

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

Testimony of Christian L. Castle
September 13, 2023

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.

Christian L. Castle

Christian L. Castle, Attorneys
9600 Great Hills Trail, Suite 150W
Austin, Texas 78759
(512) 420-2200
www.christiancastle.com