concert tickets. 'Cause part of our sales have
tried to adjust and have to tried to capture that
through various--some means we don't countenance,
you know, competition is competition, some not so
good means, but they've tried their prices--prices
for tickets have gone up tremendously and I think
one of the things they're seeing is that, when
they try to capture the secondary market 'cause

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2 they don't want someone else making money on their
3 product, they're losing out on their primary bread
4 and butter of selling tickets.

5 COUNCIL MEMBER COMRIE: But don't
6 you think that it would drive the prices down if
7 we were able to have a determined percentage that
8 were held for the consumers, at either the 15%
9 that was set aside direct for consumer sales
10 until, you know, an hour before the concert,
11 before it's open to the market, wouldn't that hold
12 prices down as well? And it actually would create
13 less of a way between, you know, the original
14 price, the secondary market price 'cause a
15 consumer would know that the price is \$100 for a
16 ticket to get to an event if they can purchase it
17 on a direct buy, and then the secondary market
18 would still have the opportunity after that. But
19 wouldn't it drive the--or at least keep the prices
20 consistent?

21 GARY ADLER: You're talking, sir,
22 on the primary market or on the secondary market?
23 I don't know what it would affect, how it could
24 affect the primary market. It may or may not.

25 COUNCIL MEMBER COMRIE: Well the

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2 primary market first, but it would also drive the
3 prices, or at least keep the prices consistent on
4 the secondary market if there's a certain amount
5 of tickets that are set aside and for the public
6 directly.

7

GARY ADLER: Well, you know, I can
8 see instances where that may not be the case, and
9 then just thinking about it right now, let me give
10 you, you know, one is the consumer thinks they're
11 going to get this ticket at the box office and
12 they don't, and there's a lot of those consumers
13 that don't get the ticket, and now all of a sudden
14 you have a market that's been artificially created
15 that's much more intense than it would be in the
16 normal course of an open and free market. In
17 other words, you're having all these people who
18 had the expectation of getting a ticket, they're
19 going to the show, they're thinking they're going
20 to get it, turns out, even with this hold back,
21 there's not enough tickets to meet their demand,
22 and you've got all these consumers now who are
23 going to flood that market buying the secondary
24 market, and it creates, I think, an artificially
25 high price.

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2 So you know, I think it's maybe
3 well intended and, quite frankly, other than the
4 legislative intent sections, we don't really have
5 a position on box office--reserving some tickets
6 for the box office. Although, we think it's a bad
7 idea to do anything that limits a free and open
8 market 'cause it works. And we had economists who
9 were talking just about this in 2007 when New York
10 State had restrictions and she's famous for saying
11 just let it--I know people don't believe in a free
12 market and the ticket, for some reason it's
13 different than anything else, but it works, it
14 works every time.

15 COUNCIL MEMBER COMRIE: No, I'm not
16 against the free market for ticket. I think that
17 if you set an event at 10,000 seats and 15%, or
18 3,500, seats go to the general public, and that's
19 held at the venue to be sold either at the window
20 or through their electronics system, you know, the
21 other percentage go to the promoters, the artists,
22 but there's transparency so that the public will
23 know that, out of a 15,000 seat venue, you can
24 either choose to try to get the 3,500 at the
25 window--let's just say the window for now, but the

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2 window could actually be online--you know, do
3 direct purchase with the consumer or that person
4 can go to their American Express, if they have a
5 Black card--which I've never seen--if they can,
6 you know, order--they go to promoter or they go to
7 the artist 'cause the fan club, but at least
8 there's transparency and there's truth in
9 marketing. So, you know, that way the individuals
10 can have an opportunity to make that choice
11 upfront. And you know, that's what I think what
12 we're trying drill down to.

13 So, you know, I'm not trying to,
14 you know, change the opportunity for a secondary
15 market to be free and open, I just want the
16 consumer to have an understanding what their
17 options are, where they can go from 12:01 a.m. to
18 try to purchase a ticket: Should they go straight
19 to the secondary market, should they go...because
20 they have a better chance because they know
21 there's going to be 3,500 tickets at the venue for
22 purchase at, you know... We want to give truth in
23 advertising or they go to, you know Ticketmaster
24 to try to buy the ticket, that's really what we're
25 trying to work on here.

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2 The other issues of whether or not
3 the secondary market is, you know, creating blocks
4 for people to have the opportunity for
5 transferability, I think that can be easily
6 resolved if we push those folks to have a transfer
7 option within their purchase or within their
8 timeline before the event to create a transfer
9 option online for people.

10 And also, you know the other issue
11 that has been brought to me is the restriction of
12 some, even the secondary market people, to allow
13 for the sale of the tickets have to be controlled
14 only through them, which I think is unfair also,
15 and charging percentages and fees to allow that to
16 happen, you know, is something that's over
17 exorbitant to the normal consumer as well.

18 But I want to thank all of you for
19 being here. George, I want to just let you know
20 I'm not trying, again, I'm not trying to limit
21 profit, this is not about restricting profit. If
22 you set a price, that's your price; if you know
23 you need to make, you know, whatever that price is
24 to make a profit. This is not about limiting
25 profit or limiting opportunities of venues to make

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2 money or to be able to sell, but the issue of
3 certain venues totally controlling their tickets
4 to the point that it's a restriction for consumers
5 is problematic.

6

7 But as you know, I'm a big
8 supporter of increasing tourism and, you know, New
9 York City is only going to stay strong if our
10 entertainment center stays strong and if we can
11 continue to have, you know, the best Broadway
12 shows in the world and the best concerts in the
13 world, that's what's going to keep business here
14 in New York. But to keep consumers to have a real
15 opportunity to understand what they're purchasing
16 is really what I'm after. I'm truly not trying to
17 limit the opportunity to make sure that we have
18 the best concerts in the world or the best special
19 events and not looking to limit the opportunity
20 for the venues to make money because we want those
21 venues to stay in New York and we want more venues
22 to come 'cause that's how we keep the city's
23 economy growing.

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25 So I just want to assure you that
was not the intent. This is the first hearing for
the bill, I hope to work with everyone in the room

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2 to come up with something that makes sense. Thank
3 you.

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GEORGE FERTITTA: Thank you.

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CHAIRPERSON GARODNICK: Before you
6 go, a couple more from me, and, Mr. Fertitta, I
7 want to just focus on you for a moment on your
8 testimony. We noted that in your testimony you
9 said it's the right of venues to make a profit at
10 fair market value on the major events that they're
11 able to procure and produce. Any issue with
12 transparency regulations?

13

GEORGE FERTITTA: My only issue is
14 really about the holding back of the 15%, that's
15 the only issue, everything else that you've--

16

[Crosstalk]

17

CHAIRPERSON GARODNICK:

18 [Interposing] So NYC & Company has no particular
19 issue about requiring venues to state how many
20 tickets are available to the public.

21

GEORGE FERTITTA: Oh, we would
22 prefer it to be as transparent as possible--

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CHAIRPERSON GARODNICK: Okay.

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GEORGE FERTITTA: --so we're for
25 all of those.

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CHAIRPERSON GARODNICK: Okay. And also in your testimony you noted that, in your view, the real issue is illegal black market scalping. Can you explain how you're defining illegal black market scalping in this context? Because, obviously, New York State law changed, most secondary market resales are now legal. So what are you referring to when you say illegal black market scalping?

GEORGE FERTITTA: What we're referring to is that literally when you're going to an event and somebody's got 4 tickets or 10 tickets in their hand and they're charging you \$500 and we don't know the mechanism in which they received those tickets, and those are the kind of issues that we're referring to.

