# TAYLOR SWIFT TICKET FIASCO: CONSUMER SAFEGUARDS IN THE CONCERT TICKET INDUSTRY IN THE UNITED STATES VERSUS THE EUROPEAN UNION

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*Laws regarding consumer protections in concert ticket resales and scalping are insufficient at a federal level in the United States, leaving states to invent their own regulations to protect consumers from unreasonable price increases that come with the ticket scalping market. Due to developments in the internet over the last two decades, there are more scalpers than ever before. With lack of federal regulations in online ticket scalping, the moderation of ticketing law is left to the states, which often have not updated their law to reflect the complications in ticket scalping that come with the internet. Meanwhile, the European Union has recently implemented measures to protect consumers in an online market, which has direct implications for ticket scalping throughout the world. Because the EU Consumer Protection laws have been more responsive than the U.S., it provides a framework that the United States federal government should use to implement ticket resale guidelines that protect consumers in the age of digital ticketing. In addition, EU Member States have strict ticket scalping guidelines and penalties that go beyond the protectionism laid out in the EU, which U.S. states can use to guide modern and effective ticketing laws.*

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## I. INTRODUCTION

Concert tickets have been in constant demand since the mid-20th century.[1] Elvis Presley in 1956 sold tickets for just $1.50.[2] In 1966, The Beatles sold tickets for $5.50.[3] Fast forward about 40 years and Eminem sold tickets for just $34.[4] Meanwhile, in 2023, Taylor Swift had an average ticket price of $253.[5] Regardless of how much the ticket prices have changed over the decades, people have been willing to spend their money on concert tickets to see their favorite artists.[6] In recent years, from 2011 to 2019, an average of 55.58 million music tour tickets were sold worldwide.[7] While there was a drop-off in ticket sales in 2020 and 2021 due to COVID-19,[8] live music came back in full swing in 2022 with 59.21 million tickets sold worldwide.[9] This number jumped up to 70 million in 2023, with the most concert tickets sold worldwide in over a decade.[10] With such significant demand for live music, there has been a surge in price gouging within the secondary market: ticket scalpers who purchase concert tickets with the sole purpose of reselling them at a higher rate.[11] In 2018, approximately 20% of concert tickets were on resale websites in the 24 hours after an online sale began.[12] International concert tours of large artists,

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[1] Background Animal, *Concert Ticket Prices Through the Decades: From Elvis to Taylor Swift*, BACKGROUND ANIMAL, Nov. 6, 2024, https://www.backgroundanimal.com/articles/concert-ticket-prices-through-the-decades [https://perma.cc/RAX8-F52N].
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] Eric Parker, *How To See The Past Price History Of Concert Tickets?*, https://theticketlover.com/how-to-see-the-past-price-history-of-concert-tickets [https://perma.cc/65LP-ZY4Y], (last updated Jan. 13, 2025); Background Animal, *Concert Ticket Prices Through the Decades: From Elvis to Taylor Swift*, BACKGROUND ANIMAL, Nov. 6, 2024, https://www.backgroundanimal.com/articles/concert-ticket-prices-through-the-decades [https://perma.cc/RAX8-F52N].
[7] Patrick Leu, *Number of Music Tour Tickets Sold Worldwide 2011-2024,* STATISTA, Jan. 15, 2025, https://www.statista.com/statistics/380115/number-of-music-tour-tickets-sold-worldwide/ [https://perma.cc/UN9A-MU36].
[8] Neda Ulaby, *U.S. Box Office Plummeted 86% in 2020, Says Leading Arts Group*, NPR, Apr. 1, 2021, https://www.npr.org/sections/coronavirus-live-updates/2021/04/01/983500113/u-s-box-office-plummeted-86-in-2020-says-leading-arts-group [https://perma.cc/PRM2-8FU4].
[9] *Id.*
[10] *Id.*
[11] *See* Steve Knopper, *Scalped! A History of Ticket Reselling*, THE SATURDAY EVENING POST, Feb. 16, 2023, https://www.saturdayeveningpost.com/2023/02/scalped-a-history-of-ticket-reselling/ [https://perma.cc/B3D3-7Q5M].
[12] Hannah Pouler, *A Little Supply, a Lot of Demand: The Evolution of Ticket Scalping*, BUS. TODAY ONLINE J., Jan. 26, 2018, https://journal.businesstoday.org/bt-online/2018/a-little-supply-a-lot-of-demand-the-evolution-of-ticket-scalping [https://perma.cc/DY23-XXHQ].

such as Taylor Swift's Eras Tour,[13] are especially at risk for tickets being bought and resold at astronomical prices. The average price of tickets to the North American leg of the Eras Tour was $3,801 as of July 10, 2023, while tickets were originally sold for $49 to $449.[14] However, the average price for resold tickets across all European Eras Tour performances was only $340, about 91% cheaper than the North American shows.[15] This increase in resale prices has been seen across concert tours in North America, including Beyonce and Harry Styles, who saw a 347% and 92% increase in sales price, respectively.[16]

This price discrepancy cannot be explained solely by the existence of a secondary market, which exists globally. Rather, it reflects structural differences in regulatory frameworks, enforcement mechanisms, and platform accountability between the United States and the European Union. The European Union has updated their ticket scalping regulations as recently as November 2022, requiring all EU countries to comply with the new regulations by February 2024, to reflect the complications of a digital market.[17] Additionally, individual countries that are members of the EU have implemented their own strict laws against ticket scalping, meanwhile U.S. states' scalping laws are either extremely outdated, lax on enforcement or penalties, or simply do not exist.

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[13] Sanj Atwal, *Taylor Swift's Eras Tour Breaks Record as Highest-Grossing Music Tour Ever*, GUINNESS WORLD RECS., Dec. 12, 2023, https://www.guinnessworldrecords.com/news/2023/12/taylor-swifts-eras-tour-breaks-record-as-highest-grossing-music-tour-ever-762285 [https://perma.cc/X2DP-W4P5].

[14] Will Gendron, *The Average Price of a Resale Ticket for the Eras Tour was $3,801. That's Up 2,321% from Taylor Swift's Last Tour.*, BUS. INSIDER, Aug. 12, 2023, https://www.businessinsider.com/resale-price-taylor-swift-eras-tour-reputation-ticket-pitchfork-report-2023-8 [https://perma.cc/P7Y8-9ASW].

[15] Dave Brooks, *Why Are Taylor Swift Eras Tour Tickets So Much Cheaper in Europe?*, BILLBOARD, May 5, 2024, https://www.billboard.com/business/touring/taylor-swift-eras-tour-tickets-cheaper-europe-1235671760/ [https://perma.cc/T58P-NJT8]

[16] *See* Marc Hogan, Jill Mapes, and Marina Kozak, *The Price of Pop Fandom*, PITCHFORK, Aug. 3, 2023, https://pitchfork.com/features/article/the-price-of-pop-fandom [https://perma.cc/NW9A-G6K2]; Bibhu Pattnaik, *Average Taylor Swift Resale Ticket Soars By a Whopping 2,321%,* BENZINGA, Aug. 12, 2023, https://www.benzinga.com/general/entertainment/23/08/33809267/average-taylor-swift-resale-ticket-soars-by-a-whopping-2-321 [https://perma.cc/H965-FCM3]; Gendron, *supra* note 14.

[17] Press Release, European Council of the European Union, What is Illegal Offline Should Be Illegal Online: Council Agrees Position on the Digital Services Act (November 25, 2021).

Consumers and celebrities have both expressed their outrage at the current state of ticket scalping. One user on social media platform "X", formerly known as Twitter,[18] stated that "resale should just be illegal. [I]f you buy a ticket and can't go, the ticket goes back to [Ticketmaster]. [Y]ou get the amount you paid back. [Ticketmaster] relists for the same price."[19] This one post received over twenty thousand likes and over one thousand reposts, showing the widespread support of some version of ticket reform.[20] Among celebrities, singer Neil Young wrote on his website that "Artists have to worry about ripped off fans blaming them for Ticketmaster add-ons and scalpers," calling out concerns regarding both hidden fees on ticketing websites and the massive uptick in ticket scalping in recent years.[21] Robert Smith, frontman for The Cure, has also been vocal against ticket scalping, implementing non-transferable tickets to help keep their tickets affordable and attempt to deter resellers.[22] Even Lin-Manuel Miranda, creator of the Broadway show Hamilton, has been a vocal advocate for anti-ticket scalping legislation, arguing that "[t]he extra money doesn't provide a better concert or show experience for you, the fan. Instead, it goes straight to the broker's bottom line."[23] Unfortunately, even these conscious efforts to avoid ticket scalping did not work, as scalpers began to sell Ticketmaster accounts that contained the tickets, rather than transferring them from account to account.[24] Yet two things

[18] Elon Musk confirms Twitter's transformation is complete. It's now X.com., CBS NEWS, May 17, 2024, https://www.cbsnews.com/news/elon-musk-confirms-twitters-transformation-complete-its-now-x-com/ [https://perma.cc/NHW8-CAV6].
[19] @IrishInIsengard, X.COM, Oct. 31, 2024, https://x.com/IrishInIsengard/status/1852149054915891691 [https://perma.cc/8WJH-GUQS] (This post was made by a fan of Taylor Swift, not a verified account or a celebrity. The extensive number of interactions with the post shows how much every day consumers agree that there needs to be ticket reform).
[20] *Id.*
[21] Neil Young, *Concert Touring is Broken*, NYA TIMES-CONTRARIAN, Mar. 19, 2023, https://m.neilyoungarchives.com/news/1/article?id=Concert-Touring-Is-Broken [https://perma.cc/9CNR-G2AH].
[22] Ethan Millman, *The Cure Look to Limit Scalping, Platinum Prices on Upcoming Tour*, ROLLING STONE, Mar. 10, 2023, https://www.rollingstone.com/music/music-news/the-cure-tickets-non-transferrable-platinum-1234694347/ [https://perma.cc/D9SE-35ND].
[23] Lin-Manuel Miranda, *Stop the Bots From Killing Broadway*, THE NEW YORK TIMES, June 7, 2016, https://www.nytimes.com/2016/06/07/opinion/stop-the-bots-from-killing-broadway.html [https://perma.cc/863D-N46Q] (stating that the ticket scalping problem will persist until ticket scalping becomes a felony).
[24] Jason Koebler and Joseph Cox, *The Cure Tried to Stop Scalpers. Brokers are Selling Entire Ticketmaster Accounts Instead*, Mar. 21, 2023, 1:09PM, https://www.vice.com/en/article/the-cure-tried-to-stop-scalpers-brokers-are-selling-entire-ticketmaster-accounts-instead/ [https://perma.cc/S8M6-SRUQ].

become clear from these statements: both consumers and celebrities are tired of the predatory practices of ticket scalpers, and scalpers will do whatever they can to circumvent artist's efforts to stop ticket scalping.

