

July 7, 2025

U.S. Department of Justice
Federal Trade Commission

Submitted via Regulations.gov

Re: Unfair and Anticompetitive Practices in Live Ticketing (Docket No. ATR-2025-0002-0002)

On behalf of the undersigned U.S.-based nonprofit performing arts stakeholders, we submit these comments in response to a Department of Justice and Federal Trade Commission memo (May 7, 2025) seeking information from the public to identify unfair and anticompetitive practices and conduct in the live concert and entertainment industry. We welcome this opportunity to assist the agencies in preparing recommendations to combat unfair practices in the live entertainment market. By way of these comments, the undersigned organizations offer perspectives on how future regulatory action and legislative proposals may impact the unique aspects of the nonprofit ticket sales models in use in communities nationwide.

Secondary Market, Speculative Tickets, and Bots

The artists, venues, and audiences in the nonprofit performing arts sector are all threatened by predatory practices in secondary ticket sales. Relief from predatory activity on the secondary market is urgently needed.

- Websites using deceptive URLs and logos steer ticket-buyers away from primary nonprofit ticket sellers. Some organizations purchase ads on search engines in order to elevate their own sites, as a means to prevent ticket buyers from following these deceptive sellers. This practice incurs significant additional costs to the organizations to deter this threat.
- Inflated prices and fraudulent ticket sales brokered on the secondary market erode audience confidence in the ticket-buying process, steer resources away from the artists and arts workers engaged in live performance events, and lead to wasted resources as box office professionals and volunteer ushers respond to disappointed audience members holding fake tickets.
- Despite persistently developing secure ticketing platforms, nonprofit performing arts organizations have reported an unprecedented wave of costs associated with fraudulent activity in both the primary and the secondary market, prompting consumers to seek refunds for tickets purchased with stolen credit card data. As the agencies consider action related to refund practices, secondary market activity, and bot-driven concerns, new approaches to addressing this fraudulent activity should be implemented. Some of these requests may also be associated with cases in which a reseller is requesting a refund for tickets that they were not able to sell on the secondary market. These “charge-back” requests that must be accommodated by the primary seller can amount to tens of thousands of dollars in unexpected costs to a single nonprofit performing arts organization. Absorbing these unanticipated and uncontrollable expenses directly impacts the capacity of these organizations to meet their nonprofit artistic missions and a remedy is urgently needed.

- As any measures are considered to address predatory activity on the secondary market, the Commission should consider how secondary ticket sales activity is defined. Exchanging tickets for buyers happens at a very high volume by primary sellers that operate on a season basis, and ongoing flexibility is needed for how primary sellers handle these exchanges. The generous ticket exchange opportunities offered by season-based nonprofit performing arts organizations can result in a high volume of tickets returned and resold by primary sellers. Any effort to restrict predatory secondary sales activity should ensure that sales of tickets returned to the primary sellers are considered primary, and not secondary sales. Any consideration of new transferability restrictions or requirements should also take this legitimate activity into consideration.
- Relatedly, nonprofit arts organizations may employ restrictions or limitations on transferability of tickets for a range of reasons. These include efforts to try to keep prices affordable and events accessible to patrons from a range of economic means, to discourage reselling at inflated prices on the secondary market for popular events, to discourage fraud, and to address security and logistical considerations. Flexibility to employ reasonable resale restrictions allows nonprofit organizations to offer discounted admission to specific populations, for example, by offering a grant-funded program offering subsidized admission to students, seniors, military veterans, or young audiences. Such a program's mission would be rendered useless if these subsidized tickets were resold by another entity for profit to a general audience. All of these practices ultimately help us to make the arts as accessible as possible. The agencies should be cautious of efforts by secondary platforms and brokers to paint reasonable limitations and restrictions on resale and transferability as "anti-consumer."

Background: Nonprofit Performing Arts Entities

To better inform agency action, we offer the following additional facts and background regarding ticket sale activity by nonprofit performing arts organizations.