[Pause]

CHAIRPERSON GARODNICK: Okay. Thank you. We have a number of different folks who are looking to testify today so we will free you all. But thank you very much for your testimony. We're now going to call Jon Potter of the Fan Freedom Project; Marissa Greenberg of the same; oh, and Dustin Brighton from eBay and

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StubHub.

[Pause]

CHAIRPERSON GARODNICK: Welcome.

Whenever you're ready, you can go ahead and get started.

[Pause]

JON POTTER: Great. Thank you, Mr.

Chairman, thank you, Mr. Comrie, for inviting me to testify. I'm Jon Potter, I'm the Founder and President of the Fan Freedom Project. We launched in February of this year, we now have more than 40,000 supporters nationwide, including more than 3,000 here in New York.

We are very appreciative of this hearing, we're very appreciative of, Mr. Comrie, your bill. I can't tell you that I've spent a lot of time in the nitty gritty details as some of the testifiers have been, but we're certainly happy to work with everybody on the New York City Council to ensure that fans have fair access to face value tickets, full transparency in knowing who they're competing with, how many tickets are actually being made available for their purchase, and that, once fans have paid full value, once the provider

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2 of tickets, the seller of tickets has gotten their
3 money, it's my ticket and if I want to give it to
4 my friend or my cousin or my neighbor or if I want
5 to resell it, it's my ticket.

6 And the next time you go to a car
7 lot and the person who sells you a car tells you
8 that they still require you to come back to their
9 car lot five years later when you want to resell
10 that car and they're going to tell you what the
11 price is of that car resale, my guess is that 311
12 number will start ringing with regard to cars.

13 What we're saying is there should
14 be a right of consumers to have the same rights
15 with regard to cars. When a car dealer advertises
16 that they have a car for only \$8,000 and it's a
17 brand new Rolls-Royce, they have to tell you what
18 the VIN number is and they have to say well we
19 really only have one and it really doesn't drive
20 very well.

21 But we have deceptive marketing and
22 deceptive advertising laws here in New York City,
23 we just need to make sure that they actually apply
24 to ticket sales. We have consumer rights laws and
25 some transparency laws in New York City, we have

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to make sure they apply to consumers.

Mr. Breyault of the Consumers League made a very good point, which is that, we in the consumer arena are very opposed to illegal use of ticket buying bots, ticket buying software that essentially jumps the line ahead of regular consumers who are standing there doing the click, click, click at Ticketmaster.com to try to get their tickets. There are ways to attack illegal use of software. The music industry, and the movie industry, the FBI who goes after pedophiles, you know, kiddie porn purveyors, we know how to track people down on the Internet and how to arrest them. If there are people who are using illegal software to buy huge blocks of tickets and screw the rest of New York City consumers, and apparently there are, we should be able to find a way to get them.

And it's just as New York's music industry and New York's movie industry worked very hard and hired very talented software people to help the FBI and to help law enforcement go after those folks, I think it's incumbent on the ticket sellers, Ticketmaster, and the event providers to

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2 help the district attorney and help the Attorney
3 General go after those bad guys and get them.

4 And the idea that you would instead
5 impose restrictive tickets and paperless tickets
6 and will-call only on everybody because of a few
7 bad apples is a ruse. And there are some well
8 intended artists, there are some well intended
9 venues who are trying to do the right thing by
10 consumers, but if you're looking at Ticketmaster,
11 this is called making lemonades out of lemon--
12 yeah, making lemonades out of lemons, right?
13 You're sitting here saying, oh, we have a way now,
14 we have an excuse of these bad guys with bots to
15 make all tickets restrictive, and, by the way,
16 we'll make all the tickets restricted to our
17 secondary market resale site. So Ticketmaster,
18 already being the second largest reseller of
19 tickets, is now going to quickly become the first
20 largest reseller of tickets and the only reseller
21 of tickets because they will lock your ticket and
22 everybody else's to their digital platform. And
23 once that happens, there will be no more
24 competition, prices will go up, customer service
25 will go down. It's pretty standard monopoly

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economics.

So in closing, we can talk through all the great stories on our website or all the terrible stories on our website of fans literally having great frustration buying tickets, using tickets, selling tickets, we can go through all the technology issues of how to catch these bot guys, but the most important thing is that you're holding this hearing and that you're committed to legislating in support of New York City's consumers. And I thank you for your time.

CHAIRPERSON GARODNICK: Thank you.

DUSTIN BRIGHTON: Mr. Chairman, members of the committee, my name is Dustin Brighton and I'm Director of Government Relations for eBay and StubHub. As most know, eBay is the World's Online Marketplace with over 99 million active users worldwide who choose from a variety of categories for goods. Tickets, one such category on eBay, and constitutes one of the most popular and dynamic categories in our marketplace. In 2007, eBay acquired StubHub because it fit in well with our mission.

People from all across the country

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2 visit eBay and StubHub to buy and sell tickets
3 that are in high demand. We have a very open and
4 transparent marketplace where buyers can see all
5 the available inventory, ensure that buyers have
6 the wisest choices and sellers to get the best
7 price, it's what we do. We are not a ticket
8 broker as we do not position inventory on the open
9 market.

10 We believe that the majority of
11 tickets on eBay and StubHub have been sold at or
12 below face value, and our research shows that eBay
13 and StubHub ticket sellers in large part are
14 individuals who end up with more tickets than they
15 can use and want to try and recoup at least some
16 of their costs.

17 The overwhelming majority of these
18 transactions on our marketplaces occur without any
19 problems--the seller receives payment, the buyer
20 receives the tickets he or she purchased in a
21 timely fashion. For those very few transactions
22 that don't go well, if there's a problem with the
23 transaction, we back our transactions with a 100%
24 fan protect guarantee. So the purchaser gets into
25 the event, we supply them with a ticket, or, if

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2 that's not successful, we guarantee that that
3 buyer will get 100% of his or her money back.

4 Recognizing the significant
5 consumer benefits of open and competitive
6 marketplaces where consumer protections are
7 intact, the state of New York in 2010 passed what
8 is considered by many in the ticketing industry,
9 the most competition and consumer friendly resale
10 statute in the nation. The law seeks to protect
11 consumers by ensuring that they can purchase a
12 ticket in a transferable form.

13 Specifically, it mandates that at
14 the time of purchase of the ticket on a primary
15 market, the customer must be given an option to
16 buy a ticket that can be transferred or resold on
17 any resale marketplace, independent of the
18 operator or operator's agent.

19 Unfortunately, a trend has been
20 developing that we've seen here in New York City
21 and other places. The trend is that a lot of
22 acts, as we've already talked about today,
23 implement a will-call only system where consumers
24 are forced to pick up tickets at a will-call only
25 window on the day of the show, effectively

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2 preventing them from reselling or transferring
3 tickets that they can no longer use. With will-
4 call only distribution to an event, the ticket is
5 acquired and it's actually tied to one's I.D. and
6 the only method to gain entry to the event is to
7 pick up your tickets at that location on the date
8 of the event at that will-call window. In that
9 manner, the ticket issuer is able to control or
10 eliminate the ability of the purchaser to resell
11 that ticket on the open secondary market.

12 There have already been multiple
13 concerts in the New York City, as I stated, that
14 have used will-call only distribution. When the
15 secondary market is eliminated, consumer benefits,
16 such as choice and competition, are eradicated as
17 well.