This Note argues that the United States should adopt a federal regulatory framework that (1) mandates price transparency, (2) imposes enforceable restrictions on automated ticket purchasing, and (3) places direct regulatory obligations on ticketing platforms.

## II. Problem of Ticket Scalping

Ticket scalping is generally defined as selling tickets for a price more than the price printed upon the face of said ticket.[25] Ticket scalping is not a new practice. In the 1860s, during Charles Dickens' second reading tour, people were paid to stand in queues and buy tickets for "sidewalk men," who then resold the tickets, increasing the price from $5 to $50.[26] The new age of digital ticketing, however, has made ticket scalping much more accessible as a means of making money.[27] Online scalpers have found ways to use "bots" to flood online ticket sales and buy massive amounts of tickets.[28] These bots are computer programs that use software that automatically executes tasks based on the creator's instructions and programming.[29] There are many ways that bots can be used to buy up tickets, including creating a multitude of accounts to purchase from[30], hacking other individual's accounts[31], buying tickets at lightning speed[32], and

[25] 2 Ill. L. and Prac. Amusements § 27; *Ticket Scalping*, SEON, https://seon.io/resources/dictionary/ticket-scalping/ [https://perma.cc/RLH6-WZBX] (last visited 11/22/2024).
[26] Knopper, *supra* note 11.
[27] *Id.*
[28] *Everything You Need to Know About Ticket Bots*, Queue it, updated April 21, 2024, https://queue-it.com/blog/ticket-bots/ - how-do-ticket-bots-work [https://perma.cc/YT74-V2NN].
[29] *Id.*
[30] *See generally* TicketBots.net, (last visited 11/22/2024) https://ticketbots.net/ticketmaster-account-creator-bot [https://perma.cc/9HJD-4NQE] (selling a Ticketmaster Account Creator Bot that is designed to create multiple accounts on Ticketmaster).
[31] Thomas Maxwell, *Hackers Keep Stealing Tickets From People's Ticketmaster Accounts*, Gizmodo, November 10, 2024, https://gizmodo.com/hackers-keep-stealing-tickets-from-peoples-ticketmaster-accounts-2000522757 [https://perma.cc/M754-35TR].
[32] Daniel Allen, *Ticketmaster Bot: Automated Ticket Purchasing Guide*, The Ticket Lover, updated Oct. 31, 2024, https://theticketlover.com/ticketmaster-bot/ [https://perma.cc/XDG8-XYQA].

using the bots to override ticket purchase limits.[33] Due to the volume and speed of these bots, consumers have a significantly smaller chance of being able to purchase tickets as "ticket snipers [ ] pack[] the queue with automated requests at superhuman speed."[34]

Online reselling platforms, such as Ticketmaster, Seatgeek, and Vivid Seats, have made it easier for ticket scalpers to resell. This lack of compliance is evidenced by ongoing litigation and regulatory actions brought against major ticket resale platforms for deceptive pricing practices.[35] For example, in New York, laws are in place requiring secondary resellers of tickets to display the all-in prices, including fees, or face-value prices of tickets.[36] However, websites like StubHub and Vivid Seats initially list lower prices when buying tickets, only to show the cost with fees when a user moves to check out.[37] Additionally, almost none of the secondary market platforms are regularly disclosing tickets' original face value.[38] Only Ticketmaster and AXS, who show the face value price of tickets at check out or after clicking on a ticket but prior to checkout, disclose the face value prices at any time during the purchase.[39]

The economy of ticket scalping is one that benefits resellers and secondary resale websites at the expense of the average consumer. One positive aspect of the secondary ticket market is that it can improve allocational efficiency,[40] a characteristic of an efficient market

[33] *Everything You Need to Know About Ticket Bots*, QUEUE IT, updated April 21, 2024, https://queue-it.com/blog/ticket-bots/ - how-do-ticket-bots-work [https://perma.cc/YT74-V2NN].
[34] Avi Loewenstein, Note, *Ticket Sniping*, 8 J. ON TELECOMM. & HIGH TECH. L. 243, 245 (2010).
[35] *See* Dave Clark, *Vivid Seats Faces NY Lawsuit Over "All-In" Ticket Pricing Law*, TICKETNEWS, https://www.ticketnews.com/2024/02/vivid-seats-faces-ny-lawsuit-over-all-in-ticket-pricing-law/ [https://perma.cc/J9VZ-XLTH] (last visited Feb. 26, 2025); Amy Albanese, Francis Nolan IV, *Sellers Beware: Growing Number of Ticketing Fee Class Actions Lawsuits*, JD SUPRA, Feb. 20, 2025, https://www.jdsupra.com/legalnews/sellers-beware-growing-number-of-8337378/ [https://perma.cc/EMV5-QM2Z].
[36] N.Y. ARTS & CULT. AFFR. § 25.07 (Consol. 2025); Millman, *supra* note 22.
[37] Millman, *supra* note 22.
[38] *Id.*
[39] *Id.*
[40] *The Economics of Ticket Scalping*, THE CONVERSATION, Sep. 10, 2017, https://theconversation.com/the-economics-of-ticket-scalping-83434 [https://perma.cc/7BH7-MJ8G].

where the distribution of goods in an economy meets the needs and wants of society.[41] This happens through the distribution of tickets to those who value them the most at the lowest possible cost.[42] Unfortunately this has created an incentive for scalping since high demand for certain shows or events can cause ticket scalpers to buy up large portions of available tickets, which creates artificial scarcity in the market.[43] This artificial scarcity allows scalpers to drive the costs of tickets up to maximize their profits without contributing to the productivity of the market, also known as rent-seeking.[44] By rent-seeking, scalpers are negating the benefits of allocational efficiency by distorting how tickets are distributed and used.[45]

Because ticket scalpers do not care about the attendance or cost of the shows they scalp, only that they are making a profit, the activities of scalpers are harming not only consumers and market efficiency, but venues as well. While total ticket sales do contribute to each venue's bottom line, food and beverage sales are key to generating a profit.[46] When ticket scalpers buy up blocks of tickets, inflating the cost of *all* tickets, those tickets often go unsold on the secondary market, leaving seats vacant that concertgoers could have filled if the prices were within a reasonable range. This may be negligible where there are a few scattered empty seats, but has huge impacts on the venues when entire sections of a venue are left empty due to ticket scalpers artificially inflating ticket prices.[47] These empty seats can significantly impact venues by

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[41] Will Kenton, *Understanding Allocational Efficiency and Its Requirements*, INVESTOPEDIA, Jul. 31, 2023, https://www.investopedia.com/terms/a/allocationalefficiency.asp [https://perma.cc/Q9DE-A2W2].
[42] *The Economics of Ticket Scalping*, *supra* note 40.
[43] Alex Lawrence, *Scalper Bots: The Box Office Boom No One Wants*, STYTCH, Dec. 28, 2023, https://stytch.com/blog/scalper-bots/ [https://perma.cc/LSV2-FXT2].
[44] *The Economics of Ticket Scalping*, *supra* note 40; Phillip Leslie & Alan Sorensen, *Resale and Rent-Seeking: An Application to Ticket Markets*, 81 THE REV. OF ECON. STUD. (Issue 1) 266, 267 (2014).
[45] *Rent-Seeking: Economic Costs and Policy Implications,* SOCIALSTUDIESHELP.COM, https://socialstudieshelp.com/rent-seeking-economic-costs-and-policy-implications/ [https://perma.cc/T9PQ-WFF8] (last visited Feb. 21, 2025).
[46] *See generally How Do Music Venues Make Money?*, CAL. LEARNING RES. NETWORK, Nov. 8, 2024, https://www.clrn.org/how-do-music-venues-make-money/ [https://perma.cc/2BC9-AKFH].
[47] Lewis Panther, *Rihanna's Half-Empty 'Sold Out' Wembley Gig Shows How Touts are Ruining Music Concerts*, MIRROR, https://www.mirror.co.uk/news/uk-news/rihannas-half-empty-sold-out-8335400?ICID=ref_fark [https://perma.cc/4XRN-S6JF] (updated Jul. 2, 2016); *See generally,* @jessicuhemily, TIKTOK, June 19, 2024,

reducing the amount of food and beverage sales that are made, as well as increasing the risk of overstaffing.[48]

Some artists are trying to combat ticket scalping by using the Ticketmaster Verified Resale for any fans that need to resell their tickets.[49] Ticketmaster Verified Resale is a secondary resale market that allows fans to sell their tickets to concerts that they could no longer attend to other fans.[50] Ticketmaster prides the Verified Resale program as an easy way to sell your tickets, giving buyers assurances that they will receive their tickets, and ensuring that buyers get paid.[51] While the program is meant to ensure protections for both the buyer and seller, in many cases, consumers are left paying costs above face value to professional ticket scalpers.[52] The Verified Resale program allows sellers to set their own prices, leaving scalpers to set unreasonably high prices for the tickets that they are selling.[53] While this may stop the selling of fraudulent tickets, this does not stop the issue of ticket scalpers circumventing regulations regarding the amount of tickets that are allowed to be bought per event using scalping bots.[54] Additionally, Ticketmaster in particular has been accused of recruiting professional ticket scalpers to guarantee that their limits on how many tickets people can buy can be circumvented by ticket scalping bots.[55] While

https://www.tiktok.com/@jessicuhemily/video/7382219360389139745?q=sections%20of%20concerts%20empty&t=1740164925657 [https://perma.cc/PA5G-Q92A].

