

The Center for Growth and  
Opportunity at Utah State University

## Public Interest Comment on Consumer Protection, Ticket Bots, and the Better Online Ticket Sales (BOTS) Act

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The Center for Growth and Opportunity at Utah State University is a university-based research center located on the Logan campus of Utah State University. The Center for Growth and Opportunity is dedicated to producing policy-relevant research that explores the interactions between key institutions—business, government, and civil society—to better understand how to improve opportunity, broad-based economic growth, and individual well-being. As part of its mission, the Center conducts independent analyses addressing rulemakings and proposals. Therefore, this reply comment is designed to assist the agency as it explores these issues.



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**Growth and Opportunity**  
at Utah State University

## Introduction

We appreciate the opportunity to submit comments regarding the Federal Trade Commission’s (FTC) Workshop Examining Online Event Ticket Sales. We applaud the FTC’s interest in exploring the potential consumer protection issues associated with the online event-ticket marketplace. As was noted in the workshop announcements, “The online event ticket industry has been a frequent topic of consumer and competitor complaints.”<sup>1</sup>

Our comments address the issue of using ticket purchasing software (commonly referred to as “ticket bots”) and the Better Online Ticket Sales Act (BOTS Act). In particular, we discuss many of the misconceptions around ticket bots, and more specifically their use in buying (and eventual reselling) of tickets on a secondary market. The use of bots to purchase and resell tickets is an integral part of ensuring a healthy market that is responsive to consumers and performers. This comment not only addresses the perceived problems with ticket bots but also outline potential alternative solutions to the complaints being made about online ticket resales.

We begin with some background on the use of bot technology. We then outline the consumer protection and competitive considerations that ought to be made when considering bot technology. We then discuss why the federal response in the BOTS Act is unnecessary. Finally, we provide a roadmap for alternative solutions to anticompetitive or unwanted practices in ticket sales.

## Background

Broadly defined, bots are nothing more than automated software programs that run tasks on the internet. Networks of bots (botnets) use distributed computing to perform an automated task. This technology is most known for its role in distributed denial of service (DDoS) attacks; however, botnets can be leveraged to apply excess computing power to aid in cancer research in the Stanford Protein Folding Project,<sup>2</sup> help find evidence of extraterrestrial life at SETI,<sup>3</sup> or raise money for charity.<sup>4</sup> Bots perform basic, time-consuming, and repetitive tasks more quickly than humans. Good use cases of bots include chatbots such as Amazon’s Alexa that can answer questions, play music, or order food.

Moreover, bots aid in searching websites for information, as well as indexing or archiving digital information. In this context, it is important to understand that bot technology itself is not malicious. Instead, individuals often treat bot technology as harmful when they disagree with the task being performed: in this case finding tickets and purchasing them at suprahuman speeds.

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<sup>1</sup>“FTC to Hold Workshop Examining Online Event Ticket Sales,” Federal Trade Commission, October 4, 2018. Available at: <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-hold-workshop-examining-online-event-ticket-sales>.

<sup>2</sup> Stanford University, “Folding@Home,” accessed november 21, 2018. Available at: <http://folding.stanford.edu/>.

<sup>3</sup> U.C. Berkeley, “Seti@Home,” accessed november 21, 2018. Available at: <https://setiathome.berkeley.edu/>.

<sup>4</sup> Mark McAndrew, “Charity Genie,” accessed november 21, 2018. Available at: <http://www.charityengine.com/about>.

## Bots and Consumer Protection

The primary consumer protection concern surrounding ticket bots is the competitive advantage given to ticket reselling companies over the average consumer. Ticket bots enable the user to rapidly buy large quantities of tickets when they are first released at face value, forcing average consumers to turn to higher priced tickets on secondary markets.<sup>5</sup> In an attempt to protect consumers, Congress passed the Better Online Ticket Sales (BOTS) Act in 2016, prohibiting the use of computer software to quickly purchase multiple tickets on online ticketing systems.<sup>6</sup>

Banning the use of bots, however, fails to recognize the benefits created by their use. First, ticket resales are an integral part of the market process. Second, secondary markets and the use of bots to acquire tickets upon release should be understood in the context of the larger ticket distribution system. Third, banning bots may create negative unintended consequences.