18 In addition, we fully endorse a
19 transparency as far as ticket distribution in the
20 primary market. We feel an informed consumer is
21 an empowered consumer. An open and transparent
22 primary ticket market would allow consumers to
23 make educated decisions when it comes to
24 purchasing tickets and for how much. Consumers
25 shouldn't be shocked when tickets sell-out in

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2 minutes if they understood that only a small
3 fraction of tickets were actually available to the
4 general public after hold backs and insider sales,
5 as you've heard from many today.

6 I would like to highlight that
7 Barry Diller is the former Chairman of Live Nation
8 Entertainment, seems to think it a good idea too,
9 based upon a quote from a USA Today article
10 published in the April of 2009, and I quote, "The
11 problem with the ticketing business is: It's the
12 essence of non-transparency. And the reason is
13 that everybody has an axe to grind. Artists do
14 not want consumers to know that they have a take
15 of different parts of the ticketing package.
16 People who own venues want to put in service
17 charges. So I think there's going to be
18 legislation which is going to force transparency,
19 and I think that would be great for everybody."

20 While StubHub and eBay also support
21 transparency, the transparency requirement should
22 not be imposed on neutral marketplaces like
23 StubHub and eBay that don't have access to primary
24 ticket distribution data. They don't share that
25 with us. StubHub and eBay have no knowledge,

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2 example, for what type and number of tickets are
3 made available at the on sale date, and primary
4 ticketing companies and venues are very unlikely
5 to provide us with that data.

6 It would be very difficult for
7 online exchanges unaffiliated with primary
8 ticketing companies to comply with some of the
9 mandates that are currently in the bill; however,
10 we look forward to working through these issues
11 and further on these issues with Councilman Comrie
12 and the committee.

13 So on behalf of the over 3 million
14 users located in New York, I appreciate the
15 opportunity to have a voice here today.

16 Thank You.

17 [Pause]

18 MARISSA GREENBERG: Mr. Chairman
19 and members of the committee, my name is Marissa
20 Greenberg and I'm a very active concert goer. I
21 work in radio so I very rarely have to buy my own
22 concert ticket, but when I do, I dread having to
23 use major ticketing sites such as Ticketmaster.

24 Over the past two years these sites
25 have increased their various fees almost to the

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2 point where a reasonably priced ticket becomes a
3 ticket that is completely out of my price range.
4 This not only hurts the consumer, but the artist
5 as well. I try to avoid these sites and purchase
6 tickets directly from the artists or venues
7 whenever possible. However, these major sites
8 have agreements with so many venues that it is
9 making it increasingly harder for smaller
10 ticketing agencies to offer tickets to mainstream
11 events. It has almost become monopolistic.

12 The fees that come along with
13 ticket purchases is hardly the only issue that
14 consumers face when dealing with major ticketing
15 agencies. These major ticketing sites are unfair
16 in the way they share information with their
17 consumers. Many times I will go to buy a ticket
18 to a highly sought after event and, within
19 minutes, the event will sell out, leaving the
20 consumer frustrated and confused as to how the
21 event sold out so quickly. Consumers should be
22 told, the number of tickets that are available to
23 the public so we know what to expect.

24 Once the tickets are available to
25 the public are gone, there is nothing more

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2 frustrating than having to go to a secondary
3 market ticketing site to buy your ticket.
4 Something that is more frustrating, though, is
5 knowing that some of those tickets that I see on
6 the secondary market ticketing sites are posted
7 there at a new, much higher price by the ticketing
8 agencies themselves.

9 I work in the music industry so I
10 do understand that tickets have to be put aside
11 for the venue, the artist, and the press, but
12 every single ticket that is left over should be
13 made available to the public at the same price on
14 the actual ticketing agency site--not at an
15 increased price on the secondary market site.

16 The last issue that I wanted to
17 bring up is the issue of paperless ticketing.
18 This has become increasingly popular over the past
19 few years and it worries me that one day this will
20 be our only option, which wouldn't be so bad, but
21 only if drastic changes were made to the system.
22 The idea of not being able to transfer a paperless
23 ticket to a friend or to sell it if I cannot go to
24 the event is something that keeps me from buying
25 so many tickets. If I see that an event only

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2 allows me to have a paperless ticket, I will
3 really think if I truly want to buy this ticket
4 and be stuck with it if I cannot go. In most
5 cases, I end up not buying the ticket simply
6 because I am a college student and money is tight,
7 I don't want to be stuck with a ticket to an event
8 that I cannot attend and I can't get out of using
9 the ticket. I bought the ticket I own and I
10 should be able to do with it as I please.

11 The large ticketing sites, such as
12 Ticketmaster, have become very controlling and,
13 unless something is done about them, they will
14 continue to make the ticket buying environment
15 less and less consumer friendly.

16 Thank you for listening.

17 CHAIRPERSON GARODNICK: Thank you
18 very much for your testimony, for all of your
19 testimonies today. Let me ask a couple questions
20 about that paperless ticket situation to start
21 off. Because New York State law, it's not
22 explicit about how exactly you define a paperless
23 ticket, but it does say that if you employ a
24 paperless option, you must give an opportunity or
25 an opportunity to transfer it or a means to

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2 transfer it on whatever site, whatever venue,
3 whatever means you wish. As we took through the
4 last panel on the definitions between e-ticket,
5 paperless ticket, regular old ticket, it's still
6 not completely clear to me how one would freely
7 and openly transfer a paperless ticket if such a
8 thing is employed today. Can you help us with
9 that?

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JON POTTER: I think it's a fair point, and we probably should start our definitional challenge with what's the ticket, then we can get to what's a paperless ticket. But if we generically define a ticket as the right of admission, and then, regardless of whether it's paper, paperless, a barcode, a chip in my head, you know, or an ink stamp on my hand, it is the right to enter venue for a given time. Or it is essentially a right to--it is a license to enter the venue, but the license is transferable. So it's my right, I've acquired it, I've purchased it, I've licensed it, but I've paid full price. So however they want to manifest that, right, I should be able to do it.

In one sense, it is harder to get

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2 into a venue for a concert than it is to get on an
3 airplane today, if you have to show, not only your
4 photo I.D., but also your purchasing credit card.
5 United Airlines doesn't ask me for my purchasing
6 credit card 'cause they think the photo I.D. is
7 good enough to stop hijackers and terrorists; but,
8 you know, the local concert hall wants my
9 purchasing credit card also. That's just screwy,
10 and, you know, it imposes all sorts of burdens
11 that, frankly, we should be paying attention to
12 and we appreciate you are.

13 I think definitionally, if you just
14 go back to basics, it's the right of admission,
15 whether it's paper, paperless, a barcode on my
16 phone, or something else, I should have the right
17 to transfer that to somebody else.

18 CHAIRPERSON GARODNICK: So then
19 let's just take an example. A paperless option is
20 employed, I want to buy a ticket to a concert next
21 week and I go ahead and I put down my--let's say I
22 buy it on Ticketmaster--I put down my credit card
23 and I go ahead and buy it. Under New York law, I
24 have the right to transfer that ticket, but I
25 don't really want to go back on Ticketmaster for

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2 whatever reason, you know, maybe I've had a
3 problem on their site and it frustrated me or
4 whatever reason, and I want to just actually give
5 that ticket to, you know, my wife. Or maybe make
6 it and, you know, and even use your example, just
7 give it to somebody I meet on the street. And
8 let's say that I want to do that, but I don't want
9 to use the same system that I actually bought it
10 on, how do I do that?

11 JON POTTER: I think that's one of
12 the challenges that the provider of the paperless
13 ticket is going to have to figure out if the law
14 requires transferability.