[48] Neil Shah, *Major Music Acts Are Seeing 20% No-Show Rates at Concerts*, THE WALL ST. J., Dec. 16, 2021, 9:00 AM, https://www.wsj.com/articles/major-music-acts-are-seeing-20-no-show-rates-at-concerts-11639663201?msockid=1d4b480d593f631114a95c76584162d2 [https://perma.cc/TP2J-5D8P].

[49] *See generally Ed Sheeran, Mathematics Tour*, TICKETMASTER, https://help.ticketmaster.se/hc/en-us/articles/26402781746065-Ed-Sheeran-Mathematics-Tour [https://perma.cc/XA5L-8A65] (last visited Mar. 1, 2025).

[50] *How to Sell Your Tickets: Always Safe, Always Secure*, TICKETMASTER, Dec. 21, 2020, https://blog.ticketmaster.com/how-to-sell-tickets-safe-ticketmaster/ [https://perma.cc/5HM4-HPBM].

[51] *Sell Your Tickets in 3 Easy Steps*, TICKETMASTER, https://www.ticketmaster.com/sell?msockid=1d4b480d593f631114a95c76584162d2 [https://perma.cc/ZXJ6-RWSE] (last visited Mar. 1, 2025).

[52] Debra Parma, *At Ticketmaster, Scalpers Score and Fans Come Last*, 38 J. L. & COM. 463, 465 (2020).

[53] *See Sell Your Tickets in 3 Easy Steps supra* note 50.

[54] Note, *supra* pp. 6.

[55] Dave Seglins, Rachel Huolihan, Laura Clementson, *'A Public Relations Nightmare': Ticketmaster Recruits Pros for Secret Scalper Program*, CBC, https://www.cbc.ca/news/business/ticketmaster-resellers-las-vegas-1.4828535 [] (last updated Sep. 21, 2018).

Ticketmaster has denied these claims,[56] company representatives told news outlets that Ticketmaster's resale division turns a blind eye to ticket scalpers who use bots to buy and sell tickets at inflated prices.[57] If true, the Ticketmaster Verified Resale is actively helping ticket scalpers, rather than protecting consumers.

## III. Legal Safeguards in the United States

Despite the United States' extensive regulatory framework governing commerce, federal and state laws have failed to meaningfully address ticket scalping in the digital marketplace. The United States legal system is designed to regulate commerce, protect consumers, and maintain order through a complex network of federal, state, and local laws.[58] This system governs a vast array of economic activities, including the sale and resale of goods and services.[59] In theory, laws and regulations should prevent unfair market practices and ensure fair access to goods. However, when it comes to ticket scalping, current legal interventions have proven largely ineffective. With scarce enforcement of federal laws and inconsistent state-level restrictions, ticket scalping persists with little meaningful deterrence. This disconnect between legal intent and real-world enforcement raises important questions about the limits of legal regulation in controlling secondary ticket markets.

### A. Federal Ticket Scalping Laws

While there are laws regulating the sale of accessible seating tickets for more than non-accessible seats in the same section,[60] as well as regulating the reassignment of accessible seating

[56] Thomas Barrabi, *Ticketmaster Denies Colluding with Scalpers to Boost Profits*, Fox Bus., Sep. 21, 2018, https://www.foxbusiness.com/retail/ticketmaster-denies-colluding-with-scalpers-to-boost-profits [https://perma.cc/9U2C-AYWB].
[57] Seglins, *supra* note 55.
[58] *See A Comprehensive Overview of the Legal System in the United States of America*, Generis Glob. Legal Servs., Dec. 1, 2024, https://generisonline.com/a-comprehensive-overview-of-the-legal-system-in-the-united-states-of-america/ [https://perma.cc/2Y6S-9JJC].
[59] *See, UCC Article 2: Because Even Your Toaster Deserves a Fair Contract*, Darrow Everett LLP, Oct. 17, 2024, https://darroweverett.com/ucc-article-2-rules-sale-goods-terms-warranties-remedies/ [https://perma.cc/FN8T-RMWJ].
[60] 28 CFR § 35.138(c) (2025).

to non-disabled individuals,[61] there are no federal laws regarding ticket scalping of concert or event tickets. There is, however, one federal act that has attempted to affect the market of ticket resales by banning automated programs meant to jump online ticket queues and buy massive amounts of tickets.[62] The Better Online Tickets Sales Act (BOTS) prohibited "unfair and deceptive acts and practices relating to the circumvention of ticket access control measures,"[63] and the sale or offer to sell "any event ticket in interstate commerce obtained [through these deceptive practices] if the person selling…participated directly in or had the ability to control the [prohibited] conduct."[64] The BOTS Act, however, does not directly prohibit ticket scalping, instead attempting to circumvent scalpers by banning one of the most commonly used methods of purchasing tickets in bulk, which are then often sold on the secondary ticket sale markets.[65]

In addition to not outright banning ticket scalping, the BOTS Act has been underregulated by the Federal Trade Commission in any way to effectively deter ticket scalpers from using bots to buy and resell tickets. It took five years from the time the BOTS Act was enacted for the Federal Trade Commission (FTC) to bring a case against brokers for violating the law.[66] The case was brought against three New York based companies that used automated software to obtain tens of thousands of tickets to popular events, which were then resold to consumers at significant markups.[67] However, the case settled for $31 million in 2021,[68] with those payments being

[61] 28 CFR § 35.138(e) (2025).
[62] 15 U.S.C § 45c; *see also* Better Online Ticket Sales Act of 2016, 114 P.L. 274 (enacted Dec. 14, 2016).
[63] Better Online Ticket Sales Act of 2016, 114 P.L. 274 (enacted Dec. 14, 2016) at § (a)(1)(A).
[64] *Id.* at § (a)(1)(B).
[65] Press Release, FED. TRADE COMM'N, *FTC Brings First-Ever Cases Under the BOTS Act* (Jan 22, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/01/ftc-brings-first-ever-cases-under-bots-act [https://perma.cc/55WK-5QTJ].
[66] *Id.*
[67] *Id.*
[68] Zach Williams, *Taylor Swift Ticket Uproar Drives States to Crack Down on Bots*, BLOOMBERG L., Feb. 24, 2024, https://news.bloomberglaw.com/tech-and-telecom-law/taylor-swift-ticket-uproar-drives-states-to-crack-down-on-bots [https://perma.cc/TUR6-YRYC].

currently suspended due to lack of funds.[69] Since then, the FTC has not brought any other cases against scalpers using bots to buy and resell tickets. In 2022, amid the controversy regarding the sale of Taylor Swift Eras Tour tickets on Ticketmaster,[70] U.S. Senators Marsha Blackburn and Richard Blumenthal[71] addressed a letter to the chair of the FTC regarding the lack of enforcement of the BOTS Act.[72] Both Senators aimed to question what steps the FTC was taking to enforce the BOTS Act, stating that preventing consumer harm through the ticket scalping practices using bots was "exactly why Congress chose to enact the BOTS Act … and why we both chose to sponsor that bill." Since then, there have still been no cases brought by the FTC under the BOTS Act. Without the Federal Trade Commission being willing to prosecute and litigate violations of the BOTS Act, the regulation is functionally ineffective in practice due to limited enforcement and lack of consistent regulatory action. This failure demonstrates that prohibiting the means of scalping, rather than the practice itself, is insufficient to protect consumers.

The BOTS Act grants enforcement authority to the Federal Trade Commission and state attorneys general to pursue violations involving the use of automated ticket purchasing software.[73] However, despite this statutory authority, enforcement has been minimal, with only a

[69] Lesley Fair, *FTC's First BOTS Act Cases: Just the Ticket to Help Protect Consumers From Ticket Bots,* FED. TRADE COMM'N, Jan. 22, 2021 https://www.ftc.gov/business-guidance/blog/2021/01/ftcs-first-bots-act-cases-just-ticket-help-protect-consumers-ticket-bots [https://perma.cc/XSH4-3DJX].
[70] David Shepardson, *Live Nation CFO Defends Ticketmaster, Blames Bots for Taylor Swift Debacle*, REUTERS, Jan. 23, 2023, https://www.reuters.com/legal/live-nation-cfo-berchtold-testify-senate-hearing-ticket-industry-issues-2023-01-23/ [https://perma.cc/3L8G-3726].
[71] Marsha Blackburn (Republican), U.S. Senator for Tennessee, https://www.blackburn.senate.gov/ [https://perma.cc/W93M-JA8N]; Richard Blumenthal (Democrat), U.S. Senator for Connecticut, https://www.blumenthal.senate.gov/ [https://perma.cc/6NJ7-S4JG] (showing bipartisan support for ticketing reform).
[72] Letter from Hon. Lina M. Khan to the FTC (Nov. 28, 2022), https://www.blackburn.senate.gov/services/files/311F7520-8FE0-4F34-AA8A-4DAF55D629F2 [https://perma.cc/J66G-3Q4Z].
[73] 15 U.S.C § 45c; *see also* Press Release, FED. TRADE COMM'N, *FTC Brings First-Ever Cases Under the BOTS Act* (Jan 22, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/01/ftc-brings-first-ever-cases-under-bots-act [https://perma.cc/55WK-5QTJ].

handful of actions brought since the Act's passage in 2016.[74] This limited enforcement has significantly undermined the Act's deterrent effect, allowing ticket scalpers to continue using automated technologies with relatively low risk of liability.[75]

