

Testimony of Tod Cohen
Senate Commerce Committee
Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security
“Examining the Better Online Ticket Sales Act of 2016”
September 13, 2016

Chairman Moran, Ranking Member Blumenthal, and Members of the Subcommittee,

Thank you for inviting me to participate in this important hearing today. My name is Tod Cohen, and I am the General Counsel for StubHub. StubHub, owned by eBay, is a global online marketplace for event tickets. As the world’s largest online ticket marketplace, StubHub offers fans a safe and convenient place to get tickets to the games, concerts, and theater performances they want to see – and an easy way to sell their tickets when they can’t go.

Today, some fans are – rightly – frustrated with how tickets are sold. They often face unreasonable technological, licensing and legislative restrictions when they buy or sell tickets. The rules and processes are too often unfair for fans and inconsistent with free market principles. Like nearly every other industry, a more open and transparent ticket marketplace means lower prices, broader availability and access as well as greater safety and security for people like each of us who crave and want to attend live events. But, the ticket marketplace is not transparent.

The main focus today will be on ticket bots, the software programs designed to bypass ticket purchasing limits or skip ahead in a virtual ticket queue. StubHub believes that misuse of these programs harm all parts of the ticket industry, including consumers. This is why we consistently support anti-bots legislation at the U.S. state level, and we commend Senator Moran, Senator Schumer, and Representative Blackburn on their efforts to enact a federal anti-bot bill. Still, not all bots are malicious. Overwhelmingly, most bots perform a number of functions that are critical to the Internet. Bots are used by nearly every portion of the Internet, including search engines, e-commerce sites, news and weather services as well as nearly every other Internet functionality. As the committee considers this bill, I encourage you to avoid any technological mandates that needlessly undermine innovation or provide certain private actors unfair competitive anti-consumer protections. Ticket bots are just one component in a suite of anticompetitive and anti-consumer ticketing practices that operate as restraints of trade in the ticketing market. Rather than focus exclusively on bots, I hope for the fans’ sake that we have a more comprehensive dialogue today and going forward.

For most fans, a fundamental question is: Why can’t I get tickets when they go on sale? Ticket bots only partially answer this question. A lack of transparency, principally with respect to the practice called ticket “holdbacks”, are also largely to blame. In a report on ticket sales released earlier this year, the New York Attorney General found that – on average – less than half (forty-six percent) of concert tickets are actually made available for purchase to the general public. In some cases, these holdbacks are more extreme, with reports of major headliners releasing as little as twelve percent of tickets to the public for sale. The held back tickets are generally reserved for presales and for industry insiders, including artists, agents, venues, and

promoters. Understanding the primary market's allocation practices would be a helpful development, and I hope that we can explore that issue today.

Even for the lucky few who are able to buy tickets at the initial on sale, there are often downstream restrictions imposed by primary ticketing providers, teams, venues, and artists as a condition of the sale. I want to highlight a couple of those restrictions today.

There are some ticketing practices that are intended to make it difficult, if not impossible, for the original purchaser to transfer freely the ticket. These restrictions – imposed technologically or through onerous licensing terms – are an inconvenient limitation on fans' ownership rights. They prohibit fans from buying tickets as a gift, giving tickets away to friends or family, or as donations. And if a ticket buyer cannot attend the event, the intended purpose is to block easy resale, which sticks that fan with tickets they cannot use.

Additionally, some primary ticket providers, venues, and teams will cancel – or threaten to cancel – tickets that are sold outside of their preferred or affiliated secondary platforms. Restrictions that are utilized to ensure that ticket resales can *only* occur on the platform *approved* by the primary ticket provider locks consumers into a single ecosystem, which discourages competition among secondary ticketing exchanges and prohibits consumers from shopping around for lower fees and better service.

One common justification for these restrictions is to reduce fraud. Count us as highly skeptical of this argument. The incidence of fraud on the StubHub platform is less than 0.01 percent, and in those very rare instances of fraud, we offer a robust FanProtect Guarantee to protect our buyers by providing a full refund or, more importantly, access to the event in question whenever possible. Our evidence shows that there is no link between reducing fraud and adopting restrictions. Instead, when restrictions are imposed fans lose out with higher prices, less availability, increased uncertainty and unnecessary stress.

Primary ticket providers, venues, and artists will also point to brokers and the above-face value prices on secondary ticket sites when defending these practices. However, this is a selective argument. StubHub estimates that approximately fifty percent of the tickets on our site are sold below the "face value" set by the ticket issuer. Although there are tickets listed on StubHub at above face value, those are set by market forces and a healthy competitive broad trading market is created by allowing prices to be set by the market as opposed to artificial restrictions. Many artists, promoters, teams and content creators use broad online markets to their advantage by monitoring the market value and releasing new blocks of tickets at whichever price the market will bear.

Ultimately, we encourage Congress to assist in a comprehensive dialogue around the ticket industry and whether federal legislation is necessary. It is worth noting that there is no independent federal legislation regarding the ticket industry. Regulation of the ticket industry has always been at state, local and municipal levels. We hope that Congress will engage in a broad in-depth examination of the ticket industry and require all elements and stakeholders participate in such an examination or study.

StubHub believes that a fair, secure and competitive ticket marketplace unequivocally supports fans. We think that fans have the right to decide how – and for how much – tickets will be bought and sold after the initial purchase. We are strongly committed to partnering with industry, public policy and other leaders to achieve this goal. Public education is essential to the effort, and this hearing is a great start. For our part, StubHub earlier this year launched StubHub Concourse, a public policy informational and engagement tool for fans. For those in the room or watching via webcast that are interested in these issues, I encourage you to sign up at stubhubconcourse.com.

Thank you again for the opportunity to testify today. I look forward to answering any questions you may have.