

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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Rep. Robert B. Jacquard, Chairman
House Committee on Corporations
Rhode Island General Assembly
Providence, Rhode Island

February 25, 2019

RE: Support for H 5362, Updating the Rhode Island Ticket Resale law

Dear Chairman Jacquard and members of the committee:

NetChoice enthusiastically supports H 5362. This bill brings Rhode Island's ticket laws into the 21st Century and helps fans enjoy safe and easy ways to buy, sell, and give away their sports and concert tickets. H 5362 also enables resale at market rates and creates important consumer protections against deceptive websites that fool Rhode Island fans into paying more to buy resale seats from brokers, when there are actually unsold seats available for less.

The evolution of ticketing technologies and a growing concentration of market power is putting the squeeze on Rhode Island fans, and that's why H 5362 is needed now.

H 5362 creates important consumer protections

The bill requires ticket resellers to provide purchasers a **full refund or comparable replacement** ticket if:

- The event is canceled and not rescheduled;
- The ticket received by the purchaser is counterfeit;
- The ticket fails to conform to the description provided by the seller or reseller;
- The ticket was not delivered to the purchaser prior to the occurrence of the event, unless such failure of delivery was due to an act or omission of the purchaser; or
- The ticket does not provide the consumer admission to the event for which it was purchased.

Protecting fans' ability to resell and give-away their tickets

H 5362 gives Rhode Island fans protections for ticket transferability, which already exist for fans in Colorado, Connecticut, New York, and Virginia. H 5362 aims to maintain consumer choice, convenience, and market competition:

- allows Rhode Island fans to freely give a ticket to a friend, client, or family member;
- prevents denial of admission to anyone seeking to use a transferable ticket;
- allows fans to sell tickets they are not going to use; and
- enables fans to choose among competing secondary markets to buy and sell tickets.

Without H 5362, Ticketmaster can restrict fans to only get “Credit Card Entry” Tickets.

Ticketmaster’s “Credit Card Entry” tickets require a fan to present the credit card used to buy the ticket, plus a government-issued identification card for the person who bought the ticket. Venues using these restricted tickets could deny admission to fans whose credentials do not match the original ticket buyer, as seen in the attached restrictions displayed on Ticketmaster’s website.

Without H 5362, citizens and businesses can’t even give away tickets to friends, family, or clients, because the purchaser’s name won’t match the ticketholder. Parents could be forced to accompany their teenagers to the event gate to show ID of the ticket *purchaser*, rather than allowing the teen to present their ticket to the usher.

While Ticketmaster sometimes gives the option to transfer a ticket, it requires a complex interaction with Ticketmaster and may require payment of yet another “convenience fee.”

With restricted tickets, fans who give their tickets to family or friends have to escort them to the venue doors. And a ticketholder who cannot attend cannot easily sell or even give away his tickets.

We’ve attached a page from Ticketmaster’s website that explains the inconvenient restrictions imposed on fans who must buy Credit Card Entry tickets.

A new federal law removes Ticketmaster’s main justification to impose restricted tickets.

Ticketmaster’s own website explains why it requires “Credit-Card Entry” restrictions – to stop software ‘bots’ used by unscrupulous brokers to grab hundreds of tickets in first minutes they go on sale:

Why is Credit Card Entry the only option for some events, or some sections?

When Credit Card Entry is the only option it’s probably because the tickets are in high demand, and the artist, team, or venue wants true fans like you to get the seats you want at face value by eliminating unfair competition from professional scalpers. Without the ability to resell tickets at steep prices, scalpers have no reason to snatch them up when they go on sale using automated software, or “bots”.

But now, there’s now a new federal law making it illegal for brokers to circumvent ticket purchase limits on sites like Ticketmaster. In December 2016, Congress passed the Better Online Ticket Sales, or BOTS Act. The bill empowers the FTC and state Attorneys General to stop ticket scalpers from buying-up tickets by bypassing online controls that limit the number of tickets a person can buy.

Even Ticketmaster supported the BOTS Act, “Ticketmaster worked closely with legislators to develop the BOTS Act and we believe its passage is a critical step in raising awareness and regulating the unauthorized use of Bots.”¹

With BOTS now a federal crime, there's no justification for Ticketmaster to offer only restricted tickets.

