

## California SB 785

## OPPOSITION

June 20, 2023

California State Legislature  
Assembly Arts, Entertainment, Sports, & Tourism Committee

NetChoice respectfully requests you **oppose** SB 785.

The primary ticketing market is broken. Unfortunately, SB 785 exacerbates the issue without addressing the real problem, Ticketmaster-Live Nation's stranglehold on the industry. As it turns out, SB 785, would further entrench Ticketmaster and Live Nation's monopoly on the industry by enshrining Ticketmaster's right to discriminate against fans who want to use a competing ticketing platform to buy their tickets.

California is currently advancing legislation to address the Ticketmaster monopoly like SB 829. The US Department of Justice is expected to bring an antitrust suit against Ticketmaster in the next couple of months.

Which makes SB 785's consideration so confusing as the biggest beneficiary is Ticketmaster and the biggest loser from SB 785's enactment are fans looking for more competition, lower prices, and better services.

### **Guaranteeing Ticketmaster's Right to Discriminate against fans.**

Increasingly, consumers are facing Ticketmaster's restrictions on the transferability of the tickets they rightfully purchase. These restrictions are unilaterally dictated by the ticket issuer and may prevent fans from giving away their tickets to friends and family altogether, or more likely, require that all transfer/resale occur through the platform where the tickets were originally purchased.

Ticketmaster has been increasing the use of these restrictions, notably through their "SafeTix" digital ticketing system which requires all transfers to occur through the Ticketmaster app. In fact, Ticketmaster has stated that they intend to sell all of their tickets via "SafeTix" beginning by 2021.

Under SB 785, Ticketmaster can discriminate and deny citizens only because of where they bought their tickets. And fans and businesses are denied the ability to give away tickets to friends, family, or clients, because the purchaser's name won't match the ticketholder's name.

*Under SB 785, Ticketmaster can discriminate and deny citizens only because of where they bought their tickets.*

SB 785 empowers Ticketmaster while removing the ability of consumers the choice to purchase tickets without transferability restrictions at the original point of sale. SB 785 puts Ticketmaster in control, not fans.

## Does nothing to address the real problem of bots

President Obama signed the BOTS (Better Online Ticket Sales) Act into law, making it illegal to use automated computer scripts (bots) to bombard ticket websites with multiple orders the instant seats go on-sale. But enforcement is limited due, in part, to the failure of Ticketmaster to report the criminals to law enforcement.

*“Ticketmaster is now accused of running what looks like an underground ticket scalping project that may be driving up prices and costing consumers millions.” - CBS This Morning*

Ticketmaster is in the business of selling tickets. It is in their interest to sell tickets to whomever will buy them, even if using bots to endrun fans and in violation of Federal law. At a recent Congressional hearing, the CEO of Ticketmaster could not identify if and how often they have referred ticket brokers using bots to law enforcement. Instead, Ticketmaster has complained about bots but done little to nothing to help law enforcement identify and prosecute the bad actors.

In fact, Ticketmaster is accused of helping scalpers to avoid the Ticketmaster bots. As CBS This Morning reported:

“Ticketmaster is now accused of running what looks like an underground ticket scalping project that may be driving up prices and costing consumers millions.”<sup>1</sup>



<sup>1</sup> CBS This Morning, Ticketmaster is colluding with ticket scalpers and taking a cut, undercover report finds (Sep 20, 2018).

So not only are consumers missing the chance to get the best tickets when they first go on-sale, but they're often paying more for inferior seats on the deceptive websites used by some brokers. A better approach would be to require Ticketmaster to report known violations to law enforcement. If bots are such a concern to Ticketmaster they should have no problem reporting them for prosecution.

## **A better approach on addressing the problems in the ticketing market—ensuring ticket transferability**

Connecticut,<sup>2</sup> New York,<sup>3</sup> Colorado,<sup>4</sup> Utah,<sup>5</sup> and Virginia<sup>6</sup> enacted similar laws to guarantee the rights of fans to transfer their tickets. These legislators protected their state's fans' ability to freely transfer, resell, and give away their tickets.

Conversely, in California where such rights do not exist for fans, Ticketmaster can deny citizens and businesses the ability to give away tickets to friends, family, or clients, because the purchaser's name won't match the ticketholder's name. These protections are absent SB 785. California should ensure that consumers are empowered in the ticket purchase transaction by allowing them the choice to purchase tickets without transferability restrictions at the original point of sale. Such an action puts consumers in control, not ticket issuers.

## **Now is the Time to Enact Ticket Transferability Protections**

The primary event ticket marketplace is broken. SB 785 will make it worse. Instead, California should move to empower and protect consumers.

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<sup>2</sup> 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."

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> UT Code §§ 13-54-102 (2019). "(1) Except as provided in Subsection (2), each ticket issued for an event shall be a transferrable ticket."

<sup>6</sup> 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."

Ticketmaster controls more than 70% of the market for ticketing and live events. Ticketmaster controls more than 80% of live concerts.<sup>7</sup> This is evidence of monopolistic market power.

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The “service fees” that Ticketmaster charges continue to increase while quality falls. Evidence of consumer harm.

The hearings before the US Senate Judiciary Committee showed how Ticketmaster and its parent company Live Nation used their market power to force venues to only sell through Ticketmaster.<sup>8</sup> This is evidence of abuse of market power.

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Because it creates more problems in the ticketing space, empowers Ticketmaster and LiveNation to engage in further abuses, and fails to help fans, we ask that you **not advance SB 785**. Instead, California should follow Connecticut, Colorado, Virginia, and many other states to guarantee California fans the right to giveaway, share, or resell their tickets how they want.

As ever, we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.

Sincerely,

Carl Szabo  
Vice President & General Counsel  
NetChoice

*NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.*

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<sup>7</sup> Florian Ederer, *Did Ticketmaster’s Market Dominance Fuel the Chaos for Swifties?*, Yale Insights (Nov. 23, 2022).

<sup>8</sup> See, *That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment*, US Sen. Jud. Cmtee. (Jan. 24, 2023)