There have been multiple bills proposed to Congress regarding ticket scalping, either by strengthening the FTC's authority by building upon the BOTS Act or entire reform of ticket scalping law, but no bill has been implemented. One such bill was introduced by Senators Blackburn and Ben Ray Lujan, called the Mitigating Automated Internet Networks for Event Ticketing Act ("MAIN Event Ticketing Act"), in 2023.[76] The bill aimed to strengthen the BOTS Act by requiring online ticket issuers to implement policies and safeguard to protect website security.[77] Specifically, the provision would require any online service that executes the sale of event tickets to implement measures to enforce ticket purchasing limits.[78] It would also require that online ticket retailers report to the FTC any circumvention of the implemented safeguards, as well as requiring the FTC to create a publicly available website that allows individual consumers to report violations of the BOTS Act.[79] The MAIN Event Ticketing Act was into the 118th Senate, then reintroduced in the 119th Senate and referred to the Committee on Commerce, Science, and Transportation, but no action has been taken to enact the legislation since.[80]

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[74] See Press Release, Fed. Trade Comm'n, *FTC Brings First-Ever Cases Under the BOTS Act* (Jan. 22, 2021) (noting first enforcement action occurred five years after enactment); Letter from Sens. Marsha Blackburn & Richard Blumenthal to Lina M. Khan, Chair, Fed. Trade Comm'n (Nov. 28, 2022) (questioning lack of enforcement).
[75] *See* Lesley Fair, *FTC's First BOTS Act Cases: Just the Ticket to Help Protect Consumers From Ticket Bots*, Fed. Trade Comm'n (Jan. 22, 2021) (discussing enforcement challenges).
[76] MAIN Event Ticketing Act, S. 3191, 118th Cong. (2023); *See also,* Press Release, Ben Ray Lujan, U.S. Senator for New Mexico, Lujan Introduces Bipartisan Bill to Protect Consumers in the Online Ticket Marketplace (Feb. 3, 2025), https://www.lujan.senate.gov/newsroom/press-releases/lujan-introduces-bipartisan-bill-to-protect-consumers-in-the-online-ticket-marketplace/ [https://perma.cc/F942-9VSY]; Press Release, Marsha Blackburn, U.S. Senator for Tennessee, Blackburn Introduces Bills to Increase Music Tourism, Combat Bots in the Online Ticket Marketplace, and Support Independent Music Creators (Jan. 23, 2025), https://www.blackburn.senate.gov/2025/1/issues/jobs-and-economy/blackburn-introduces-bills-to-increase-music-tourism-combat-bots-in-the-online-ticket-marketplace-and-support-independent-music-creators [https://perma.cc/UKB7-ACNZ].
[77] MAIN Event Ticketing Act, S. 3191, 119th Cong. (2025).
[78] *Id.*
[79] *Id.*
[80] MAIN Event Ticketing Act, S. 3191, 118th Cong. (2023); MAIN Event Ticketing Act, S. 3191, 119th Cong. (2025).

In addition to the MAIN Event Ticketing Act, many other ticketing bills have been introduced into Congress, including the Better Oversight of Stub Sales and Strengthening Well Informed and Fair Transactions for Audiences of Concert Ticketing Act ("BOSS and SWIFT Act"),[81] and the Fans First Act.[82] However, none of these proposed bills directly prohibit scalping, focusing more on the ticketing industry as a whole and having implications for ticket scalping. The BOSS and SWIFT Act was a bill proposed to the Senate in 2023.[83] It would have required sellers to disclose the total costs of tickets and prevented sellers from changing the total costs of tickets during the purchasing process.[84] The Act also would have required disclose of refund policies, and required the disclosure of the total number and cost of tickets that will be offered, overall enhancing transparency in the ticket-buying process.[85] The Fans First Act, similarly, was introduced in the Senate in 2023.[86] The Fans First Act focused on ticket transparency by banning the use of deceptive names when selling tickets and prohibiting the sale of tickets that the seller does not have in possession.[87] It also required disclosure of the full cost of the ticket inclusive of fees as well as the refund policy.[88] The Fans First Act would have also made changes to strengthen the BOTS Act by requiring online ticket issuers to establish safeguards to protect website security and requiring the reporting of individuals who circumvent those website security measures, much like the MAIN Ticketing Act.[89] Both the Fans First Act

[81] BOSS and SWIFT ACT of 2023, S. 2957, 118th Cong. (2023); 118 S. 2957; *See* Press Release, Richard Blumenthal, Blumenthal, Hirono, & Markey Introduce BOSS & SWIFT Act to Protect Consumers From Predatory Ticket Sellers & Fees, Sep. 27, 2023, https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-hirono-and-markey-introduce-boss_swift-act-to-protect-consumers-from-predatory-ticket-sellers--fees [https://perma.cc/J5L2-UQHW].
[82] Fans First Act, S. 3457, 118th Cong. (2023).
[83] BOSS and SWIFT ACT of 2023, S. 2957, 118th Cong. (2023).
[84] *Id.*
[85] *Id.*; Press Release, Richard Blumenthal, Blumenthal, Hirono, & Markey Introduce BOSS & SWIFT Act to Protect Consumers From Predatory Ticket Sellers & Fees, Sep. 27, 2023, https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-hirono-and-markey-introduce-boss_swift-act-to-protect-consumers-from-predatory-ticket-sellers--fees [https://perma.cc/J5L2-UQHW].
[86] Fans First Act, S. 3457, 118th Cong. (2023).
[87] *Id.*
[88] *Id.*
[89] *Id.*

and the BOSS and SWIFT Act have since died in Congress with the adjournment of the previous session and have not been reintroduced in the present Congressional session.

These measures proposed to the Senate have mainly targeted ticket transparency, which has key implications for ticket scalping. By buying mass quantities of tickets, scalpers create artificial scarcity in the market.[90] This apparent scarcity makes consumers more willing to buy tickets at inflated prices, fearing that they will not get to see their favorite artist due to a lack of supply.[91] By increasing transparency, scalpers will not be able to create an artificial sense of scarcity or have total discretion in how much tickets are inflated.[92] Although transparency in ticket sales is important, it does not directly impact ticket scalping itself. Instead, it attacks the mechanisms in which scalpers exploit, like artificial scarcity and the lack of information consumers have regarding ticket costs at the outset. Though these ticketing acts have stalled in Congress, the proliferation of these bills demonstrate that ticket scalping and consumer protection is a concern for many lawmakers. The problem is, even at a federal level, legislation enhancing transparency of ticket sales and banning the use of automated bots to buy and resell tickets does not address the heart of the issue. Ticket scalping needs to be *regulated* more directly with regular enforcement to make a tangible difference in the ability for consumers to get their hands on concert tickets at affordable prices.

B. State Ticket Scalping Laws

With the lack of federal legislation and enforcement in the ticket scalping market, most regulation has been left up to the states. Currently, 20 states have some law related to the

[90] *See generally Ticketing Platforms for Anti Scalping: A Comprehensive Guide for Live Event Organizers*, TICKETFAIRY BLOG, Feb. 3, 2025, https://www.ticketfairy.com/blog/2025/02/03/ticketing-platforms-for-anti-scalping-a-comprehensive-guide-for-live-event-organizers/ [https://perma.cc/6HPU-43DR].
[91] Pouler, *supra* note 12.
[92] Note, s*upra* pp. 7-8.

scalping of concert tickets.[93] These laws range from strict regulations, prohibiting the upcharge of tickets from anyone other than the registered brokers[94] or imposing penalties such as substantial fines and jail time,[95] to extremely weak regulations, only banning the use of automated bots[96] or requiring resellers to meet certain criteria[97] with no specific penalties attached to violations.[98] This Section will explore different ticket scalping laws across the country with differing levels of restrictions, specifically those meant to target the scalping of concert tickets.[99]

*1. California*

California is one state that has imposed strict ticket scalping regulations.[100] In California, the Code of Regulations defines the "fair value" of tickets as the face value, or the price at which it is offered to the public.[101] Any person in California who buys a ticket for the purpose of resale, then sells said ticket for more than fair value at the location of the event is guilty of a misdemeanor.[102] This law is effective if ticket scalpers are selling on the premises of an event, punishable by fees up to $1,000 and even jail time of up to six months.[103] However, this

[93] *See generally* 2025 ALA. ADV. LEGIS. SERV. § 40-12-167 (LexisNexis); CAL. PENAL CODE § 346 (Deering 2024); DEL. CODE ANN. Tit. 11, § 918 (2025); FLA. STAT. ANN. § 817.36 (LexisNexis 2025); GA. CODE ANN. § 43-4B-25 (2024); 815 ILL. COMP. STAT. ANN. 414/1.5 (LexisNexis 2024); KY. REV. STAT. ANN. § 518.070 (LexisNexis 2025); LA. ANN. STAT. § 4:1 (2024); MD. CODE ANN., BUS. REG. § 4-318 (LexisNexis 2024); MASS. ANN. LAWS ch. 140, § 185 (LexisNexis 2024); MICH. COMP. LAWS SERV. § 750.465 (LexisNexis 2025); MINN. STAT. ANN. § 325F.676 (LexisNexis 2024); N.J. STAT. ANN. § 56:8-33 (LexisNexis 2024); 4 PA. STAT. ANN. §§ 201-215 (LexisNexis 2025); 5 R.I. GEN. LAWS § 5-22-26 (2024); S.C. CODE ANN. § 39-5-36 (2024); UTAH CODE ANN. § 13-54; UTAH CODE ANN. § 13-56; VT. STAT. ANN. tit. 9, § 4190 (2025); WASH. REV. CODE ANN. § 19.345.020 (LexisNexis 2024); WIS. STAT. § 42.07 (2024).
[94] GA. CODE ANN. § 43-4B-25 (2024); N.Y. ARTS & CULT. AFFR. § 25.27 (Consol. 2025); 815 ILL. COMP. STAT. ANN. 414/1.5 (LexisNexis 2024); N.J. STAT. ANN. § 56:8-33 (LexisNexis 2024).
[95] N.Y. ARTS & CULT. AFFR. § 25.07 (Consol. 2025); CAL. PENAL CODE § 346 (Deering 2024).
[96] MICH. COMP. LAWS SERV. § 750.465 (LexisNexis 2025); VT. STAT. ANN. tit. 9, § 4190 (2025); WASH. REV. CODE ANN. § 19.345.020 (LexisNexis 2024).
[97] 2025 ALA. ADV. LEGIS. SERV. § 40-12-167 (LexisNexis); 815 ILL. COMP. STAT. ANN. 414/1.5 (LexisNexis 2024).
[98] MINN. STAT. ANN. § 325F.676 (LexisNexis 2024).
[99] The State statutes explored in this Section are examples of common regulations across the countries. While each state can vary, those explored here have been adopted in similar forms across states.
[100] CAL. PENAL CODE § 346 (Deering 2024).
[101] CAL. CODE REGS., tit. 2, § 18946 (2025).
[102] CAL. PENAL CODE § 346 (Deering 2024).
[103] *Id.*; CAL. PENAL CODE § 19 (Deering 2024).

