

Statement of Jeremy Liegl on Behalf of Pandora Media, Inc. and Ticketfly, LLC

Before the

U.S. Senate Committee on Commerce, Science, & Transportation

Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security

September 13, 2016

Chairman Moran, Ranking Member Blumenthal, and distinguished members of the Subcommittee.

My name is Jeremy Liegl, and I am the Associate General Counsel at Pandora Media, Inc., and Ticketfly, LLC. I want to begin by thanking the Subcommittee for taking the time to hold this hearing to understand the marketplace for the sale of tickets to live events and the role of concert ticketing in the broader music market. I am grateful for the opportunity to testify and offer the Pandora-Ticketfly perspective on these issues.

Pandora, the popular Internet radio service, launched in 2005 and has become the world's most powerful music discovery platform. Pandora introduces listeners to new music based upon our proprietary Music Genome and also connects fans with the artists they enjoy, in part by informing them of upcoming concert events and providing a vehicle for purchasing tickets to those events. Pandora (assisted by its recent integration with Ticketfly) also provides artists with tools to connect with their audiences, including the opportunity to connect through live music events.

In late 2015, Pandora acquired Ticketfly, a live events technology company that powers the entire event lifecycle for venues and promoters. Ticketfly was founded in 2008, and since its inception, has processed over \$1 billion in gross ticket sales. In 2015 alone, Ticketfly sold 12.5 million tickets to 90,000 different events, and worked with over 1,200 venue and promoter partners. The Ticketfly platform does not stop at ticket sales, however. Venues and promoters come to Ticketfly for talent booking, ticketing and marketing, mobile analytics, and through its partnership with Pandora, the ability to match online music listeners with live event information. Just this past July, Pandora launched a feature to notify users who like a particular artist when that

artist will be playing nearby. Pandora-Ticketfly connects artists and promoters with America's largest and most engaged music audience—over 78 million listeners on Pandora every month.

Given this deep engagement with the live events space, Pandora-Ticketfly strongly supports the Better Online Ticket Sales Act of 2016, S. 3183 (the "BOTS Act"). We believe that fans – our core user base – deserve a fair and reasonable opportunity to support their favorite music artists by buying tickets at the face value set by those artists and the venues, not by online bot operators employing software tools that disadvantage the general public and circumvent technical measures designed specifically to defeat the use of bots. Since the misuse of bots to subvert the security mechanisms and terms of service ticketing platforms put in place is fundamentally unfair to platform operators, the public, and the broader music industry, the BOTS Act provides an especially appropriate solution to this problem by making the use of bots subject to the prohibition of "unfair or deceptive acts or practices" in Section 5 of the Federal Trade Commission Act.

Attending a show to see a favorite performer is a special moment for a music fan – a moment that can be recalled weeks, years or even decades later – and that makes live events a critical part of the music industry's success. Even in an age of social media, when fans and artists are more connected than ever, there is no substitute for seeing a live performance by one of your favorite artists. For some fans, this means singing along to Taylor Swift at the height of her latest stadium tour; for others, it's seeing that indie band that Pandora introduced you to along with 100 other committed fans in a tiny venue. Every concert-goer has a story they will share with friends and fellow fans.

Those stories help create and expand the fan base for each artist, and therefore help to drive the success of all the individuals and companies who participate in the music industry. When fans are precluded from purchasing tickets at face value due to the use of automated ticket-purchasing programs called "bots," the entire music ecosystem suffers because fans miss out on opportunities to create the memories that build the bonds between artists and their fans. These bonds are critical for artists looking to sustain a multi-decade music career. Fans may also be priced out of a concert entirely, and even if they get to attend by purchasing on the resale market, the markups they pay mean they have less money to attend other events or to purchase merchandise and concessions, which also directly benefits artists and venues.

Tens of thousands of tickets each year are acquired using bots¹ that violate ticketing platforms' terms of use, and circumvent measures designed to ensure that the average fan has a fair and equal opportunity to buy a ticket to a live event. Bots facilitate the purchase of hundreds or even thousands of face-value tickets in a matter of seconds (typically, as soon as the tickets become available to the general public), dramatically decreasing the number of tickets available to fans seeking to support their favorite artists. Bot operators can then demand extraordinarily high prices in the secondary sale market – essentially extorting additional payments from fans that should have the ability to purchase tickets at face value.