## Ticket Resales are a Critical Part of the Market Process

Ticket resales, commonly known as scalping, perform in an important role in the market for tickets. These secondary markets only exist because sellers are either under-valuing tickets, under-supplying concerts, or a combination of both. Performers or venues will put a below-market price on tickets for a number of reasons, such as generating goodwill for artists or helping avoid accusations of elitism.<sup>7</sup> Underpricing tickets also helps to ensure sold-out shows, which increase an artist's status and increases opportunities for merchandise, food, and drink sales.<sup>8</sup> As singer-songwriter Robert Ritchie (professionally known as "Kid Rock") explained:

If you give people a fair price, I think they'll feel a little better about spending their money. And they might, you know, they might drink some more beer, or they might buy two T-shirts, they might spend as much just because they don't feel like someone is trying to get one over on them.<sup>9</sup>

While this ticket pricing strategy for primary tickets may engender goodwill with some, a secondary ticket market ensures that tickets go to those that value them the most. Regardless of the system chosen, individuals will always compete for tickets. If tickets are allocated primarily on a "first come, first served" basis, without any mechanism to communicate supply and demand (i.e., dynamic pricing), those who are first to the box office are the ones to win the competition for tickets. As economists Armen Alchian and

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<sup>5</sup> United States Government Accountability Office (2018), "Event Ticket Sales: Market Characteristics and Consumer Protection Issues," GAO-18-347, page 1. Available at: <https://www.gao.gov/assets/700/691247.pdf>.

<sup>6</sup> Better Online Ticket Sales Act of 2016, Pub. L. No. 114-274, 130 Stat. 1401 (2016) (BOTS Act).

<sup>7</sup> See, e.g., "Kid Rock vs. The Scalpers," *National Public Radio*, Planet Money Podcast, November 28, 2018. Available at: <https://www.npr.org/sections/money/2018/11/28/671580422/episode-468-kid-rock-vs-the-scalpers>.

<sup>8</sup> Peter Passel, "Economic Scene; If scalpers can get so much, why aren't tickets costlier?" *The New York Times*, December 23, 1993. Available at: <https://www.nytimes.com/1993/12/23/business/economic-scene-if-scalpers-can-get-so-much-why-aren-tickets-costlier.html>

<sup>9</sup> "Kid Rock Takes on the Scalpers," *National Public Radio*, Planet Money Podcast, November 28, 2018. Available at: <https://www.npr.org/templates/transcript/transcript.php?storyId=196277836>.

William Allen explain, this approach is more or less synonymous with a race for tickets in which tickets are awarded to those who cross the finish line first (replace “finish line” with “box office” and you get the same outcome).<sup>10</sup>

Beyond bots, individuals have always found ways to gain advantages in these races, including student tickets to Duke Basketball games,<sup>11</sup> the US Supreme Court<sup>12</sup> to hearings on Capitol Hill.<sup>13</sup> When admission priced at zero and administered on a first-come-first-served basis, competition for tickets takes the form of a willingness to wait in line. Those who are willing to face the elements and wait for days outside, or find someone to hold their place in line, will gain admission.

Allowing underpriced (and zero-priced) tickets to be sold on secondary markets allows those who can compete on other margins to find other, mutually beneficial exchanges. This gives buyers who did not have the time or the luck to secure tickets the opportunity to purchase them later. In the same way that professional line-standers have emerged for zero-priced tickets,<sup>14</sup> tickets bots and secondary markets easily enable broader access for those who may not be able to compete in the original ticket release.

Moreover, secondary markets supported by bots can be beneficial to the artist and the venue. Scalpers take on the risk of selling the tickets and provide both artists and venues the revenue of a sold-out show close to the on-sale date.<sup>15</sup> Also, with a competitive secondary market for tickets, the numerous actors on the secondary market seeking to make some money from this opportunity are also competing against each other, lowering the markup they can charge to ensure they aren't left with unsold tickets.

## Bots are only one part of the ticket distribution system

As the FTC noted in its announcement, the workshop will focus on “practices that prevent consumers from obtaining tickets, [and] mislead consumers.”<sup>16</sup> In doing so, we urge the FTC to look beyond ticket bots resale markets, and look more closely at the current practices primary ticket sellers are engaged in. Is the use of bots in online ticket sales the primary practice preventing consumers from obtaining tickets?

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<sup>10</sup> Armen A. Alchian and William R. Allen, *University Economics* (Belmont, CA: Wadsworth Publishing Company, 1969): 11.

<sup>11</sup> “Krzyzewskiville,” Wikipedia, accessed December 1st, 2018. Available at: <https://en.wikipedia.org/wiki/Krzyzewskiville>.

<sup>12</sup> Laura Vozzella, “Professional Line-Standers and their Subs Hold Spots Outside Supreme Court,” *The Washington Post*, March 26, 2012. Available at: [https://www.washingtonpost.com/blogs/post\\_now/post/professional-line-standers-and-their-sub-hold-spots-outside-supreme-court/2012/03/25/gIQA6VNWbS\\_blog.html?utm\\_term=.24f1673b9ce0](https://www.washingtonpost.com/blogs/post_now/post/professional-line-standers-and-their-sub-hold-spots-outside-supreme-court/2012/03/25/gIQA6VNWbS_blog.html?utm_term=.24f1673b9ce0). (Note: although the practice has been curbed for lawyers, the general public may still use line-standers for the Supreme Court.)