regulation does nothing to prevent the online resale of tickets.[104] In today's world of ticketing, it is rare that people have physical tickets they are trying to sell on or near the premises of an event. Rather, it is more common to post resale tickets online via websites like Ticketmaster and SeatGeek due to the ease and speed that sellers can upload tickets.[105]

A bill was introduced to the California legislature in 2023 that would have impacted online ticket scalping; the language was drafted by the Assembly Committee on Privacy and Consumer Protection.[106] First, the bill would guarantee transparent pricing: anyone selling tickets would have to display the total cost of the ticket, including any service charges and fees prior to the ticket being selected to purchase.[107] This would help consumers be fully aware of how much they are spending on their tickets prior to purchasing. Currently, many ticket resale websites, including Ticketmaster and SeatGeek, do not display the full purchase price of the ticket.[108] Instead, they display the base price of the ticket and add surcharges once customers get to check out.[109] This causes consumers to purchase tickets for much more than anticipated, fearing that tickets would not be available by the time they go to select new tickets within their price range.[110]

Second, the bill would end restrictions on transfers of tickets once they are purchased.[111] In the past, physical tickets were bought and sold at ticket offices, and this is what most ticket

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[104] CAL. PENAL CODE § 346 (Deering 2024).
[105] *The Ultimate Ticket Resale Guide: Top Places to Sell Your Tickets*, MY MONEY CHRONS., https://mymoneychronicles.com/ticket-resale-guide/ [https://perma.cc/7X2F-6X8U] (last visited Feb 20, 2025).
[106] Assembly Priv. and Consumer Prot. Comm. A.B. 8 Legis. Bill Hist. (C.A. 2023).
[107] *Id.*
[108] Millman, *supra* note 22.
[109] Rachel Witkowski, *What's the Real Price of That Flight or Concert Ticket? New Laws Aim to Help Expose Hidden Fees*, FORBES, https://www.forbes.com/advisor/personal-finance/new-laws-on-junk-fees/ [https://perma.cc/P33E-W7V3] (last updated Oct. 24, 2023).
[110] *See generally* Morgan Foy, *Buyer Beware: Massive Experiment Shows Why Ticket Sellers Hit You With Last-Second Fees*, BERKELEYHAAS (Feb. 9, 2021), https://newsroom.haas.berkeley.edu/research/buyer-beware-massive-experiment-shows-why-ticket-sellers-hit-you-with-hidden-fees-drip-pricing/ [https://perma.cc/TLH2-BDRM]; How Junk Fees Distort Competition, WHITE HOUSE, March 21, 2023, https://bidenwhitehouse.archives.gov/cea/written-materials/2023/03/21/how-junk-fees-distort-competition/ [https://perma.cc/6X5T-ZHAS].
[111] Assembly Priv. and Consumer Prot. Comm. A.B. 8 Legis. Bill Hist. (C.A. 2023).

laws currently focus on. But the new California provision would address the modern state of electronic ticketing:[112] tickets would be non-transferable, or in the event of resale, the bill would ban the platform operator, like Ticketmaster, from extracting additional fees to resell the ticket.[113]

While these newly proposed safeguards in California are geared to protect consumers, some amendments (proposed in committee) have removed certain protections from the legislation.[114] One such amendment would have required significant disclosure of ticket availability and pricing of tickets at least seven days before tickets go on sale.[115] This would have further protected consumers by providing transparency about the scarcity and price of tickets, preventing consumers from panic buying tickets and allowing consumers to be aware of how much the resale tickets are worth. This bill has been heavily opposed by ticket sellers, including Live Nation Entertainment, who owns Ticketmaster.[116] Despite the opposition from online ticket brokers, it would be prudent for California lawmakers to remain steadfast in their decision to improve consumer protection in the online ticketing market by expanding their current legislation regarding ticket scalping.

*2. Illinois*

Illinois's ticketing law is called the Ticket Sale and Resale Act.[117] This Act prohibits sales of tickets for entertainment venues at any place other than the box office, unless the tickets are sold at the same price as originally advertised.[118] However, there are exceptions if tickets are resold by ticket brokers who are registered with the Secretary of State.[119] Additionally, the ticket

[112] *See* Felix Richter, *Ticketmaster Dominates the U.S. Ticketing Landscape*, STATISTA, May 27, 2024, https://www.statista.com/chart/32320/most-used-online-ticketing-providers-in-the-us/ [https://perma.cc/C3CM-S2KG].
[113] Assembly Priv. and Consumer Prot. Comm. A.B. 8 Legis. Bill Hist. (C.A. 2023). (The bill also contained a provision requiring seller to provide printed tickets at the same price and fees as electronic tickets for cellphone-free events).
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] 815 ILL. COMP. STAT. ANN. 414/0.01 (LexisNexis).
[118] 815 ILL. COMP. STAT. ANN. 414/1(a) (LexisNexis).
[119] 815 ILL. COMP. STAT. ANN. 414/1.5(a)(1) (LexisNexis).

broker needs to have a phone number Illinois consumers can call for inquiries concerning tickets that are on sale, consumer protection guidelines, and a standard refund policy.[120] Alternatively, the ticket broker can satisfy the aforementioned requirements if they certify that they belong to a professional association organized under any state that is authorized to conduct business in Illinois, have been in existence for at least 3 years, and dedicates itself to maintaining the integrity of the ticket brokerage industry.[121] Additionally, the Act does not apply to the sale of entertainment tickets by a reseller engaged in interstate commerce on internet auction listing services that are registered with the Office of the Secretary of State.[122] The Act also specifies that ticket brokers may add service charges to the original price of the ticket, so long as they are reasonable, in exchange for their services.[123] At first glance, it looks like the Ticket Sale and Resale Act would be effective against ticket scalpers. However, with so many exceptions to the rule, it is easy for ticket scalpers to find loopholes in the law. Ticket brokers are simply entities that are engaged in the business of reselling tickets to events.[124] While ticket brokers come with their own issues that will not be discussed in this Note,[125] ticket scalpers can hide behind websites like Ticketmaster, SeatGeek, and VividSeats, who are ticket brokers, to bypass the Ticket Sale and Resale Act. Additionally, because the Ticket Sale and Resale Act does not apply to resellers engaged in interstate commerce, those websites simply need to be registered with the Secretary of State to circumvent the prohibition on upselling tickets.[126] Because the most

[120] 815 ILL. COMP. STAT. ANN. 414/1.5(a)(1)(F) (LexisNexis).
[121] 815 ILL. COMP. STAT. ANN. 414/1.5(a)(1) (LexisNexis).
[122] 815 ILL. COMP. STAT. ANN. 414/1.5(e) (LexisNexis).
[123] 815 ILL. COMP. STAT. ANN. 414/4 (LexisNexis).
[124] 815 ILL. COMP. STAT. ANN. 414/1.5 (LexisNexis).
[125] Ticket brokers have been under investigation by the Department of Justice regarding unlawful monopolies and hiring professional ticket scalpers to circumvent their own safeguards. *See generally,* Press Release, U.S. Department of Justice, Justice Department Sues Live Nation-Ticketmaster for Monopolizing Markets Across the Live Concert Industry (May 23, 2024).
[126] 815 ILL. COMP. STAT. ANN. 414/1.5(e) (LexisNexis).

common way for ticket scalpers to sell their tickets is to upload them to these resale websites,[127] the Ticket Sale and Resale Act is effectively a smokescreen that actually protects ticket scalping.

Those who do violate the Ticket Sale and Resale Act can be held civilly liable by the purchaser of the resold tickets if they feel "aggrieved or injured by paying for such tickets any sum in excess of the advertised price."[128] Recovery, however, is only $100 per ticket that was overcharged, regardless of how much they paid for the resold ticket.[129] Resale tickets are often sold for hundred, if not thousands, more than the original face value.[130] Even those that feel "aggrieved" by the amount that they overpaid are unlikely to commence legal action for such a small portion that they may have overpaid. Meanwhile, criminal penalties for violating the Ticket Sale and Resale Act are a Class A misdemeanor charges, resulting in a possible fine of up to $5,000 for each offense.[131] However, the act does not define whether each criminal offense is per ticket, per event, or per transaction.[132] While civilly, people can sue per ticket, it is not clear whether this applied in the criminal context.[133] Overall, the Ticket Sale and Resale Act aims to reduce ticket scalping. However, because of the lack of defining key provisions, the overwhelming number of exceptions, and the lack of justice for people who are scammed, it fails to protect consumers in practice.

