

Attorney General Eric T. Schneiderman Testimony

**PREPARED STATEMENT FOR THE RECORD
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TO THE SENATE SUBCOMMITTEE ON CONSUMER PROTECTION
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Mr. Chairman, Mr. Ranking Member, and other distinguished Members of the Subcommittee: I am pleased to present this prepared testimony regarding the problem of ticket purchasing software, commonly known as “ticket bots.”

As the Attorney General for the State of New York, my responsibilities include enforcing New York law governing the market for tickets to concerts, sports games, and other live events. For more than three years my office has led a wide-ranging investigation into this market, and the facts we uncovered all lead to one conclusion: Ticketing is a fixed game. Fans are shut out of buying tickets from primary sellers such as Ticketmaster and are then forced either to pay exorbitant markups on the secondary market, at resale sites such as StubHub or Ticketmaster’s Tickets Now, or else miss out on vital cultural events altogether.

Through our investigation, my office has gained in-depth, first-hand knowledge of ticket bots. We subpoenaed documents and data, performed analyses, and took testimony. We presented our findings in January 2016 in a detailed report entitled “Obstructed View: What’s Blocking New Yorkers from Getting Tickets,” which accompanies my testimony. The report described myriad ways in which the ticket industry is broken, with bots as a particular focus. Bots are a particularly pernicious force in the ticketing industry. By automating the ticket-buying process, bots have two huge advantages over human buyers: (1) they perform each transaction at lightning speed, and (2) they can perform thousands of transactions simultaneously. As a result, they crowd out human purchasers and snap up most good seats. My investigation found one bot that purchased more than 1,000 tickets to see U2 at Madison Square Garden within a single minute, and more than 15,000 tickets to U2 shows nationwide within a single day. Three of the biggest bot users collectively bought more than 140,000 tickets to New York over three years. Multiply that by fifty states and you can see the enormity of this problem nationwide. Millions of fans are shut out from getting tickets at face value. Moreover, the integrity of the entire market for tickets is undermined by the fact that bot users have made the process so unfair.

In addition to reporting on industry practices, my office also took enforcement actions against bot developers, users, and illegal resellers. My office has already reached settlements with some of the country’s biggest bot-users, requiring them to abstain from using bots for events in New York and recouping millions in penalties. For example, one of those bot users scooped up 520 tickets to a Beyoncé concert in Brooklyn in just three minutes, and was required to pay \$600,000 in disgorged profits and penalties. Our investigations into even more bot-users are ongoing and we expect to announce additional significant enforcement actions.

Our report and enforcement actions also helped spur a push in the New York State Legislature to take additional action to crack down on bot use. My office worked with leading

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State legislators from both parties on a bill that increased civil penalties, for the first time in New York imposed criminal penalties for bot use, and extended liability to those who may try to evade the law by outsourcing the bot use to a third party while reselling the tickets the bot obtained. That bill passed with unanimous support in both houses and awaits the Governor's signature.

I applaud this committee's efforts to craft an anti-bot law at the federal level, because while state laws like the one pending in New York will increase deterrence, I believe the bot problem could be much more effectively addressed with a federal anti-bot law that complements existing state laws. Ticket reselling is enormously lucrative. My investigation found that reseller markups on tickets are 50% over face value on average, but sometimes reach more than 1,000%. One bot user we investigated had more than \$40 million in annual revenue, a large portion of which he split with his bot-programmer partner. These riches create large incentives for resellers to use bots. Compare that with the resellers' view of current deterrence: First, states with anti-bot laws must discover the bot use (which may not happen considering sophisticated bots are very good at mimicking human behavior) and then bring an action. Second, even if the action results in disgorgement and penalties, the bot user has ample funds to pay those costs, not only from the illegal bot use in states with bans but also from the legal bot use in states lacking such bans. In short, the states without bans subsidize illegality in states with bans. A federal prohibition could help change the incentives so it no longer pays to use bots.

Outlawing bot use is not just logical, it is fair. Currently, the small-time scalper standing outside a venue selling a pair of tickets is far more likely to be subject to arrest and sanction, while the highly sophisticated and well-financed bot users who scalp tens of thousands of tickets gets off scot free. This is akin to punishing a three-card monte dealer for deception while giving a pass to a fund manager running a Ponzi scheme that affects thousands of people.