15 CHAIRPERSON GARODNICK: Got it, so
16 the law does require it, but today we don't really
17 have an answer to that question, it seems to me,
18 at least in a way that makes it truly
19 transferable, the paperless ticket, if employed,
20 except through perhaps the same means from which
21 you got it, is that correct?

22 JON POTTER: When Congress
23 regulates automobile mileage standards, it doesn't
24 tell them how to do it, it just says you have to
25 get 30 miles to the gallon and then the automobile

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2 manufacturers figure out how to sell cars that go
3 30 miles to the gallon.

4 CHAIRPERSON GARODNICK: Okay. So
5 Ticketmaster is not testifying here today, so this
6 is--and to the extent that I would have had some
7 questions for them specifically, they're really
8 questions that are for advocates and others, so
9 I'm going to throw some of those at you guys. But
10 you noted that Ticketmaster is making certain
11 tickets only available on their digital resale
12 platform, and that's TicketsNow, so tickets, which
13 people are buying through Ticketmaster are only
14 available for--we're finding that they're only
15 available on TicketsNow. Can you just explain
16 that a little more?

17 JON POTTER: Ticketmaster has two
18 resale platforms--

19 CHAIRPERSON GARODNICK: Yeah.

20 JON POTTER: --two transfer
21 platforms. One is the TicketsNow platform, which
22 is very similar to StubHub, it's a consumer to
23 consumer exchange. There have been allegations
24 that those who are in business with Ticketmaster
25 often use it to surreptitiously turn it into a

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2 primary sales tool while making it appear to be a
3 secondary sale in order to raise prices, as others
4 have identified here. The artist hold backs, for
5 example, they will take those and put them on
6 through TicketsNow.

7 But it's essentially a consumer to
8 consumer tool, that's what it's promoted as and
9 marketed as. TicketExchange is Ticketmaster's
10 sort of partnering tool with a team. So they will
11 have, for example, yankees.ticketmaster.com and
12 yankees.ticketexchange.ticketmaster.com and that's
13 the preferred resale partner, and, in some cases,
14 it becomes with paperless tickets the mandatory
15 resale partner and that becomes the challenge.
16 Once you have a mandatory resale partner, it's not
17 like that resale is devoid of any fees, but
18 there's no competition on fees. It's not like
19 there's any pressure to improve your software to
20 improve your user experience once you've locked
21 the ticket--the buyer into your partner resale
22 site. So that is oftentimes, it's the
23 TicketExchange site when it's through a sporting
24 event, for example.

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CHAIRPERSON GARODNICK: What is the

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2 difference on fees? I mean, as I see it, there is
3 really TicketsNow, which is the arm of
4 Ticketmaster; you have StubHub. I mean, then
5 those are the official ticket exchanges that are
6 out there. Obviously, there are marketplace, I
7 know where you could, you know, anybody could
8 exchange a ticket, but those are the, at least the
9 most predominant symbols of this that exist today,
10 is that correct?

11 DUSTIN BRIGHTON: I think, so, I
12 mean, those are the two that those online
13 exchanges or what's normally talked about in the
14 media, people are aware of them, and I know our
15 marketing team does a good job in marketing
16 StubHub.

17 StubHub, we don't set the prices on
18 the secondary market. The way that we make our
19 money, we make a commission on the resale of a
20 ticket, as well as charging a buyer fee. We're
21 very up front and open with that on our website,
22 it's a 15% commission on the sale, 10% buyer fee,
23 that's how we make our money. And that percentage
24 is based upon what the ticket is sold--at the
25 price the ticket is sold, it's not on face value.

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2 Quite frankly, we have no way of knowing what the
3 face value is of a ticket when it's being sold on
4 our exchange.

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CHAIRPERSON GARODNICK: So 15% on
6 the sale. Is there also a fee for an electronic
7 download?

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DUSTIN BRIGHTON: Yes, sir, we do
9 charge a little bit for that, and I'll be honest
10 with you, I don't know what that is off the top--

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[Crosstalk]

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CHAIRPERSON GARODNICK:

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[Interposing] Well, you know, I went and took a
14 look at the StubHub website yesterday and I saw
15 that there was an electronic download fee of
16 \$4.95, even for a \$15 ticket; and for a \$200
17 ticket there was an electronic download fee of
18 \$5.20, which, you know, I don't know exactly how
19 those fees are calculated. Obviously, for a \$15
20 ticket, that seemed way out of whack to me, but
21 also I don't know how you're calculating
22 electronic download fees in that context. Could
23 you help us understand that?

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DUSTIN BRIGHTON: I can get back to
you on that, I honestly don't know that off the

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top of my head.

CHAIRPERSON GARODNICK: To post and purchase, this 15% on the sale that you guys take, that is paid for by the--how exactly is that paid for? Let's say, you know, I have a Yankees ticket that I want to put up for sale for \$100, I determine the price, not you guys, I put it on StubHub, and I have a buyer who is perfectly willing to pay that \$100. The 15% is coming from whom?

DUSTIN BRIGHTON: That 15% would come from the seller. On our website we say, if you want--an example is, if you wanted to make on a \$10 ticket, that you wanted to make \$10 on the sale of your ticket, you would need--we recommend that you put in the 15% 'cause that is what we would hold.

CHAIRPERSON GARODNICK: Okay. Got it. And the electronic--what other fees are there, other than electronic download fee? Are there other fees that StubHub would charge in a situation like that?

DUSTIN BRIGHTON: There are other fees that we would impose or possibly impose.

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I'll be glad to get you a list of those.

CHAIRPERSON GARODNICK: Okay. A member of my staff purchased tickets for an event on StubHub and, when he got to the box office, he was told that the tickets were fake. Now StubHub was apparently great about refunding the money, but the question for you is how often does a fake ticket scenario play out and how do you guys--

DUSTIN BRIGHTON: Sure.

CHAIRPERSON GARODNICK: --address that?

DUSTIN BRIGHTON: It's very rare. As a matter of fact, out of all of our transactions, as far as counterfeit tickets go, that type of scenario is less than 1% of the number of transactions on our web

[Pause]

CHAIRPERSON GARODNICK: It may be a small number, but what do you do to ensure that--I mean, can you do anything to ensure that the tickets are not bogus?

DUSTIN BRIGHTON: Well I would say that number one, I mean, if it's, as you said, there different categories of tickets--you've got

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2 electronic tickets, physical tickets, etc.--one
3 thing that we do when there's a physical ticket
4 involved, we use Federal Express to ensure that
5 that ticket reaches the buyer. The seller posts
6 the ticket on the website; a buyer comes, buys
7 that ticket; we notify the seller that the
8 ticket's been purchased; the buyer submits
9 payment, we hold that actually in escrow; we send
10 to the seller a FedEx envelope with an address
11 label that they can slap on the FedEx envelope,
12 put the tickets in and then send it to the buyer,
13 that's how we're able to track it to make sure it
14 gets there. If the ticket doesn't reach them in
15 time, we obviously will contact the seller and
16 say, hey, there's a problem and we go after them,
17 as well as make the buyer whole in whatever way we
18 can--again, by refunding the money or trying--if
19 we find out about this soon enough, finding them
20 other tickets on the open market.

21 CHAIRPERSON GARODNICK: What's the
22 most common scam that you all have encountered?
23 Is that it or what is the most common?

24 DUSTIN BRIGHTON: I wouldn't know
25 what the most common is, but there are all

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2 different types of scams that you see utilized.
3 As a matter of fact, there was press yesterday,
4 evidently we were the victim of a phishing attack,
5 somebody was going out and saying you've bought
6 tickets on StubHub, congratulations, now just send
7 us all your credit card information and your
8 personal--so, I mean, obviously, we put out a
9 release immediately saying don't--to our users
10 saying don't answer this, etc. So there are lots
11 of creative ways.