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[127] *See generally How to Scalp Tickets*, WIKIHOW, https://www.wikihow.com/Scalp-Tickets [https://perma.cc/U7YN-HMBJ] (last updated Feb. 20, 2025).
[128] 815 ILL. COMP. STAT. ANN. 414/3 (LexisNexis).
[129] *Id.*
[130] Molly Szymanski, *As Resale Ticket Prices Climb, the Live Music Industry Looks for Solutions,* CAP. NEWS SERV., Feb. 27, 2024, https://cnsmaryland.org/2024/02/27/as-resale-ticket-prices-climb-the-live-music-industry-looks-for-solutions/ [https://perma.cc/5ZWZ-CWWU].
[131] 815 ILL. COMP. STAT. ANN. 414/2(a) (LexisNexis).
[132] *Id.*
[133] *Id.*

*3. Minnesota*

Minnesota legislation was prompted by the governor of Minnesota, Tim Walz,[134] struggle to get tickets to Taylor Swift's Eras Tour.[135] Minnesota Representative Kelly Moller introduced a new piece of legislation in 2023 regarding the regulation of ticket sales for entertainment events in Minnesota, after she too missed out on Eras Tour tickets.[136] This law was passed in 2024 and is now effective starting January 1, 2025.[137] Governor Walz stated that the new law is "protection, so you don't get a fraudulent ticket. The resellers can't snatch them all up before you get an opportunity to do it."[138] Chapter 94 House File 1989 ("HF 1989") strengthens consumer protections in entertainment ticketing by addressing the processes related to sale, advertisement, and resale of tickets.[139] When Representative Moller introduced HF 1989 on the House Floor, she stated that "It prohibits the use of bots to purchase tickets and other unfair practices that puts tickets in the hands of scalpers over consumers."[140]

HF 1989, as enacted, protects consumers when buying event tickets through multiple provisions that address both disclosures and prohibitions. First, all ticket sellers, including ticket resellers, must clearly disclose the total cost of the ticket, including all fees and surcharges, and the disclosure must not be misleading.[141] Second, ticket resellers and online ticket marketplaces,

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[134] *House Passes Legislation to Combat Junk Fees and Ensure Ticket Price Transparency*, M.N. HOUSE OF REPS., April 11, 2024, https://www.house.mn.gov/Caucus/View/DFL/39277 [https://perma.cc/7SX9-P6RS].
[135] *See,* @GovTimWaltz, X.COM, Nov. 18, 2022, https://x.com/GovTimWalz/status/1593646029995483136 [https://perma.cc/7H5U-LSHA].
[136] Tim Walker, *House Passes Bill that Calls for Added Protections for Online Ticket* Buyers, MN HOUSE OF REPS., Apr. 11, 2024, 6:28PM, https://www.house.mn.gov/sessiondaily/Story/18284 [https://perma.cc/AG5Z-KACL]; *Taylor Swift Bill is Signed Into Minnesota Law, Boosting Protections for Online Ticket Buyers*, NBC NEWS, May 8, 2024, https://www.nbcnews.com/news/us-news/taylor-swift-bill-signed-minnesota-law-boosting-protections-online-tic-rcna151198 [https://perma.cc/D8QV-TD7Z].
[137] *HF 1989*, MINNESOTA LEGISLATURE, Office of the Revisor of Statutes, https://www.revisor.mn.gov/bills/bill.php?b=house&f=HF1989&ssn=0&y=2023 [https://perma.cc/JN2S-2WDM].
[138] Ellie Roth, *Gov. Tim Walz Signs 'Taylor Swift Bill' Into Law, Requiring More Regulation in the Ticketing Industry*, MPR NEWS, May 7, 2024, https://www.mprnews.org/story/2024/05/07/walz-taylor-swift-bill-law-regulation-ticketing-industry [https://perma.cc/VK8K-ANGD].
[139] Governor Walz Signs Bill Strengthening Protections for Ticket Buyers, OFF. OF GOVERNOR TIM WALZ & LT. GOVERNOR PENNY FLANAGAN, May 7, 2024, https://mn.gov/governor/newsroom/press-releases/?id=1055-623441 [https://perma.cc/UD3H-MZ2L].
[140] Walker, supra note 133.
[141] MINN. STAT. ANN. § 325F.676 (LexisNexis 2024).

like Ticketmaster and Seatgeek, must disclose that the price of resale tickets may be higher or lower than original purchase price, as well as the refund policies of the reseller or online marketplace.[142] Third, the statute includes multiple prohibitions, such as the selling or offering to sell more than one copy of the same ticket, employing another person to purchase tickets for the purpose of reselling, or using an online domain name containing the name or place of an event, unless acting on behalf of those entities.[143] Finally, there is a prohibition on circumventing any portion of the ticket buying process or disguising the identity of a purchaser to buy more than the maximum amount of tickets, such as scalpers often do with automated bots.[144] If someone were to engage in those practices, they are banned from selling the tickets that they obtained.[145]

While this is progress for the state of ticket scalping legislation in Minnesota, there are weaknesses to the provisions as written. The most concerning provision that is missing from the statute is a lack of specification as to the consequences for violations. Rather than making it clear what the penalties for breaking the law would be, the legislature left enforcement authority to the Commissioner of Commerce.[146] The Commissioner may utilize their powers to impose administrative actions such as issuing cease and desist orders, imposing fines, and seeking injunctive relief.[147] This provides the Commissioner with wide discretion to exercise his authority, which may result in very little enforcement, or a level of enforcement that does not deter scalpers from continuing to defraud consumers. As with federal law, without a strong enforcement mechanism and clear penalties, the incentive to keep conduct within the confines of the law is too low to make an impact for consumers. Only time will tell if the new Minnesota

[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] MINN. STAT. ANN. § 325F.676 (LexisNexis 2024).
[147] MINN. STAT. ANN. § 45.027 (LexisNexis 2024).

legislation will improve the issue of ticket scalping in the state, or if it simply one more figurehead in the patchwork of ticketing legislation.

Overall, although many states have ticket scalping laws, as discussed above, many of them are ineffective. Many ticket scalping laws do not address the concerns around a digital ticketing market, and if they do, the regulations are easy to get around or impose little to no penalty for engaging in ticket scalping. Without the regulation of ticket scalping, there is no safeguard for consumers when buying tickets. Additionally, even if there are regulations, without having clear consequences for engaging in ticket scalping, there is no form of deterrent for those who engage in ticket scalping, therefore the practice will continue to run rampant in the United States.

## IV. Legal Safeguards in the European Union

### A. The European Union

As opposed to the U.S., the European Union has recently undergone developments in their consumer protection law.[148] In recent years, the European Commission – the executive arm of the EU which is responsible for proposal of new legislation and the enforcement of EU law[149] – has implemented many different policies that ensures that EU consumer protection law is reviewed in light of new digital markets.[150] This included a "Digital Fairness Fitness Check" which aimed to evaluate whether consumer protection in the digital world was as effective as protections in place for those purchasing goods in the real world.[151] These results were published in October of 2024 and stated that the EU wanted to take even further action regarding the digital

[148] *Review of EU Consumer Law*, European Commission, https://commission.europa.eu/law/law-topic/consumer-protection-law/review-eu-consumer-law_en [https://perma.cc/3SQ7-SZCF] (last visited Feb. 20, 2025).
[149] *European Commission,* European Union, https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-commission_en [https://perma.cc/QY42-5G7Q] (last visited Feb. 20, 2025).
[150] *Review of EU Consumer Law*, *supra* note 145.
[151] *See id*.

market.[152] This includes ensuring that there is "coherent application and effective enforcement" of the Digital Services Act ("DSA"), which was implemented in all EU Member States in February 2024. The Digital Services Act ("DSA") regulates online platforms to prevent illegal and harmful activities online and prevent the spread of disinformation.[153] It applies to "all online intermediaries offering their services in the single market, whether they are established in the EU or outside."[154] The DSA provides one set of rules applicable throughout the EU, affecting at least 27 countries,[155] and is geared towards all online platforms, including intermediary services, hosting services, search engines, and other online platforms.[156] The key provisions include responsibilities for content management, transparency obligations, protection of minors, risk assessment and mitigation, crisis response mechanisms, and data sharing provisions.[157]

The goal of the DSA was to update the EU's regulation of digital markets, which had not been adapted since 2000, to address the new risks and challenges that come with citizens interacting with digital services on a daily basis.[158] The DSA also addresses the issue that many Member States had introduced national laws regarding how intermediary services should address illegal content, online disinformation, and other societal risks.[159] Due to the close relationship between EU Member States and the free movement of foods and services across country lines, when Member States begin to impose laws that affect the free market, the EU steps in to create harmonization in the international market, as with the DSA.[160]

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[152] *See id.*
[153] *The Digital Services Act*, EUROPEAN COMMISSION, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en [https://perma.cc/E2E4-LXKX].
[154] *Id.*
[155] *Facts and Figures on the European Union*, EUROPEAN UNION, https://european-union.europa.eu/principles-countries-history/facts-and-figures-european-union_en [https://perma.cc/L8VK-DZUR].
[156] *The Digital Services Act, supra* note 150.
[157] *Id.*
[158] 2022 O.J. (L 277), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2065 [https://perma.cc/W7TK-2VEQ] (last visited Feb. 20, 2025).
[159] *Id.*
[160] *Id.*

While the DSA does address broad concerns around online platforms, it has direct implications for ticket scalping. First, it requires transparency for ticket sellers.[161] It requires that online platforms collect and verify key information about professional sellers offering tickets on their platform, such as their identity, location, and contact details, as well as requiring that consumers be notified whether they are purchasing from a professional seller or an individual, which makes it easier for consumers to identify potential exploitive sellers.[162] Second, the DSA bans deceptive practices, such as hiding excessive fees or not disclosing the total prices of tickets upfront.[163] It also ensures that all platforms display pricing, including surcharges, prior to purchasing.[164] Third, platforms are required to have established mechanisms to detect and remove ticket listings that have been acquired through illegal means, such as tickets bought using bots to purchase tickets in bulk or tickets being sold without proper authorization from the event organizer.[165] All of these regulations help to increase consumer trust in identifying genuine sellers and avoiding overpriced tickets, making it more difficult for scalpers to buy tickets in bulk, and having higher oversight of resale platforms.