- Pre-pandemic Form 990 data compiled by SMU DataArts, the National Center for Arts Research at Southern Methodist University, found that the live events industry in the United States includes more than 14,500 nonprofit performing arts entities.
- SMU DataArts found that, on average, total earned revenue (ticket sales and other forms of earned revenue combined) accounted for 39% of gross annual revenue for nonprofit performing arts organizations nationwide. In order to support their creative workforce and fulfill their nonprofit missions, these entities rely on an essential combination of earned revenue (including from ticket sales), charitable contributions, grants, and governmental support.
- Transparency in pricing is essential for consumer confidence, and nonprofit performing arts organizations rely on trusted relationships with ticket-buyers to support and advance increased access to live performing arts events.
- Many nonprofit performing arts organizations operate on a season basis and offer a wide variety of subscription-based sales packages consisting of multiple tickets to a number of shows, in addition to single-ticket sales. Audiences are offered season-based and flexible ticket packages in which multiple and variable options are available to ticket-buyers, and the total price will vary based on selection.

- In an effort to maximize public participation in the nonprofit performing arts, organizations often offer flexible ticketing options that allow attendees to commit to a number of performances in advance, while choosing the specific performances at a later date. These models, as well as subscription packages, can often entail generous return policies that allow ticket-buyers to exchange tickets in the course of a season.
- Audience members often engage with nonprofit performing arts organizations simultaneously as ticket-buyers and charitable donors. Because revenue from ticket sales is only a portion of the income that supports the artists and production costs involved in live events, the ticket sales process is often coupled with opportunities to cultivate charitable donations. Nonprofit performing arts organizations comply with current Internal Revenue Service (IRS) requirements regarding the substantiation and disclosure of charitable gifts, including the recordkeeping rules, contemporaneous written acknowledgement requirements, and written disclosure statements detailed in [IRS Publication 1771: Charitable Contributions – Substantiation and Disclosure Requirements](#).
- Ticket sales platforms and promotional and marketing material are often shared across multiple performing arts organizations and the venues in which live events are hosted. A relatively small portion of the nation's nonprofit performing arts organizations will own and operate their own venue, and most will engage vendors to facilitate online ticket sales. Often these are specialized vendors, rather than the more familiar firms that provide primary ticketing services for most large pop music and team sports events.
- Nonprofit performing arts entities use a variety of methods for promoting access to live events, including online, phone, and print media and communications. Direct mail promotion of live events through print material remains a significant marketing strategy among nonprofit performing arts entities. Ticket sales happen through a combination of online platforms and in-person box office purchases.
- Nonprofit performing arts organizations often use variable pricing strategies to both maximize the earned revenue that supports the nonprofit performing arts workforce, as well as to offer reduced or free-of-charge ticketing options for community-based partners.
- Among nonprofit performing arts organizations, a number of practices are in place that adjust ticket availability as live performance events near. Season subscribers and contributors are often offered early access to seating choices. In order to provide the best possible artistic experience, seats are often made available first for areas closest to the stage, with additional seating opened if demand warrants a larger availability. A selection of tickets might be held in reserve for specific access by community and educational partners, or for specific audiences, such as students, seniors, and military veterans. Any new rules that may be considered regarding limiting "holdbacks" or implementing new related disclosure requirements should take into account the full range of ticket availability strategies that benefit attendees and artists alike.

We have sought to briefly illustrate in these comments considerations specific to the nonprofit performing arts sector's engagement in ticket sales. Should future consideration be given to new regulatory action or legislative proposals related to live performance events, we ask that the agencies specifically seek participation by representatives of the nonprofit performing arts

sector. We stand ready to be of assistance in further informing the agencies of opportunities to prevent unfair and deceptive practices in the ticket market while also supporting the vitality of the nonprofit performing arts sector. Thank you for the opportunity to comment.

Signatories

Association of Performing Arts Professionals (APAP)

Carnegie Hall

Chorus America

Dance/USA

Folk Alliance International

Future of Music Coalition

League of American Orchestras

National Performance Network

OPERA America

PAVA - Performing Arts Venues Alliance

Performing Arts Alliance

Theatre Communications Group