12 As far as what's the most
13 prominent, I wouldn't know off the top of my head.

14 JON POTTER: Mr. Chairman, I think
15 one of the important points you're making is, how
16 do we prevent fraud in this business and still--
17 and then we also talk about, you mention the
18 download fee. With Major League Baseball, StubHub
19 has a business arrangement where, when I go to
20 sell my baseball tickets on StubHub, I don't have
21 to wait for that FedEx envelope to ship it to
22 somebody, there's a barcode on that ticket, I
23 enter the barcode, their system integrates with
24 Major League Baseball's system, they confirm the
25 barcode is right, they terminate digitally my

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ticket and then create a new digital ticket, you know, in the cloud essentially, on their servers, so that when the buyer comes along, it's an automatic download.

There's no reason that system won't work for Ticketmaster and won't work for Ticketmaster's paperless tickets. In fact, Ticketmaster is a provider of Major League Baseball tickets for some teams in some stadiums and the system works brilliantly when they want it to work brilliantly. With paperless tickets, they've chosen not to allow easy integration for independent competitors in the resale market; they've chosen using the ruse of consumer protection to lock all the digital transfers to their platform only.

DUSTIN BRIGHTON: If I may--

CHAIRPERSON GARODNICK: Go ahead.

DUSTIN BRIGHTON: --Mr. Potter's correct, we are integrated with Major League Baseball, Major League Baseball is a major partner of ours and vice ver--[pause] so being integrated with their system, if, say you print off an electronic ticket, you're issued a barcode. If

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2 you resell that ticket, we're integrated with the
3 system so Major League Baseball is going to know
4 that that ticket's been resold, they can cancel
5 the old barcode and reissue a new one to the
6 consumer to ensure that the other ticket isn't
7 used by someone else, because that, aga--[pause]
8 is no longer valid.

9 So where we're integrated and we're
10 able to work with those in the primary market or
11 sports teams, the chances of fraud go down
12 significantly.

13 CHAIRPERSON GARODNICK: There was
14 an article in March of 2009 in the Wall Street
15 Journal that indicated that the vast majority of
16 premium priced tickets that were listed on
17 TicketExchange were sold by artists and their
18 promoters, but that they were essentially
19 presented as resales offered by fans with fans
20 quote unquote rarely listing tickets on that site.
21 So question for you is, do you know if that
22 practice continues today; and also if there is a
23 way or whether there could be a way for consumers
24 to confirm that tickets that are posted on
25 TicketExchange, or perhaps even on StubHub, are

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actually being posted by fans?

DUSTIN BRIGHTON: It's very hard, excuse me, it's very hard for us to know exactly if a ticket's posted, if it came from a fan, if it came from a ticket broker, if it came from an artist, etc. We wouldn't have that knowledge readily available, we just wouldn't know.

CHAIRPERSON GARODNICK: You wouldn't know, but Ticketmaster, presumably, would know to the extent that artists with whom that they are working are actually posting things immediately on their secondary marketplace, is that right?

DUSTIN BRIGHTON: I would think so, yes, but you know, I'm not familiar with Ticketmaster's business practices--

[Crosstalk]

CHAIRPERSON GARODNICK: [Interposing] Okay. Are you guys familiar with the Radiohead situation from several weeks ago? One of the surprising allegations, at least, that came out of that was that tickets appeared on the secondary market, I guess, that is, again, it's TicketExchange, before they were available in the

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2 primary marketplace. Were you able to suss out
3 the accuracy of that, number one? And two, how
4 that would even be possible?

5 JON POTTER: I think we can
6 probably start by, hopefully, giving somebody the
7 benefit of the doubt and saying that that was a
8 speculative reseller who, before they even had
9 access to tickets, before they purchased tickets,
10 were posting them for sale, assuming they would
11 find a way to fill that order once. And
12 speculative reselling has been an issue in the
13 industry as, if you will, whether it's a broker or
14 a hobbyist saying, I'm going to post these tickets
15 for sale, I really don't have them yet, but I
16 think I can get them and so I'll post them for a
17 really high price.

18 And you know, and look, we do puts
19 and calls and all sorts of things on Wall Street
20 and this is sort of a ticketing, you know,
21 parallel. Whether it's right or wrong and whether
22 it should be disclosed, I think you could say in
23 fairness, it should be disclosed. If I can't get
24 tickets to the Super Bowl, but somebody else
25 thinks they can and, you know, there's an escrow

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2 account somewhere, I'm willing to put my money in
3 escrow while they go and chase them down and try
4 to fill the bill.

5 But so that's one issue is it might
6 have been an individual speculative seller. To
7 the extent it goes back to your earlier question,
8 which is, if Ticketmaster is doing the show, and
9 Ticketmaster has a relationship with TicketsNow
10 and with TicketExchange and with the venue and
11 often with the artist--because they're affiliates,
12 they own venues, operate venues, and also are
13 artist managers, one would think they have the
14 best access to information about, A, the
15 distribution of tickets, and, B, whether one of
16 their affiliated entities or their contractually
17 associated entities is posting those tickets on
18 the secondary website pretending to be a consumer.

19 CHAIRPERSON GARODNICK: One of the
20 concepts that we have talked about a little bit
21 today, in addition to Council Member Comrie's
22 bill, is the requirement of transparency for
23 venues that are selling tickets to give people
24 more of an understanding or, in fact, a precise
25 understanding of the number of tickets that are

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2 actually being made available for the public. I'd
3 like you to weigh in on that as an idea and tell
4 us what you think.

5 JON POTTER: We think it's pretty
6 simple, we're not asking people to decide in
7 advance, whether it's a 9,000 seat show or 12,000
8 seat show, but once you make that decision and put
9 the tickets up on sale, you know with great
10 certainty precisely how many tickets you've made
11 available for sale. What we're asking for is a
12 number and if you can't produce that, then you
13 probably have audit problems and need to talk to
14 your accountants.

15 DUSTIN BRIGHTON: Yes, obviously,
16 we support transparency. We feel like that
17 Ticketmaster, after the merger with Live Nation
18 Entertainment, it's estimated that they may
19 control 80% of the domestic entertainment market
20 here in the U.S., the major acts; they also own
21 the contracts with the venues. They're bound to
22 know where those tickets are going and how they're
23 being distributed. We're not saying that they
24 can't do it, obviously, we would state that they
25 just need to disclose to the public. 'Cause many

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2 times, the secondary market and, StubHub
3 specifically, take a black eye when tickets aren't
4 available, because, like you said, they go online,
5 they see their available on our website, and we
6 have no knowledge of how those tickets are
7 distributed, they don't share that data with us.

8 CHAIRPERSON GARODNICK: Couple more
9 questions for me then I'm going to go to Council
10 Member Comrie. On the question of preemption,
11 legality, whether a municipality, such as ours
12 here in New York state, humble old New York City,
13 can actually pass laws of this nature to be able
14 to protect consumers, such as Council Member
15 Comrie's, or laws that would require transparency
16 particularly if there's any public nexus to any of
17 the venues. Do you have any opinion on whether we
18 are within our jurisdictional rights to be able to
19 do that?

20 DUSTIN BRIGHTON: I am not an
21 attorney, I'm not licensed to practice law in New
22 York, so it would be hard for me to make that
23 determination. I will tell you that it would seem
24 to me that there might be the opportunity there
25 for the City to pass something, based upon what I

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2 know about the New York statute, but again, it
3 would take somebody with the proper training to
4 make that call.