<sup>13</sup> “The Life of a Professional Line-Stander,” *The Washington Post*, March 4, 2005. Available at: [https://www.heraldextra.com/lifestyles/the-life-of-a-professional-line-stander/article\\_cfb223dd-c899-5250-9e68-0710d906a86f.html](https://www.heraldextra.com/lifestyles/the-life-of-a-professional-line-stander/article_cfb223dd-c899-5250-9e68-0710d906a86f.html).

<sup>14</sup> “Line Stander,” *Wikipedia*, accessed December 2nd, 2018, [https://en.wikipedia.org/wiki/Line\\_stander](https://en.wikipedia.org/wiki/Line_stander).

<sup>15</sup> Christopher Koopman and Anne Hobson, “Chasing Away Scalpers Only Hurts Consumers,” *The Hill*, October 27, 2016. Available at: <https://thehill.com/blogs/pundits-blog/sports-entertainment/303063-chasing-away-scalpers-only-hurts-consumers>.

<sup>16</sup> “FTC to Hold Workshop Examining Online Event Ticket Sales” Federal Trade Commission, October 2018, <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-hold-workshop-examining-online-event-ticket-sales>.

Evidence indicates that there are larger problems affecting ticket availability. The New York Attorney General's office investigated ticket sales for events in New York between 2012-2015 and found that the majority of tickets were never made available to the general public.<sup>17</sup> As the report details:

[B]efore a member of the public can buy a single ticket for a major entertainment event, over half of the available tickets are either put on "hold" and reserved for a variety of industry insiders including the venues, artists or promoters, or are reserved for "pre-sale" events and made available to non-public groups, such as those who carry particular credit cards.<sup>18</sup>

Sometimes, these "reserved" tickets are then sold on secondary markets. For example, as the Wall Street Journal reported in 2009, Neil Diamond sold 160 tickets over two shows at marked-up prices.<sup>19</sup> Moreover, given the lack of transparency in how pre-sale tickets are distributed, this creates what the NY AG's report referred to as an "information vacuum."<sup>20</sup> As a result, third parties, scalpers, and bots have been drawn as the antagonist, while artists and industry insiders have avoided responsibility for withholding and misallocating tickets.

## Banning bots will create negative unintended consequences

While banning ticket bots may appear to create a level playing field for consumers, cutting the supply of resale tickets creates different margins upon which winners and losers will be determined. For example, the most popular shows will still sell out in minutes; however, tickets will go to those with the fastest internet speeds, the ability to take the time to wait, or those with the sheer luck to click refresh at the opportune moment.

Furthermore, competition in the resale market has incentivized innovative, pro-consumer measures from platforms. SeatGeek, for example, has built an algorithm to let potential buyers know the current market value of a ticket and how good of a deal the buyer is getting.<sup>21</sup> StubHub has partnered with Uber to allow event-goers to hail a ride to events they are attending.<sup>22</sup>

Making it harder to move tickets onto these platforms through the use of bots will not fully squash the resale market, but it could both increase the price that consumers will pay (by removing the price

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<sup>17</sup> Office of New York State Attorney General: Eric T. Schneiderman (2016), "Obstructed View: What's Blocking New Yorker's From Getting Tickets," *New York Attorney General*. Available at: [http://www.ag.ny.gov/pdfs/Ticket\\_Sales\\_Report.pdf](http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf).

<sup>18</sup> Office of New York State Attorney General: Eric T. Schneiderman (2016), "Obstructed View: What's Blocking New Yorker's From Getting Tickets," *New York Attorney General*, page 4. Available at: [http://www.ag.ny.gov/pdfs/Ticket\\_Sales\\_Report.pdf](http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf).

<sup>19</sup> Ethan Smith, "Concert Tickets Get Set Aside, Marked Up by Artists, Managers," *The Wall Street Journal*, March 11, 2009. Available at: <https://www.wsj.com/articles/SB123672740386088613>.

<sup>20</sup> Office of New York State Attorney General: Eric T. Schneiderman (2016), "Obstructed View: What's Blocking New Yorker's From Getting Tickets," *New York Attorney General*, page 35. Available at: [http://www.ag.ny.gov/pdfs/Ticket\\_Sales\\_Report.pdf](http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf).