Rhode Island can—and should—stop the anti-consumer practice of restricted tickets.

While private contracts are a private matter, governments step-in when contracts threaten property rights, constrain consumer choice, or force unfair agreements on consumers.

Event tickets are another situation ripe with concern for anti-competitive practices that harm not only consumers but also competitive businesses.

¹ 16-Dec-2016, “Obama signs law to combat ticket bots”, <http://ew.com/article/2016/12/16/obama-law-ticket-bots/>

Ticketmaster's *primary* ticket sales platform has previously required customers to resell only through Ticketmaster's own secondary market service. Failing to stick with Ticketmaster has resulted in voided tickets and threats to cancel patrons' season tickets.²

Other states are protecting their fans from restricted tickets

Fans don't suffer these restrictions when artists perform Colorado, Connecticut, New York, or Virginia. These states have laws with the similar protections as those in H 5362.

Last year Connecticut³ and Virginia⁴ enacted laws similar to those in New York⁵ and Colorado⁶. These legislators protected their state's fans' ability to freely transfer, resell, and give away their tickets.

Big-name acts regularly perform in these states, so there's simply no credibility to any claim that passing H 5362 would discourage concerts from coming to Rhode Island.

Ticketmaster is aggressively expanding its Credit Card Entry ticket program. This will limit fan choice and could impose a new battery of "convenience fees" just to give a ticket to a friend.

Enables fans to resell at market rates

Rhode Island is one of only six states that limits the price fans can charge to sell their tickets. Today, Rhode Island fans cannot resell their tickets for more than \$3.

H 5362 moves Rhode Island into parity with most of the nation by allowing fans to resell at market-rates. By passing H 5362, Rhode Island will finally allow fans paying more than a \$3 transaction fee for their tickets to be made whole.

² Stubhub, Inc. v. Golden State Warriors, LLC, No. C 15-1436 MMC, 2015 WL 6755594 (N.D. Cal. Nov. 5, 2015), *appeal dismissed* (July 22, 2016).

³ CT Pub Act. 17-28 (2017). "No person shall employ an entertainment event ticketing sales system that fails to give the purchaser an option to purchase tickets that the purchaser may transfer to any party, at any price and at any time, without additional fees and without the consent of the person employing such ticketing system."

⁴ VA Stat. § 59.1-466.5-7. "No person that issues tickets for admission to an event shall issue any such ticket solely through a delivery method that substantially prevents the purchaser of the ticket from lawfully reselling the ticket on the Internet ticketing platform of the ticket purchaser's choice... No person shall be discriminated against or denied admission to an event solely on the basis that the person resold a ticket, or purchased a resold ticket, on a specific Internet ticketing platform."

⁵ NY Arts & Cult Aff L § 25.30 "[I]t shall be *prohibited* for any operator of a place of entertainment, or operator's agent, to: (a) restrict by any means the resale of any tickets...(b) deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold...(c) employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator's agent." (emphasis added).

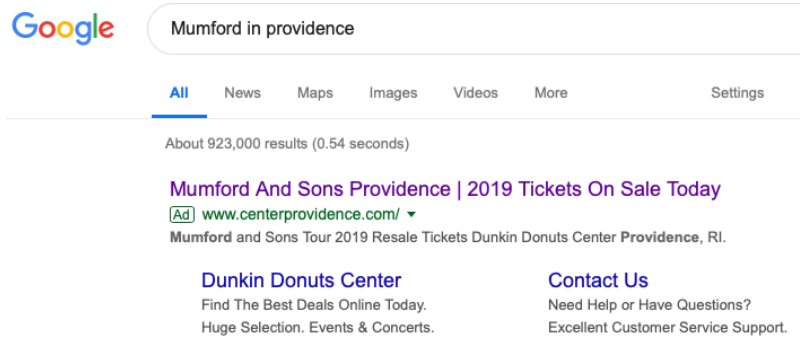
⁶ Colorado Rev. Stat. § 6-1-718(3) "It is *void as against public policy* to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale... A person or entity, including an operator, that regulates admission to an event shall not deny access to the event to a person in possession of a valid ticket to the event...based solely on the ground that such ticket was resold through a reseller that was not approved by the operator." (emphasis added).