5 CHAIRPERSON GARODNICK: Last thing
6 for me, I just want to point out one issue, which
7 is, I think, a consumer issue which I found on the
8 eBay site myself. If you were to go today, right
9 now, to look for tickets to the Giants/Dolphins
10 game on Sunday, it will say tickets priced from
11 \$40, and you say to yourself, wow, that's amazing,
12 \$40 for a ticket to the Giants/Dolphins--yes, of
13 course, the Dolphins are a disaster this year, but
14 still, it's a particularly good price. So you go
15 and you click and you say, okay, well let me see
16 what a \$40 ticket to this game looks like--\$40 is
17 a ticket for a parking pass to that game. So I
18 want you to be aware of that because I think it
19 actually is something that probably can be
20 addressed within the StubHub system, and one that
21 probably should be because, obviously, parking
22 passes you can actually categorize differently.
23 So I just wanted to point that out to you.

24 DUSTIN BRIGHTON: No, I'm glad you
25 pointed that out because we actually--our trust

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2 and safety department would absolutely want to
3 know if somebody is falsely advertising in their
4 listings. As you know, consumers type up their
5 own listings on eBay and we just mandate that it
6 be accurate. So I'm glad you brought that to my
7 attention.

8 CHAIRPERSON GARODNICK: Great.
9 Council Member Comrie.

10 COUNCIL MEMBER COMRIE: Council
11 Member Garodnick has been pretty thorough with
12 this panel, so I don't have a lot of questions for
13 you, I'll just thank you for coming down and
14 sharing your concerns with us. And just to
15 review, you're in favor of on the transparency,
16 correct?

17 DUSTIN BRIGHTON: Yes, sir.

18 COUNCIL MEMBER COMRIE: And just
19 making sure that whatever the event is, that the
20 consumer would know what tickets are available in
21 what location, the direct buy or to go through
22 whatever the promoter or VIP club or.... You
23 know, I think that the idea of transparency seems
24 to have been pretty much agreed by everyone this
25 morning.

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2 The issue of the 15% set aside and
3 how we get there to make that work to make sure
4 that the consumers are safe and make sure that
5 that is not also the new opportunity for illegal
6 ticket brokers, I think is achievable.

7 Also, if we could work together
8 making sure that they have the conditions of four
9 tickets per person and the ability to do a
10 paperless or wireless transfer, correct? You're
11 in favor of the 15% set aside as well?

12 JON POTTER: I don't think we have
13 an opinion at this point on the 15% set aside,
14 it's not something we've, frankly, studied and
15 there's been some interesting challenges raised
16 about. I'm not sure, frankly, I heard something
17 about they would be set aside for walk-up or they
18 would be set aside for any walk-up only in the
19 last day before the show or the last hour walk up-

20 -

21 [Crosstalk]

22 JON POTTER: --that time or--

23 COUNCIL MEMBER COMRIE:

24 [Interposing] I think we need to work on that
25 from--you know, I don't disagree with Consumer

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2 Affairs to prevent, you know, lines or to prevent
3 anybody that would want to try to create an
4 opportunity from that, I think we need to look at
5 that. But to have a percentage of tickets for
6 general direct purchase by the consumer from the
7 venue, I think would be, I think, a possibility to
8 actually stabilize ticket prices as well. So at
9 least they would know that there are one set of
10 tickets that they would have an even shot at
11 getting for the face value of the ticket for the
12 venue.

13 So how we work on that, I would
14 hope that with all of the lawyers in the room, we
15 could figure out a way to make that happen. So
16 well the lawyers and the other folks that are
17 working on it. But and trying to protect the
18 consumer enhance and also to enhance the ability
19 of the consumer to buy and transfer tickets, so
20 we'll see.

21 With that, Councilman Garodnick has
22 been pretty detailed in asking you about the fraud
23 in the industry and the reselling in the industry,
24 and if there are any recourse for victims, so he's
25 gone through that pretty detailed, so I'll just

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thank you for coming and appreciate your time.

JON POTTER: Thank you.

DUSTIN BRIGHTON: Thank you.

CHAIRPERSON GARODNICK: Thank you all very much for being here. I'm going to call our next and last panel, and as they come up I'm going to just note that we have some testimony that's been submitted for the record. So Daniel Zenkel, season ticket holder, come on up; Lawrence White; Noah Budnick, welcome and--

COUNCIL MEMBER COMRIE: Noah Budnick, he's related?

[Pause]

CHAIRPERSON GARODNICK: We've got testimony that has been submitted by Live Nation; the Broadway League; Leor Zahavi of Admit One, LLC; Madison Square Garden--

[Off mic]

CHAIRPERSON GARODNICK: --Alan Zwirn of Rockaway Beach, Queens; Brendan Walsh of North Shore, New York; Mario Asaro from Douglaston, Queens; Mindy Bockstein, Chair and Executive Director of the New York State Consumer Protection Board from 2007 to 2011; and Jules

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2 Polonetsky, who was the Commissioner of DCA from
3 1998 to 2000, have a joint letter; Lori Lerner of
4 New York, New York. We have all of those folks
5 who have submitted testimony for the record, but
6 they are not here in person today to testify.

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So with that, why don't we go right
ahead, and the floor is yours.

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DANIEL ZENKEL: Okay. My name is
Daniel Zenkel. Mr. Chairman and members of the
Committee, thank you for providing me this
opportunity to speak to you today about my
experience as a long-time season ticket holder and
attendee of numerous lives sports and
entertainment events in New York City.

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I've been a New York Knicks season
ticket holder since 1983. I've always had two
tickets in the Loge section, two rows above the
beer sign--I don't want to promote any particular
beer company--and slightly behind the baseline.
They are good seats, but not great; they are just
one section away from club seats, which have
always cost much more. I don't recall the exact
price that I paid for my tickets in 1983, but it
was approximately \$20 per ticket, about \$900 for

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2 the season, plus exhibition games. I don't know
3 how much the CPI has changed since then, but I'm
4 guessing the 1983 cost translates to about \$2,500
5 in current dollars. Over the years, the price of
6 tickets increase, sometimes gradually, sometimes
7 steeply. For the 2011-'12 season, if in fact
8 there is a season, each of my tickets will cost
9 \$165 per game. For an entire season, that would
10 be approximately \$7,000 per ticket--\$14,000 in
11 total for my two tickets. This is simply too much
12 money for me or for most New Yorkers to pay.

13 The only way that I can afford my
14 tickets is to resell most of them. I do this
15 online through StubHub.com, it is easy and makes
16 my tickets affordable. It enables me--a lifelong
17 Knicks fan who witnessed firsthand Willis Reed's
18 inspirational performance in game seven of the
19 1970 playoffs--to hold onto the dream of someday
20 taking my own son to a game where he can watch the
21 Knicks win another championship.

22 [Pause]

23 That wasn't even supposed to be
24 funny.

25 [Laughter]

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2 COUNCIL MEMBER COMRIE: How old is
3 your son, that's the question.

4 [Laughter]

5 MALE VOICE: And what's his life
6 expectancy.

7 DANIEL ZENKEL: Is Mr. Dolan here?

8 I do not purport to understand the motives of
9 those who seek to limit the transferability of
10 tickets, but I do understand the effect that this
11 limitation would have. Long-time season ticket
12 holders, passionate fans like myself, who can only
13 afford their tickets because they are easily
14 resold, will be forced to give up their tickets.
15 I don't know who will take my place, but I'm
16 pretty sure it won't be someone as passionate as
17 me--or perhaps as stupid.