<sup>21</sup> "Deal Score: The Key to Finding Great Deals," Seatgeek. Available at: <https://seatgeek.com/deal-score>

<sup>22</sup> Kia Kokalitcheva, "Stubhub's App Now Let's You Request an Uber to Your Event," *Fortune*, July 29, 2015. Available at: <http://fortune.com/2015/07/29/uber-stubhub-app-iphone-android/>.

competition that consumers benefit from across platforms) and drive consumers to use platforms such as social media to resell their tickets, greatly increasing the likelihood of fraud on either side.

## A Federal Response to the Use of Bots is Unnecessary

As we have outlined above, resale markets are providing a service to consumers, and the choice to allow users to purchase tickets via bots should be left up to the box offices, performers, and venues. However, there have been a number of laws passed within the last decade that limit the use of bots at a state level. For these reasons, a federal response was redundant and unwarranted. The BOTS Act only complicates the issue.

Outside of the BOTS Act, a number of steps were already being taken to address the use of bots in violations of terms and conditions set by box offices. Presently, some individual box offices already choose to prohibit bots from buying up tickets and have been successful in recovering tickets from those whose purchases violated terms and conditions.<sup>23</sup> More than 30 states have some sort of scalping law, and 14 ban the use of bots in ticket purchasing. These laws range from prohibition, to licensing requirements, to limits on resale pricing.

The federal law removes autonomy from individual venues, box offices, or states to decide whether or not bots can be used. But, perhaps more importantly, the BOTS Act effectively leverages the federal government in enforcing the terms of service set by private companies. Box offices no longer have to invest in new, more effective ways to combat bots. Instead, it is now the responsibility of the FTC, the federal government, and taxpayers.

## Alternative Solutions

If artists and venues are concerned about the prevalence of the resale market, and its popularity making bots a viable solution, there are numerous alternative solutions to be considered. Firstly, and most simply, ticket prices can be raised or dynamically priced since the initial issue comes from their artificial undervaluation. In a similar vein, the supply of concerts can be increased by adding more shows or increasing venue size.

Take, for example, the divergent approaches used by Garth Brooks and the Rolling Stones to combat ticket scalping.<sup>24</sup> In 2016, both artists played the T-Mobile Arena in Las Vegas. Both were concerned about disincentivizing scalping of their tickets. The Rolling Stones played one show and raised their prices to as high as \$705. Garth Brooks kept his tickets at the industry-standard, below-market prices (\$85) but played five shows. Kid Rock has adopted a similar approach, by adding multiple shows in a city to ensure ample supply of tickets, which keeps the resale value much closer to the face value of the

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<sup>23</sup> Anne Hobson and Christopher Koopman, "Are Robot Scalpers Ripping You Off? Do We Need Government To Stop It?" *TechDirt*. November 7, 2016. Available at: <https://www.techdirt.com/articles/20161104/15583335969/are-robot-scalpers-ripping-you-off-do-we-need-government-to-stop-it.shtml>

<sup>24</sup> Mike Weatherford, "Garth Brooks and the Rolling Stones Fight Ticket Scalpers in Their Own Way," *Las Vegas Review Journal*, June 26, 2016. Available at: <https://www.reviewjournal.com/entertainment/entertainment-columns/mike-weatherford/garth-brooks-rolling-stones-fight-ticket-scalpers-in-their-own-way/>.

tickets.<sup>25</sup> Taylor Swift, during her 2013 tour, raised her prices to reflect their market value. Each of these different approaches should be seen as a solution to the use of bots.

As outlined above, greater competition in the resale space also decreased the ills identified with ticket scalping, such as increased prices or seller fraud. Supporting a competitive resale market, rather than stifling it, will ensure that resellers keep prices competitive or risk not selling their tickets. Competition in secondary markets also encourages innovation in the space. This innovation drives down costs and allows for improvements in technology such as machine-learning and real-time dynamic pricing to improve customer experiences.

## Conclusion

Efforts to use federal law to enforce the private terms and conditions set by box offices should be reconsidered. The use of bots in the online ticket reselling space helps get tickets to those who value them most. Sellers in the secondary market take on risk which benefits venues and performers. Should states, individual artists or box offices wish to act against this market, they are more than capable of crafting their own rules on the matter, as many have done. Mobilizing federal resources to police the activity of bots will serve to squash competition, increase costs, and prevent innovation. In short, the BOTS Act transfers the costs of enforcement from the private companies involved in selling tickets to federal agencies and taxpayers.

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<sup>25</sup> “Kid Rock Takes on the Scalpers,” *National Public Radio*, Planet Money Podcast, November 28, 2018. Available at: <https://www.npr.org/templates/transcript/transcript.php?storyId=196277836>.