Prohibits use of deceptive domain names to fool fans into paying more for seats

Fans across Rhode Island regularly search online for tickets to their favorite concerts and shows. Unfortunately, many fans are misled by deceptive domain names in search results, which are designed to trick fans into thinking they are seeing unsold and available seats offered by the venue.

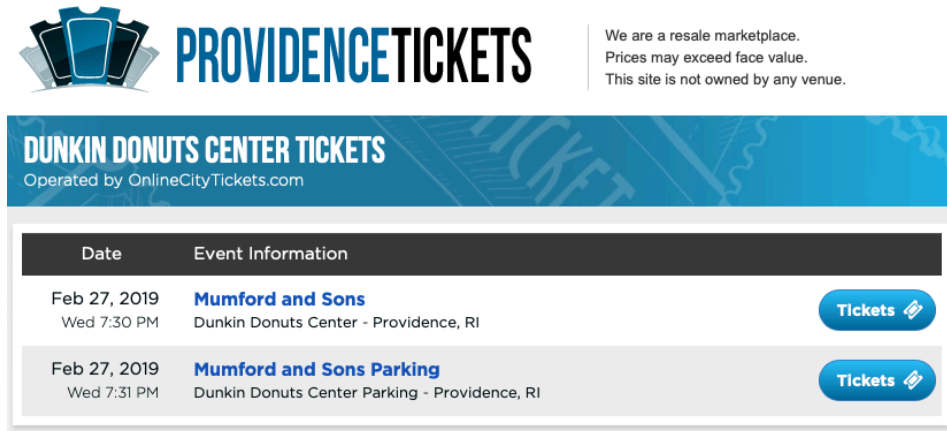
Consider a fan looking to see Mumford & Sons in concert this week at the Dunkin Donuts Center in Providence, still known to many as the Providence Civic Center.

That fan enters “Mumford in Providence” in her search engine, and the top search result comes up as seen here (at right).



Despite the domain name **CenterProvidence.com**, this site has *no affiliation* with the Dunkin Donuts Center. In fact, this website is run by a ticket resale outfit OnlineCityTickets, who sell only tickets offered by brokers – at significant markups over regular seats still available at the official Dunkin Donuts Center website.

The deceptive domain name CenterProvidence.com makes it appear as if they are the official site for the Providence center. Moreover, a fan clicking on that search link sees a webpage that declares in large uppercase, PROVIDENCE TICKETS and DUNKIN DONUTS CENTER TICKETS:



In fine print at upper right, this webpage acknowledges “We are a resale marketplace.” But that’s in stark contrast to the large uppercase letters and the list of tickets available now.

Rhode Island fans who are fooled by the domain name and website click to see tickets and learn that good seats are available in Section 110 at \$160 (see image below).

PROVIDENCETICKETS

We are a resale marketplace.
Prices may exceed face value.
This site is not owned by any venue.

800 854 2196

HOME ABOUT US CONTACT US POLICIES FAQ

MUMFORD AND SONS, DUNKIN DONUTS CENTER
Feb 27, 2019 — 7:30 PM — Providence, RI

100% BUYER GUARANTEE
APPROVED 545K Ratings

FILTER: Qty 2 Price: Min \$ 55 Max \$ 347

SORT BY: Price: Low to High Show e-tickets first

LOWER LEVEL 110 Row HH QTY 2 \$160.00 ea. BUY

Mobile Tickets

GAFF STAN...
LOWER LEVEL
4 tickets available, priced from \$ 160.00
View these tickets
View all Lower Level tickets

LOOR...
PRESS BOX

But over at the Dunkin Donuts official Ticketmaster website, **there are still many unsold seats in Section 110, at the face value of \$110**, as seen below:

ticketmaster® Sign In

Mumford & Sons - Delta Tour 2018/19 More Info

Wed - Feb 27 - 7:30 PM
Dunkin' Donuts Center, Providence, RI

Qty 2 Price \$41 \$112 Type Reset

SUITES
207 208 209 210 211 212 213
206 205 105 106 107 108 109 110 112 216
204 104 103 102 101 113 219
203 103 102 101 114 220
201 101 115 221
240 128 116 222

FLOOR STAGE FLOOR MIX

Your Tickets

SEC	ROW	SEAT
110	GG	9
Standard Ticket \$101.50 + Fees		
110	GG	10
Standard Ticket \$101.50 + Fees		

If this show *were* sold out, fans could then turn to trusted secondary market websites where they can see a larger selection of seats offered for resale. But there are seats still available at face value.

