

**TESTIMONY REGARDING HOUSE BILL 1378  
HOUSE COMMITTEE ON CONSUMER PROTECTION,  
TECHNOLOGY & UTILITIES  
SEPTEMBER 13, 2023**

Good morning. Thank you for the opportunity to testify at this important hearing.

My name is Howard Waltzman, and I am a Partner at the law firm Mayer Brown LLP.

For more than the past 25 years, I have been deeply involved in legislation involving the Internet and technology issues. I served as the General Counsel to a member of the US Senate Commerce Committee at the beginning stages of the commercialization of the Internet. From 2001-2006, I served as Chief Telecommunications and Internet Counsel at the US House Energy and Commerce Committee, during which consumers' online activities flourished.

One of my current clients is Live Nation Entertainment, the parent company of Live Nation and Ticketmaster.

The Internet became the primary means through which consumers communicated, learned, access health care, shopped, and entertained themselves. It also unfortunately became a new medium for fraud and consumer abuse, which is why my committee produced legislation such as the CAN-SPAM Act and the US Safe Web Act. Since joining Mayer Brown in 2007, I have worked on behalf of many clients trying to make the Internet a safe and secure medium for consumers.

Bots, which can generally be described as automated software applications that are often designed to imitate human behavior, are a scourge that undermine consumers' use and enjoyment of the Internet. Bots are utilized to attempt to undermine our democracy at critical points during

elections. Bots are also generally used to spread misinformation and disinformation about a variety of topics with significant implications for society, especially with respect to health care and the environment.

In the ticketing industry, bots are a particularly nefarious presence, used by ticket scalpers to buy up tickets to concerts and games that are in high demand. Scalpers use bots to circumvent online security measures, access control systems, or other technological controls designed to ensure that real fans can access tickets for their favorite artist and sports teams at affordable prices.

Because bots can perform online functions faster than humans, especially when used in overwhelming numbers, bots gobble up tickets before real fans have a chance to purchase them. Scalpers then sell these tickets to real fans at inflated prices, earning a significant profit at the expense of fans as well as artists and sports teams.

The State of Pennsylvania was a leader in efforts to combat the use of bots in the purchase of tickets, enacting a prohibition in 2010. The US Congress first enacted legislation, the BOTS Act, to prohibit the use of bots in purchasing tickets in 2016.

Unfortunately, enforcement of the BOTS Act has been challenging; the Federal Trade Commission brought its first successful action against violators in 2021. In addition, the enforcement of Pennsylvania's law has been limited by the statutory penalty cap \$5,000, which has not provided enough of a financial incentive to scalpers to stop using bots to deprive fans of affordable tickets. The effectiveness of the Pennsylvania law has also been constrained by the Attorney General's limited resources.

That is why the committee's consideration of House Bill 1378 is so valuable. This bill includes the following reforms:

- Prohibits the use of bots to purchase tickets with the intent to resell the tickets;
- Prohibits the use of bots to circumvent electronic queues, waiting periods, or other sales volume limitation systems on online ticket websites, or to use multiple email address or Internet Service Providers to circumvent such measures;
- Prohibits the use of bots to circumvent online security measures, access control systems, or other technological controls designed to facilitate authorized entry into an event; and
- Prohibits the sale of tickets where the seller engages in the prohibited conduct referenced above, or knew or should have known that such tickets were acquired in violation of such prohibitions.

In addition, House Bill 1378 would enhance enforcement by enabling an operator, primary ticketing platform, or rights holder to bring a suit against a violator.

We hope that the committee will consider this important legislation that will enhance fans' access to tickets to concerts and sporting events. I would be happy to answer any questions and I appreciate the opportunity to testify.

PENNSYLVANIA GENERAL ASSEMBLY  
Consumer Protection, Technology and Utilities Committee  
September 13, 2023

Testimony of Christian L. Castle

Thank you Chair Matzie and Republican Chair Marshall for the opportunity to testify to the Consumer Protection, Technology and Utilities Committee regarding HB 1378 particularly on the subject of the use of automated technologies and boiler room operations in the resale of tickets to fans. I will refer to all these enterprises as “bots”.

I am a music lawyer from Austin, Texas so will confine my testimony to the impact of these operations in the music business, but the same issues arise in all ticketed events including sports, live theater, and other endeavors. The driver is the vicious cycle of popularity—more popularity, more bots, more profit for the reseller, more harm to fans.

This is not how it should be. Artists typically price their tickets at a face price within the financial reach of the majority of their fans. Artists do not intend for their tickets to be gamed by bots designed to extract the last ounce of the last pound of flesh from the ticket buying public to the profit of the reseller.

It is difficult to imagine the negative externalities of the high priced game of ticket reselling auctions to occur without the use of bots. Bots make selling concert tickets more like market manipulation in high frequency trading arbitrage trading rather than fans going to a show. These transactions drive the resale price of tickets ever higher regardless of the face price set by the artist.

At the same time, the market should not disrupt legitimate resale or gift transactions among family, friends, social organizations or fan clubs. Artists typically are untroubled by these transactions and often take 10% of tickets “off manifest” to sell at face price to fan club members. These are often large operations that somehow have managed to get by without the use of automated trading platforms.

We all know that bots were banned by the BOTS Act at the federal level. We also know that enforcing the BOTS Act puts a substantial burden on the resources of the Federal Trade Commission. That burden is so great that it is unlikely that resellers view BOTS Act prosecutions as more than a cost of doing business since apprehension is unlikely. Even Senator Blackburn—a BOTS Act author—has complained of the lack of enforcement of her own legislation.

In my view, it is unrealistic to expect the FTC to take on the entire burden of pursuing BOTS Act claims to a degree that will end the practice. The private right of action in HB 1378 is a significant step forward that allows the rights holder and venue operator to pursue actions to

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protect themselves. It is a welcome addition to the rules of the road that preserve the integrity of the ticketing business and limits that negative externalities created by bot-driven resellers.

Thank you for the opportunity to testify.

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