In addition to the DSA, scalping bots have been banned in the EU since April 2019 as a part of the revised Unfair Commercial Practices Directive, which identifies commercial practices that are unfair in all circumstances.[166] The revision adds "reselling event tickets to consumers if the trader acquired them by using automated means to circumvent any imposed limit on the number of tickets that a person can buy or any other rules applicable to the purchase of tickets"

[161] *The Digital Services Act*, *supra* note 150.
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] Anna Grace, *"Landmark" EU Legislation Against Ticket Bots*, IQ MAG., Apr. 17, 2019, https://www.iq-mag.net/2019/04/landmark-eu-legislation-ticket-bots/ [https://perma.cc/LE8Y-9ZZB].

to the list of unfair practices.[167] If someone were to use bots to buy and sell tickets, it would violate the Unfair Commercial Practices Directive, which would then be punishable by each individual Member State in ways that are "effective, proportionate, and dissuasive."[168] The Unfair Commercial Practices Directive specifies that Member States have many considerations when implementing penalties, including, but not limited to the nature and gravity of the action, previous violations, and financial benefits to the trader.[169] This discretion is a hallmark of the EU directives.[170] Directives allow for the EU to impose law while giving Member States autonomy in the methods in which they achieve the goals.[171] Here, violations of the Uniform Commercial Practices Directive would result in specific sanctions from EU Member States, as well as a possible.

While the DSA is too recent to see many definitive effects in ticket scalping, it is expected that the new regulations will enhance safeguards against misconduct in online marketplaces.[172] By establishing strict transparency measures, banning deceptive practices, and establishing safeguards to remove fraudulent ticket listings, the ticket scalping market in the EU will decrease even further.[173] Additionally, by incorporating the removal of tickets from resale website where the tickets were obtained through illegal means into the DSA,[174] the DSA is directly connected to the Uniform Commercial Practices Directive, as the Directive lays out

[167] *Directive 2005/29/EC*, Annex I (23a), EUROPEAN UNION, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02005L0029-20220528 [https://perma.cc/GCR2-KJVE] (last visited Feb. 20, 2025).
[168] *Id.* at Ch. 4 Art. 13(1).
[169] *Id.* at Ch. 4 Art. 13(2).
[170] *The EU Legal System and Decision-Making Procedures*, B.3.b., EUROPEAN PARLIAMENT, https://www.europarl.europa.eu/RegData/etudes/PERI/2018/618970/IPOL_PERI(2018)618970_EN.pdf [https://perma.cc/Y8GN-G6SB].
[171] *Transposition, Implementation, and Enforcement of Union Law*, EUROPEAN PARLIAMENT, https://www.europarl.europa.eu/cmsdata/226403/EPRS_ATAG_627141_Transposition_implementation_and_enforcement_of_EU_law-FINAL.pdf [https://perma.cc/ZB8X-DGGJ] (last visited Feb. 20, 2025).
[172] *European Parliament Approves New Digital Rules with Major Impact on Secondary Ticketing*, FEAT, Jul. 5, 2022, https://www.feat-alliance.org/2022/07/05/new-eu-digital-laws-resale/ [https://perma.cc/ES84-TZSV].
[173] Note, *supra* pp. 24-25.
[174] *The Digital Services Act*, *supra* note 150.

specific ways that tickets could be obtained through illegal means, in additional to the laws in individual Member States.[175]

The Uniform Commercial Practices Directive has had significant implications for ticket scalping. As mentioned previously, the Uniform Commercial Practices Directive has explicitly defined that the use of bots to buy and resell tickets is illegal.[176] This highly effects ticket scalping, as a 2019 study of bot activity estimated that bots were responsible for 42.2% of activity on primary ticketing platforms.[177] Without having access to ticketing bots, ticket scalpers are no longer able to buy up massive amounts of tickets to create artificial scarcity or leave fans without tickets, only able to turn to resale websites to see their favorite artists.[178]

B. European Union Member States

The structure of the EU and individual countries within the EU functions similarly to the United States federal government and individual state governments in that the EU can establish laws that all EU countries must follow, but each individual country has their own laws and systems within the EU.[179] Because of this, many European countries have implemented even further regulations on ticket scalping.

France has laws that address both ticket scalping and using bots to buy tickets in bulk.[180] If someone sells tickets without the authorization of the event organizer, they can be fined up to €15,000 ($15,406).[181] If ticket brokers and individual ticket scalpers are not allowed to sell tickets without the permission of the event organizer, it reduces the risk of increasing the ticket

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[175] Note, *supra*, p. 25.
[176] *Directive 2005/29/EC*, Annex I (23a), EUROPEAN UNION, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02005L0029-20220528 [https://perma.cc/GCR2-KJVE] (last visited Feb. 20, 2025).
[177] Oisin Lunny, *Battle For $15.19 Billion Secondary Ticket Market Heats Up With First Europe-Wide Anti Touting Law*, FORBES, Jun. 24, 2019, https://www.forbes.com/sites/oisinlunny/2019/06/24/the-battle-for-15-19b-secondary-ticket-market-heats-up-with-first-europe-wide-anti-touting-law/ [https://perma.cc/HP5N-R7GH].
[178] Note, *supra* pp. 6-8.
[179] *See generally* Vivien Schmidt, THE FEDERAL VISION: LEGITIMACY AND LEVELS OF GOVERNANCE IN THE UNITED STATES AND THE EUROPEAN UNION Chapter 12 (Oxford Academic 2001).
[180] C. PÉN. 313-6-2.
[181] *Id.*

prices substantially or selling fake tickets, as those selling tickets will be verified by the event organizers themselves.[182] Additionally, France has strict measures against the use of bots to buy tickets in bulk.[183] In 2022, the French National Investigation Department revealed that Global Service Concierge and its parent company, WSI Live SA, were convincing consumers that the companies were offering resale tickets with the authorization of the event organization.[184] The companies, which regularly operate ticket resale websites, actually had no authorization to be selling tickets for resale.[185] Because of the anti-scalping violation, the companies were fined €150,000 by the French consumer protection agency for "misleading commercial practices in the resale of tens of thousands of tickets for live shows."[186] This was not the first time that Global Service Concierge had violated French anti-scalping law.[187] In November 2020, just two years earlier, the Paris Court of Justice sentenced Global Service Concierge to compensate PRODISS, the national union of musical and variety shows, €100,000 for damage caused to live show producers, in addition to legal costs, due to the violations of the French anti-scalping

[182] *See generally* Will Kelleher, *Women's Rugby World Cup Ticket Prices Hit £3,000 on Unofficial Sites*, THE TIMES, Feb. 26, 2025, https://www.thetimes.com/sport/rugby-union/article/womens-rugby-world-cup-ticket-prices-hit-3000-on-unofficial-sites-5l0wpf7dn? [https://perma.cc/A496-XVWM]; Harry Williamson, *Urgent Warning to Sabrina Carpenter Fans After Swifties Lose £1m to Fake Ticket Scammers*, THE SCOTTISH SUN, Aug. 14, 2024, https://www.thescottishsun.co.uk/tvandshowbiz/13344606/warning-sabrina-carpenter-fans-ticket-scams/ [https://perma.cc/3XHS-VDZX].

[183] C. PÉN. 313-6-2.

[184] *French Consumer Protection Agency DGCCRF Hands Down €150,000 in Fines for Misleading Ticket Resale Practices*, FEAT, Feb. 8, 2022, https://www.feat-alliance.org/2022/02/08/french-consumer-protection-agency-dgccrf-hands-down-e150000-in-fines-for-misleading-ticket-resale-practices/ [https://perma.cc/STW7-KNSA].

[185] *Id.*

[186] Press Release, PRODISS, Illicit Commercialization of Live Shows Tickets French Company Global Service Concierge Sentenced for its Next-Concert.com and Live-Booker.fr Websites (Feb. 3, 2022), https://www.prodiss.org/sites/default/files/atoms/files/presse_release_prodiss_gsc_20220203.pdf [https://perma.cc/4NTF-KEEQ]; *See also French Consumer Protection Agency DGCCRF Hands Down €150,000 in Fines for Misleading Ticket Resale Practices*, *supra* note 181.

[187] Press Release, PRODISS, Illicit Commercialization of Live Shows Tickets French Company Global Service Concierge Sentenced for its Next-Concert.com and Live-Booker.fr Websites (Feb. 3, 2022), https://www.prodiss.org/sites/default/files/atoms/files/presse_release_prodiss_gsc_20220203.pdf [https://perma.cc/4NTF-KEEQ]; *French Consumer Protection Agency DGCCRF Hands Down €150,000 in Fines for Misleading Ticket Resale Practices*, *supra* note 181.

legislation.[188] These actions taken by the French consumer protection agency show that France not only has effective ticket scalping laws, but are willing to enforce them with significant penalties.