The presence of bots harms everyone in the music industry save only for the operators of the bots. The ticket price for a face-value ticket gets distributed to numerous participants in the music ecosystem, including performers, authors, promoters, venue staff, and numerous other stakeholders. But the markup that fans pay on resale tickets, which can be in the hundreds and occasionally thousands of dollars per ticket for high-profile events, is retained solely by the bot operator.

Music industry economics are undoubtedly unique. There are often multiple rights holders for each musical work, a separate rights holder for the sound recording, and rights may be managed, administered and licensed by various stakeholders. One of the benefits of this unique system, however, is that profits are typically reinvested in the creation, promotion, marketing, and distribution of more music and prosperity of the industry. For example:

- Online music distribution services, such as Pandora, generate advertising and subscription income from music users, much of which is paid out to rights holders and creators so that there are continued incentives for creations of new works of authorship.
- Artists contract with promoters to set up tours, so that they can make money off ticket sales and merchandise. These promoters keep a portion of ticket sales so that they can continue to plan tours, including finding the right venues and sponsors.

¹ Obstructed View: What's Blocking New Yorkers from Getting Tickets, the Office of New York State Attorney General Eric T. Schneiderman, *available at* https://consumermediallc.files.wordpress.com/2016/01/ticket_sales_report.pdf.

- Internet services and applications, such as BandPage, offer artists a platform, at a low cost, to provide concert listings and sell merchandise, so that they can connect with their fans without having to create its own platform.
- Ticket fees collected by ticket platforms are primarily passed on to venues and promoters. Venues and promoters can then pass on nearly the entire face value of the ticket directly to the artists. This allows venues to keep the lights on and host more acts, and allows artists to continue to tour and provide fans with opportunities to see them live.
- Venues charge ticket prices so that they can pay the artist for performing, compensate songwriters for public performance rights, and generate revenue to keep the doors open, ensuring that more live events can be enjoyed at an affordable price to fans.

The list could go on. These different industry participants depend on each other's success, and music industry stakeholders are strongly committed to reinvesting money from their various revenue streams to foster further creativity and ensure that fans have access to live music. When third parties subvert the cyclical nature of this ecosystem through the use of bots in violation of ticket purchasing agreements, everyone else suffers. Demand for tickets declines, making live concerts less attractive to artists and venues. Songwriters and composers receive less for the performances of their songs, reducing their motivation to create new music.

All the while bot operators line their pockets with ill-gotten gains. As Adam Tudhope, a tour manager for Mumford & Sons, recently observed, "On Mumford & Sons last 16-date arena tour of the US in April 2016 we estimate that \$3m went into the pockets of scalpers and secondary sites[.]"² Ultimately, the use of bots to make mass purchases of tickets in seconds and then resell those tickets at premiums on the secondary market extracts value out of the ticket without contributing to the development of more creative works, meaning it arguably has no positive social value.

It is also important to recognize that live event pricing is not always focused on short-run profits. For example, promoters seek to sell out venues and do not necessarily want to do so at the

² Ticket Touts Made \$3M From the Last Mumford & Sons Tour. \$0 Went Back to the Music Industry, Adam Tudhope, Music Business Worldwide, Sept. 6, 2016, *available at* <http://www.musicbusinessworldwide.com/ticket-touts-made-3m-from-the-last-mumford-sons-tour-0-went-back-to-the-music-industry/>.

expense of discriminating amongst fans. Artists also want a broad swathe of their fans to have access to concerts in order to build deeper ties with their fan bases. So ticket prices are often deliberately set below the short-run, profit-maximizing price for the ticket because the performer wants to ensure that fans of all economic means have access to the event, and promoters want to show that they can deliver full houses for performances.