18 I'm not here today at the behest of
19 StubHub or any other interested party; I did not
20 take four hours, now five, out of my day for
21 myself. I'm here today for my children and for
22 the children of all New York season ticket
23 holders, whether they be Yankees, Mets, Knicks,
24 Giants, Rangers, or Jets, whose parents, like me,
25 dream of one day experiencing side-by-side with

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2 their kids live a Stanley Cup, an NBA
3 Championship, a World Series, or an NFC
4 Championship. Please do not deprive us of this
5 dream.

6 Thank you again for this
7 opportunity to share my story.

8 CHAIRPERSON GARODNICK: Thank you
9 very much for your testimony. If only the
10 championships were within our jurisdiction, we
11 would be certain to deliver on that, but we
12 appreciate what you said. Go ahead.

13 LAWRENCE WHITE: All right.
14 Chairman Garodnick and members of the Committee,
15 my name is Lawrence J. White, I am a Professor of
16 Economics at the NYU Stern School of Business. I
17 have formerly served as the chief economist at the
18 Antitrust Division of the U.S. Department of
19 Justice, and served on the President's Council of
20 Economic Advisors as Senior Staff Member
21 responsible for regulatory matters. I am also on
22 the Advisory Board of the American Antitrust
23 Institute, which is a non-profit consumer advocacy
24 group that is devoted to promoting marketplace
25 competition and the strong enforcement of

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2 competition laws. I am appearing today solely on
3 my own behalf, without compensation. I have
4 provided to the committee a more extensive written
5 statement that includes a brief biographical
6 summary. Thank you for the opportunity to testify
7 today on this important issue.

8 My testimony primarily concerns the
9 issue of restricted paperless ticketing for sports
10 events, concerts, and similar venues. Paperless
11 ticketing represents a relatively new
12 technological innovation for ticketing. It may
13 carry some advantages for ticket buyers, but it
14 also clearly carries inconveniences because of the
15 restricted nature of the format. And it also
16 carries substantial risks of inhibiting the
17 beneficial competition in the secondary markets
18 that have developed for tickets.

19 Further, there are alternative
20 means of providing the benefits that could do so
21 in a much less restrictive and manner, and a
22 manner that is less of a threat to competition.

23 Consequently, the approach that is
24 currently embodied in New York State law that--the
25 Arts and Cultural Affairs Law, Section 25.30

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2 essentially, to allow venues or their ticketing
3 agents to sell non-transferable paperless tickets,
4 but only if buyers have the option of a less
5 restrictive transferable alternative. This
6 appears to be a sensible approach and should be
7 continued, unless significant new developments
8 arise in technology or other circumstances that
9 surround ticket sales.

10 This is an area that is definitely
11 worthy of continued monitoring at all levels of
12 government--city, state, and federal--to ensure
13 that competitive issues and consumer protection
14 issues are adequately addressed. On the one hand,
15 policy should not be discouraging worthwhile
16 innovations in the ticketing area. But on the
17 other hand, there are important competition and
18 consumer protection issues that are potentially at
19 stake.

20 Again, my written statement expands
21 on these ideas. I thank you again for the
22 opportunity to appear today to testify on this
23 important matter, and I would welcome the
24 opportunity to address questions from the
25 committee.

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2 CHAIRPERSON GARODNICK: Thank you
3 very much. And, Mr. Budnick, go right ahead.

4 NOAH BUDNICK: Thank you. Thank
5 you, Chairman Garodnick and Council Member Comrie,
6 thank you for having me here today and having this
7 hearing. I'm just going to share my experience
8 that I think follows these policy recommendations
9 well.

10 I'm a Brooklynite, avid music fan,
11 concert-goer, when I can make it, and I probably
12 spend a couple hundred dollars a year on concerts,
13 and I like to support local bands. I like that
14 there's venues and, you know, employs probably
15 thousands of people around the borough, so it's
16 part of our small business network in the city, I
17 think that's really important to support.

18 So my quick stories about how
19 restricted ticketing have took the joy of concert
20 going and \$50 away from me.

21 On April 1st I got an e-mail from
22 one of my favorite bands, Yo La Tengo, about two
23 shows they were doing at the Bell House in
24 Gowanus, Brooklyn in mid-May. And I was about to
25 go into a meeting so I e-mailed my wife and I said

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2 can you please get two tickets for each of those
3 shows, and she did that at TicketWeb.com and they
4 were \$25 a piece, plus about \$13 in service fees.
5 And I was really excited to go to both their
6 concerts.

7

8 So on May 3rd, about two weeks
9 before the shows, I found out that I could only go
10 to one and I quickly e-mailed a bunch of friends
11 and I said does anybody want to pick up these
12 tickets from me, here they are, and, you know, \$50
13 is no small amount of money, so can you just pay
14 me back at face value. And a couple people were
15 interested, and we didn't exchange any money
16 'cause I didn't have the tickets.

16

17 So I went to the show on May 10th,
18 and I went to the will-call window, I went to pick
19 up my tickets and was asked for my credit card and
20 my I.D. Fortunately, my wife and I have a joint
21 credit card account so it has the same number so I
22 was able to get the cards. And I don't know what
23 would have happened if we did not have a joint
24 credit card account, but fortunately we do, so
25 that wasn't a problem. And the person crossed the
tickets off the list, stamped my wrist and my

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2 friend's wrist that I went to the show with, and
3 said we could go in. And I asked, well can I get
4 the tickets for tomorrow night and they said, well
5 there are no paper tickets, you have to go through
6 the same procedure.

7

8 So at that point I was, you know,
9 kind of hard up because I knew I wasn't going to
10 be able to go, I had a couple people who would pay
11 me back for the tickets that I can't use the next
12 night but, because there were no paper tickets,
13 there's nothing that I could do. So I did enjoy
14 the concert, it was a great show, but I was out
15 \$50; two Yo La Tengo fans were out the experience;
16 the band was out connecting with their friends;
17 the Bell House, which it's a nice venue, was out
18 whatever money those people have spent, the
19 experience that they would have had on the show.

19

20 So, you know, because of the
21 restricted ticketing, there's all this [off mic].
22 And as a music fan of the city, I hope that the
23 Council can weigh in on this and, you know,
24 prevent things like this from happening in the
25 future.

25

So thanks for...

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2 CHAIRPERSON GARODNICK: Thank you
3 for your testimony. I think what you have
4 described is precisely the frustration that
5 Council Member Comrie and I have tried to reflect
6 in our comments today. And certainly the practice
7 of the paperless or will-call only, and even if
8 it's designed to be a fan-friendly measure, it
9 does create problems and inconveniences in that,
10 and that's lost on us. When I have an invitation
11 or a listing here for the Arctic Monkeys, which
12 has the same parameters that you just described
13 for Yo La Tengo and they were the same that were
14 described and used for Radiohead.

15 So we're certainly sensitive to
16 that and we appreciate your being here and we'll
17 take a look at ways that we can impact that.

18 Let me just ask one question about
19 the transparency point, and this is really sort of
20 a practical question. Transparency, and you've
21 heard about this from other folks who testified,
22 and if you were at the beginning from in my
23 opening and Council Member Comrie's as well.
24 Transparency gives you an answer as to the number
25 of tickets you are going after, that's all it

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2 does. And as a practical matter it may or may not
3 help a consumer, but I'm going to pose this to you
4 to know whether you're going after 200 or 2,000
5 tickets at the end of the line. What do you think
6 of that as an option, and would it be valuable to
7 you as somebody who buys tickets to various venues
8 in New York?