Deceptive domain names like **CenterProvidence.com** are luring Rhode Island fans into over-paying for a small selection of resale seats offered by professional ticket brokers. Those fans are not aware that unsold seats are actually available at the venue website. The Better Business Bureau has logged hundreds of complaints against these tactics by some unscrupulous ticket brokers.

A way to stop this deception is to prohibit misuse of artist or venue names in website domain names. Other states have taken action to stop these deceptive domains. Maryland recently enacted a law criminalizing these deceptive domain names. The Connecticut Attorney General and the Federal Trade Commission settled with two notorious deceptive domain operators, resulting in a permanent injunction and \$1.4 million in fines.⁷

H 5362 would make this example an “unfair or deceptive trade practice” in Rhode Island and subject the website operator to enforcement and penalty provisions.

Also, the approach taken by H 5362 is on solid legal grounds. The US Supreme Court made clear that state can enact laws curbing this type of misleading commercial speech.⁸ In the case of this bill it goes directly at commercial speech that is misleading.

Rhode Island should join other states in stopping this deception, by empowering your Attorney General with the tools to stop these bad actors.

Now is the time to pass H 5362 and help Rhode Island consumers enjoy the choice and convenience of an open tickets marketplace that isn't plagued by deceptive domain names.

Sincerely,

Steve DelBianco
President, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org.

⁷ Federal Trade Commission, *TicketNetwork and Marketing Partners Ryadd and Secure Box Office Settle Charges of Deceptively Marketing Resale Tickets* (July 24, 2014)

⁸ See, *Central Hudson Gas & Electric Corp. v. Public Service Commission* 447 U.S. 557 (1980). The US Supreme Court in an 8–1 decision, created the four-step test for when commercial speech can win on a first amendment claim: (1) the speech has to concern a lawful activity and *cannot be misleading*; (2) the asserted governmental interest is substantial, (3) the regulation “directly advance[s] the governmental interest asserted,” and (4) the regulation is “no more extensive than is necessary to serve the interest.”

From TicketMaster's Website

Q. How does it work?

A. Instead of receiving tickets ahead of the event, the credit card used to make the purchase will serve as the customer's ticket. To attend the show, the customer just presents the credit card used to purchase the ticket(s) and a valid, government issued ID (such as a driver's license, state ID or passport). The gate attendant will swipe the credit card and since all the seats are assigned to a single credit card, your entire party must enter the venue at the same time.

...

Q. What if I'm not going to the show, but I purchased the tickets?

A. If you bought the tickets for a friend or family member, you will need to take them to the entry gate and still present your credit card and government issued ID.

Q. What if I want to buy tickets for someone else in another state and can't get to the venue for the day of the event?

A. To ensure that the tickets remain in the hands of the fan, paperless ticketing requires that that cardholder who purchased the tickets presents their credit card at the door for admission. We would advise you to have the person, who will be attending the show, purchase the tickets themselves with their credit card and then you can reimburse them.

...

Q. What if I don't have or I lose my credit card before the event?

A. If you do not have a credit card with the same account number as the one used to make the purchase, you will need to go to the box office will call window on the day of the event for alternative handling of your situation. In this case, please be sure to bring a print out of your confirmation email or online order history and your government issued ID. The box office will verify that the name associated with the order matches the name on the government issued ID. If they do not match, entry will be denied. In all other cases, entry without your credit card will be at the discretion of each venue.

...

Q: What if I purchased the tickets, but my spouse is going to the event?

A: Your spouse must be an authorized user of the credit card, and must present the credit card along with their government issued ID to gain entry.⁹

I bought tickets for friends – can we get in separately?

If you bought for a group you gotta enter as a group, UNLESS Ticket Transfer is available for your event. To check, just click the order number under Order History in My Account and look for the Transfer Tickets button.¹⁰

⁹ <http://www.ticketmaster.com/mileycyrus/faq.html> (emphasis added)

¹⁰ <http://www.ticketmaster.com/creditcardentry> (emphasis added)