For example, in 2011, during a multi-city, multi-night tour, Prince made “approximately 85%” of tickets available for \$25 each, “in an effort to make the show affordable for all of his fans.”³ Prince clearly wanted a wide range of fans to attend his shows and intentionally priced them below market as a means to that end. Two years later, Kid Rock priced most of the tickets for his summer concert tour at \$20, protesting high resale prices, he said “[s]omeone has to go out there and fight these high prices and change things up, and I’m lucky enough that I can afford to take a pay cut.”⁴ Pearl Jam took similar action in the mid-1990s, when it sought to keep prices under \$20 because the band “remember[ed] what it was like to have little money for concert tickets.”⁵ Artists like these intentionally choose lower prices for live concert tickets because having the long-term commitment of an excited fan base benefits them more over the course of their careers than simply maximizing revenues they can generate on a single concert or tour.

When an artist intentionally keeps ticket prices affordable but bots are utilized to improperly purchase a large percentage of the available tickets at that affordable price, this strategy for building the artist’s fan base (and the loyalty of that fan base) is undermined. The true fan – who is more likely to spend money on merchandise, additional concerts, and future albums – has no opportunity to buy a ticket at a fair and reasonable price. The bot operator is therefore

³ Prince Shows Announced: ‘21 Nite Stand’ In Los Angeles Starts This Week, Most Tickets \$25, Lisa Brenner, LAist, April 11, 2011, *available at* http://laist.com/2011/04/11/prince_announces_first_three_shows.php

⁴ Kid Rocks’ \$20 Concert Ticket Plan: Good for Fans, Bad for Scalpers, Time, June 26, 2013, *available at* <http://business.time.com/2013/06/26/kid-rocks-20-concert-ticket-plan-good-for-fans-bad-for-scalpers/>.

⁵ Pearl Jam Musicians Testify on Ticketmaster’s Prices, Reuters, Los Angeles Times, July 1, 1994, *available at* <http://www.nytimes.com/1994/07/01/arts/pearl-jam-musicians-testify-on-ticketmaster-s-prices.html>.

inappropriately extracting money from the system and investing those funds into the development of more sophisticated bots rather than contributing to the creative economy.

When the upside from the resale price is not shared, livelihoods of artists, venues, and promoters are diminished. Fans are harmed through above-market prices, and subsequently become discouraged from even trying to obtain tickets to shows because they are rightly skeptical when there are no tickets available on the primary ticketing platform seconds after tickets go on sale, but hundreds are available on the secondary market for a significant mark-up. When consumers believe the system is rigged against them, their willingness to engage in supporting an artist by attending an event, buying a t-shirt, or purchasing the artist's music could be significantly undermined.

While Pandora-Ticketfly and other primary ticketing platforms will get paid the same fee regardless of whether a diehard fan or a bot operator purchases the ticket, when the bot wins out over the diehard fan, that fan may not come back in the future to purchase tickets for another show. This undermines the integrity of the ecosystem and jeopardizes the long-term health of the live music industry.

Artists go to great lengths to build relationships with fans and encourage them to attend shows and experience the live event. For a number of artists, touring is their primary source of income – they make money not just on ticket sales, but also on merchandise sold at the venue. If a fan has spent two or three times the face value of a ticket to get in the door, it is unsurprising that they are less likely to purchase merchandise or download songs, for which the artist is directly compensated.

Our goal and hope is that the over 78 million music fans on Pandora, who listen to over 130,000 unique artists each month and who learn about their favorite artists touring via Pandora-Ticketfly have a fair and reasonable chance to buy tickets to see the artists they want to support. When illegal bot operators usurp the market – violating our terms of use and driving up costs to consumers – the ecosystem is jeopardized: the fan becomes discouraged, cynical, and is likely to spend less money to support music.

Pandora-Ticketfly therefore believes that the use of bots in interstate commerce to purchase tickets in violation of control measures used to prohibit their use warrants Congressional action. We greatly appreciate this Committee's attention to this important issue for the benefit of all

stakeholders – most importantly touring musicians and their fans. Pandora-Ticketfly strongly supports the passage of the BOTS Act as an important step toward ensuring that fans have fair access to tickets at the prices chosen by artists and venues, not by bot operators.

I would like to close by thanking you again for your careful consideration of this important issue. Pandora-Ticketfly is ready to provide any information the Committee may need in its deliberation, and I look forward to answering your questions.

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