9 [Pause]

10 NOAH BUDNICK: My concert attending
11 philosophy is that as soon as I see a show that I
12 want to attend, if my calendar is clear, I buy
13 tickets, and, hopefully, nothing will come up to
14 get in the way of that happening. And because
15 things sell out quickly in New York, there's a lot
16 of people interested in everything, you know, when
17 it's my favorite band, or one of my favorite
18 bands, I don't like to risk it.

19 LAWRENCE WHITE: Please understand,
20 Mr. Chairman, generally in favor of transparency,
21 I'm a markets-oriented guy. I think in this
22 instance, there's just not a lot that's really
23 gained here. Is 200 or 2,000, a big number, a
24 small number? How does it really help the
25 consumer? There may be some costs imposed on the

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2 venue or the ticketing agent. I tend to approach
3 these things from a benefit-cost approach, I'm an
4 economist, you know, that's the way I've been
5 trained. And so again, I generally like
6 transparency, generally makes markets work better,
7 but this instance, I'm not so sure.

8 CHAIRPERSON GARODNICK: Okay. Well
9 I appreciate that. I will say from my own
10 perspective, before I or anybody else would want
11 to stay home from work and click refresh on a
12 website to be able to go after tickets for an
13 event in a seemingly large venue, while
14 surprisingly few tickets are actually available, I
15 would want to know exactly how many were available
16 for my pursuit. And so, you know, it seems to me
17 to be a very low, if not no cost, to the venue.
18 They know the answer, they know what they're
19 putting up, it's all electronic, they know exactly
20 the number that's out there; and if they don't, I
21 think they've got, you know, far bigger problems.
22 And the benefit to the consumer, while perhaps it
23 does not answer all of the issues of the day,
24 certainly does help them know how much of their
25 heart and soul to put into the pursuit of those

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tickets. Go ahead.

DANIEL ZENKEL: As one of those people who has gone on sites, like we all have, to try to get tickets, and, at this point, after having probably done it 10 or 20 times and never gotten close to a ticket, I would certainly appreciate knowing how many tickets were going to be on sale.

CHAIRPERSON GARODNICK: Council Member Comrie.

COUNCIL MEMBER COMRIE: Professor, you talked about what you thought would be the best type of ticket, but you didn't go into it. Would you mind just being specific on that?

LAWRENCE WHITE: Absolutely. I think the development of the secondary market has just been a wonderful pro-consumer event. What it's allowed is greater flexibility, you've been hearing it all morning, on the part of the first instance buyer, who either plans change or they want to buy a season set of tickets, but can't use them all, having that flexibility of the secondary market is just wonderful.

And of course, markets are two-

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2 sided events. It also provides value to the later
3 instance purchaser who couldn't figure out earlier
4 whether her or she wanted to attend, but now has
5 the opportunity.

6 The secondary market works well
7 with either paper tickets, you heard this morning
8 how paper tickets can be transferred, or works
9 well with e-tickets, they can be electronically
10 transferred. It clearly doesn't work well with
11 paperless tickets.

12 Now there may be some advantages to
13 paperless tickets. The issue of lost tickets is
14 less of an issue, and arguably the problem of the
15 mass purchase by bots of tickets that are under-
16 priced for some reason--perhaps the artist wants
17 to favor their loyal fans. But the mass purchase
18 by bots is a problem, and paperless restricted
19 resale tickets are a solution to that.

20 COUNCIL MEMBER COMRIE: But don't
21 you believe that there can be a paperless resale
22 or a paperless redistribution of a ticket with
23 just a few tweaks to a computer program?

24 LAWRENCE WHITE: Well it's clear
25 that it can happen through the favored venue, but

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2 then you're at the mercy of whatever benevolence
3 that restricted process holds. I'm not in favor
4 of paperless tickets as a sole opportunity that,
5 as I stated in my testimony--

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COUNCIL MEMBER COMRIE: Right.

7

LAWRENCE WHITE: --I think the
8 current approach of New York State law, which is,
9 yeah, if you want to provide paperless tickets,
10 you can do so, but you must also provide--

11

COUNCIL MEMBER COMRIE: Make the
12 transfer--

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LAWRENCE WHITE: --a less
14 restrictive alternative.

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COUNCIL MEMBER COMRIE: Okay. And
16 then just one other thing. When you talked about
17 the concern for restricting a set aside for
18 tickets, don't you think that the opportunity to
19 create transparency across the board so that
20 consumers would know where their best opportunity
21 to purchase a ticket would be from makes sense for
22 whatever entity that their performance or concert
23 is happening?

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LAWRENCE WHITE: Sure, I mean,
25 again, I said I'm generally in favor of

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2 transparency, I'm just not convinced it's going to
3 add that much here. Maybe, as Chairman Garodnick
4 indicated a few minutes ago, maybe it helps, but
5 again, I'm not sure 200, 2,000, is that a big
6 number, is that a small number? I'm just not sure
7 it helps all that much.

8 COUNCIL MEMBER COMRIE: I
9 appreciate that.

10 LAWRENCE WHITE: I'm happy to be
11 educated on this, but I think caution is the right
12 approach here.

13 COUNCIL MEMBER COMRIE: I think we
14 all learned a little bit today at the hearing. I
15 want to thank, before I forget, my staff, my
16 interns, Dia Barne [phonetic] and Ronnie for doing
17 the research on this issue. Reggie Thomas was my
18 legislative director who is gone now, and I want
19 to introduce my new legislative person, Richard
20 Lee is here today, I'm sure all of you will get a
21 chance to talk to him as we develop and work on
22 this legislation.

23 I think the idea of transparency is
24 important to consumers, New York City consumers,
25 and all of the consumers that want to come to the

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2 city to purchase tickets for events. I think in
3 order to keep everything open and create
4 opportunity, we need to figure out a way not to
5 have sole source ticketing or one company holding
6 on to all of the ticketing for a particular event,
7 and so I think we have some work to do.

8 I want to thank the chairmanship
9 for his interest in this issue--the Chairman for
10 his interests in this issue. And, hopefully,
11 again, working together with all of the parties in
12 the room, we can come up with a bill that will
13 enhance opportunities for consumers to really know
14 what they're doing when they're purchasing tickets
15 for events. Thank you, Mr. Chair.

16 CHAIRPERSON GARODNICK: Thank you,
17 Council Member Comrie. I want to also thank you
18 for the introduction of your bill, and, certainly,
19 we heard a lot of constructive comments on that
20 subject, on all subjects today.

21 I will note in closing, before a
22 couple of thank yous myself, that this committee
23 will be watching very closely the practices of the
24 venues, the artists, the sales, the secondary
25 marketplaces, and how they are interacting with

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2 one another, and we want to make sure that the
3 consumers in New York are getting a fair deal. We
4 know that there is not an absolute right for
5 anybody to be able to buy a ticket to anything.
6 That said, the practices have to be fair, they
7 have to be clear, they have to be open, and that
8 is what we are after.

9 So I want to thank Rachel Cordero,
10 Damien Butvick, of this committee, as well as
11 Theresa Boemio, Justine Almada, Dan Pasquini, and
12 David Kimball-Stanley from my office; as well as
13 to all of you who were here today to participate
14 and to listen to this important hearing, and it's
15 certainly not going to be the last that we will be
16 hearing from this committee on this subject. And
17 with that, we are adjourned, so thank you very
18 much.

19 LAWRENCE WHITE: Thank you, Mr.
20 Chairman.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature *Tammy Wittman*

Date November 10, 2011