For all of these reasons I strongly support the chief provisions in the proposed federal BOTS Act of 2016, bill S.3183, introduced July 13, 2016 by Chair Moran and Sens. Schumer, Fischer, and Blumenthal. In particular, I support the bill's provisions in § (a) that ban on the knowing use of bots and the resale of tickets knowingly obtained using bots. Indeed, the legislation I proposed and supported in New York similarly imposed liability on knowing resale to ensure that resellers cannot insulate themselves from liability by outsourcing bot use to third parties. I also support the provisions in §§ (b) and (c) of the bill that grant authority to the FTC and state attorneys general to enforce the proposed law, while being careful not preempt existing state laws that my office and those of my fellow attorneys general may enforce against bot use in our own jurisdictions.

Based on my experience enforcing bots laws in New York, I have a few suggestions for how the bill could be improved. I urge you to consider clarifying certain provisions of the bill to ensure that it provides the strongest deterrence possible against bot use and does not complicate the efforts of state attorneys general to police ticket scalping:

- First, § (a)(1) prohibits bot use "on an Internet website of a ticket issuer." This provision should clarify that the prohibition is not limited to sales on the Internet and encompasses any technology platform, since Ticketmaster and others already sell a large share of their tickets

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through smartphone apps and may later develop as-yet-unknown platforms. Moreover, it should clarify that the prohibition is not limited to the issuer's own platform, since some issuers sell tickets on third-party websites, such as Facebook.

- Second, § (c)(1) of the current bill provides that states may sue “as *parens patriae*” to obtain injunctive relief and “damages restitution or other compensation on behalf of . . . residents” of the state. This provision should clarify that the bill does not limit state attorneys general to suits in their *parens patriae* capacity. My office currently may bring a claim under state anti-deception laws, not as *parens patriae*, for violations of federal law, and I would not want a court to construe this bill to preclude such an action. Further, § (c)(1) should expressly provide that state attorneys general may obtain the same civil penalties the FTC may obtain. These monetary penalties are critical to increasing deterrence, and that is just as true in a case brought by a state attorney general as in a case by the FTC. Additionally, this provision of the bill should expressly state that disgorgement of profits obtained illegally is also available, since that remedy is useful where restitution is difficult or unwieldy to obtain. This provision should also clarify that it is not restricted to injuries facing “residents of” the state, to avoid limiting my office’s established authority under state law to obtain relief for violations within New York’s borders that other states’ citizens, for example bot use affecting New Jersey or Connecticut fans seeking tickets to shows at nearby New York venues.
- Third, § (c)(3) of the current bill provides that “[n]othing in this subsection may be construed to prevent” states from exercising powers conferred on them by state law to conduct investigations. This provision should clarify that, beyond investigations, the bill also does not prevent states from bringing any claims they are authorized to bring under their own states’ laws.
- Lastly, I urge you to consider following New York’s lead in imposing criminal sanctions in addition to civil ones. New York imposed civil penalties for bot use in 2010, yet many resellers still used them despite the risk of detection and litigation. Indeed, my office’s investigation turned up communications from one bot user claiming that he would only refrain from bot use if he risked criminal charges in addition to civil ones.

In closing, I wish to stress that while strong anti-bot laws are a necessary step to address the fixed game in ticketing, more will be needed to improve fans’ access to cultural events. My report showed that half of all tickets, on average, are held back for industry insiders, special groups, and holders of special credit cards. These set-asides are even larger for many events, such as two Justin Bieber concerts in 2012 where only 2,000 seats at an 18,000 seat arena in New York City were released during the sale to the general public. Promoters, venues, and ticketing agents such as Ticketmaster must level with fans by disclosing the allocations of tickets to the general public versus insiders and other preferred groups. Additionally, if a ticketing agent such as Ticketmaster claims that ticket limits are enforced, it should enforce those limits as a matter of course on a per-person basis or else disclose that such limits are not so enforced. Secondary sales platforms such as StubHub and TicketsNow must ensure brokers reselling tickets on their sites can comply with laws like those in place in New York that require resellers to post licensing information and ticket face values. These sites already make face values available in the United Kingdom and should do the same for U.S. fans.

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I will continue to work with New York's State Legislature to improve the ticketing industry in my state, and urge your Subcommittee to consider these issues at the federal level as well.