Italy also has laws against the unauthorized resale of tickets above face value.[189] In Italy, it is required that primary ticket sellers gather the purchaser's identifying information to ensure only ticketholders enter venues.[190] The law then prohibits the reselling of tickets above face value, only allowing for reasonable charges from primary event ticketers to change the names on tickets.[191] The law imposes penalties ranging from €5,000-€180,000 against those who engage in the commercial reselling of tickets.[192] This law includes a provision that holds ticket resale websites responsible if they are found to be facilitating the illegal resale of tickets.[193] This has been shown to be a provision that the Italian government is willing to enforce, as Viagogo, the parent company of Stubhub, had listed tickets for 131 events for six to seven times the ticket's original face value.[194] Viagogo was fined nearly €23.5M (approximately $24.8 million) as a result of these ticket listings as a facilitator ticket resale above face value.[195] As in France, this shows that Italy's ticket scalping laws are effective in reducing ticket scalping and readily enforceable by the Italian government. By showing that the Italian government is willing to

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[188] Press Release, PRODISS, Illicit Commercialization of Live Shows Tickets French Company Global Service Concierge Sentenced for its Next-Concert.com and Live-Booker.fr Websites (Feb. 3, 2022), https://www.prodiss.org/sites/default/files/atoms/files/presse_release_prodiss_gsc_20220203.pdf [https://perma.cc/4NTF-KEEQ].
[189] Jon Chapple, *Italy Set to Outlaw Secondary Ticketing*, Nov. 30, 2016, IQ, https://www.iq-mag.net/2016/11/italian-lawmakers-outlaw-secondary-ticketing/.
[190] Art. 1, Comma 545(b), 11 December 2016, n. 232, legge-del-11122016-232.pdf [https://perma.cc/5CF8-GCVZ].
[191] Art. 1, Comma 545(c), 11 December 2016, n. 232, legge-del-11122016-232.pdf [https://perma.cc/5CF8-GCVZ].
[192] *Italian Scalping Laws Passed by Parliament*, TICKETING TECH. NEWS, Jan. 12, 2016, https://www.theticketingbusiness.com/2016/01/12/italian-scalping-laws-passed-by-parliament/ [https://perma.cc/2RFM-3G5M].
[193] *Id.*
[194] *Viagogo Fined €23.5M by Italian Regulator for Breaking Secondary Ticketing Rules*, FEAT, Jun. 27, 2022, https://www.feat-alliance.org/2022/06/27/viagogo-fined-e23-5m-by-italian-regulator-for-breaking-secondary-ticketing-rules/ [https://perma.cc/929P-XR7Y]; *see also* Gideon Gottfried, *Viagogo Fined $25M in Italy*, POLLSTAR NEWS, Jun. 24, 2022, https://news.pollstar.com/2022/06/24/viagogo-fined-25m-in-italy/ [https://perma.cc/7PL3-T6X8].
[195] Dave Clark, *StubHub Parent Viagogo Hit with $24M Fine by Italian Regulator*, TICKETNEWS, https://www.ticketnews.com/2022/06/stubhub-parent-viagogo-hit-with-24m-fine-by-italian-regulator/ (last visited Feb. 21, 2025) *see also* Gottfried, *supra* note 191.

enforce these regulations, especially against ticket resale websites, other resale websites and scalpers should be deterred from attempting to engage in this illegal practice. Unlike the United States, the European Union's framework emphasizes proactive platform responsibility and harmonized enforcement, reducing the ability of bad actors to exploit regulatory gaps.

## V. COMPARISON: WHY THE U.S. SHOULD FOLLOW THE E.U.'S LEAD

Having examined both regulatory frameworks, the shortcomings of the United States approach become more apparent when viewed alongside the European Union's more cohesive system.[196] The United States' failure to effectively regulate ticket scalping is not merely a legislative gap but a structural deficiency rooted in fragmented governance and weak enforcement mechanisms.[197] Unlike the European Union, which imposes uniform obligations on platforms and mandates proactive compliance, the U.S. system relies on a patchwork of state laws and sporadic federal intervention.[198] This fragmented approach allows scalpers to exploit jurisdictional inconsistencies, evade enforcement, and leverage dominant platforms that benefit financially from resale activity.[199] As a result, meaningful reform requires not only adopting EU-style transparency measures but also restructuring enforcement authority and imposing direct obligations on ticketing platforms themselves.[200]

### A. Transparency Alone is Insufficient

[196] *See generally Digital Services Act*, Regulation (EU) 2022/2065, 2022 O.J. (L 277) 1; 15 U.S.C. § 45c; see also Review of EU Consumer Law, European Commission (2024).
[197] 15 U.S.C. § 45c; Press Release, Fed. Trade Comm'n, *FTC Brings First-Ever Cases Under the BOTS Act* (Jan. 22, 2021); Letter from Sens. Marsha Blackburn & Richard Blumenthal to Lina M. Khan, Chair, Fed. Trade Comm'n (Nov. 28, 2022) (questioning lack of enforcement).
[198] *See, e.g.,* 815 Ill. Comp. Stat. 414/1.5; Minn. Stat. § 325F.676 (2024); Regulation (EU) 2022/2065, supra note 196, arts. 22–30 (establishing uniform obligations for online platforms across Member States).
[199] *See* Debra Parma, *At Ticketmaster, Scalpers Score and Fans Come Last*, 38 J. L. & Com. 463, 465 (2020); Dave Seglins et al., *Ticketmaster Recruits Pros for Secret Scalper Program*, CBC (2018); see also Lesley Fair, *FTC's First BOTS Act Cases*, Fed. Trade Comm'n (2021).
[200] *See* Regulation (EU) 2022/2065, supra note 196, arts. 22–24 (imposing transparency and traceability requirements on online platforms); Unfair Commercial Practices Directive, Directive (EU) 2019/2161, art. 3; see also BOSS and SWIFT Act of 2023, S. 2957, 118th Cong. (proposing enhanced transparency and consumer protections in ticketing markets).

While recent legislative efforts in the United States have focused heavily on increasing transparency, these measures alone are insufficient to address ticket scalping. Recent legislative proposals, such as with the BOSS and SWIFT Act and the Fans First Act, show that transparency reforms, which are unlikely to be passed, improve consumer awareness but do not prevent scalpers from acquiring and reselling tickets at inflated prices.[201] These proposals largely target pricing disclosures and fee transparency, ensuring that consumers are aware of the total cost of tickets prior to purchase.[202]

However, transparency does not address the underlying mechanics of ticket scalping. Even where consumers are fully informed of ticket prices, scalpers are still able to create artificial scarcity by purchasing large quantities of tickets and reselling them at inflated prices.[203] As discussed in Part III, this artificial scarcity distorts market outcomes and undermines allocational efficiency, allowing scalpers to profit without contributing to the market itself.[204]

By contract, the European Union's regulatory framework goes beyond transparency by pairing disclosure requirements with enforceable obligations on platforms and sellers. The Digital Services Act requires online platforms to provide clear pricing information while also verifying seller identities and monitoring for unlawful conduct.[205] This combined approach limits the ability of scalpers to exploit transparency gaps while still ensuring consumers are informed participants in the market. Transparency, while necessary, is therefore insufficient on its own to meaningfully curb ticket scalping.

B. Regulating Bots Does Not Address the Core Problem

[201] *See* BOSS and SWIFT Act of 2023, S. 2957, 118th Cong.; Fans First Act, S. 3457, 118th Cong.
[202] *Id.*
[203] *See supra* Part II (discussing artificial scarcity and resale prices)
[204] *See* Phillip Leslie & Alan Sorensen, *Resale and Rent-Seeking: An Application to Ticket Markets*, 81 Rev. Econ. Stud. 266 (2014).
[205] Regulation (EU) 2022/2065, arts. 22–24.

Similarly, federal efforts to regulate automated ticket purchasing through the BOTS Act fail to address ticket scalping at its core. The BOTS Act prohibits the use of automated software to circumvent ticket purchasing limits, targeting one of the primary methods scalpers use to acquire large volumes of tickets.[206] However, as demonstrated by the limited enforcement of the Act, this approach has proven largely ineffective in practice.[207]

By focusing on the method of acquisition rather than the resale of tickets itself, the BOTS Act leaves significant gaps in regulation. Scalpers can continue to operate through alternative means, including manual purchasing, coordinated buying strategies, and account-based resale systems.[208] As a result, even perfect enforcement of the BOTS Act would not eliminate ticket scalping, simply shifting the methods through which it occurs.

The European Union's framework again demonstrates a more effective approach. Rather than solely targeting the means of acquisition, EU law prohibits deceptive practices and requires platforms to actively detect and remove listings associated with unlawful conduct.[209] This broader regulatory scope addresses both how tickets are obtained and how they are resold, closing gaps that remain open under U.S. law. The failure of the BOTS Act therefore highlights a key limitation in the United States' regulatory strategy: targeting individual practices without addressing the broader system that enables ticket scalping.

C. Platform Accountability Is Essential

These shortcomings reveal a fundamental gap in the United States' regulatory approach: the failure to impose direct legal obligations on ticketing platforms themselves. In the current U.S. system, platforms such as Ticketmaster, StubHub, and Vivid Seats operate largely as

[206] 15 U.S.C. § 45c.
[207] See Press Release, Fed. Trade Comm'n, *FTC Brings First-Ever Cases Under the BOTS Act* (Jan. 22, 2021); Letter from Sens. Blackburn & Blumenthal (Nov. 28, 2022).
[208] See supra Part II (discussing alternative scalping methods).
[209] Regulation (EU) 2022/2065; Directive (EU) 2019/2161 (Unfair Commercial Practices Directive).

intermediaries, facilitating transactions between buyers and sellers while benefiting financially from resale activity.[210] Without regulatory obligations requiring these platforms to monitor or restrict scalping practices, they have little incentive to meaningfully limit the conduct that drives their profits.

The European Union takes a markedly different approach by placing affirmative obligations on online platforms. Under the Digital Services Act, platforms must verify seller identities, maintain transparency regarding commercial actors, and implement mechanisms to detect and remove unlawful listings.[211] These requirements shift responsibility from individual consumers to the platforms that structure and control the marketplace.

Imposing similar obligations in the United States would directly address one of the primary drivers of ticket scalping: the infrastructure that enables large-scale resale activity. Without platform accountability, scalpers will continue to exploit the systems designed to facilitate ticket sales. Therefore, any meaningful reform must include direct regulation of ticketing platforms alongside transparency requirements and enforcement mechanisms targeting automated purchasing.

When comparing State's ticketing laws to anti-scalping laws in EU Member States, the countries in the EU have significantly stricter laws and penalties regarding ticket scalping. Countries in the EU not only have strict anti-scalping laws, but also readily enforce these laws. Additionally, Member States impose extremely strict penalties to those that do break their laws, as demonstrated in Italy.[212] In the United States, however, individual states have very weak regulations. The regulations are not adapted for ticket scalping in a digital market. The states that

[210] See Debra Parma, *At Ticketmaster, Scalpers Score and Fans Come Last*, 38 J.L. & Com. 463 (2020).
[211] Regulation (EU) 2022/2065, arts. 22–30.
[212] Note, s*upra* p. 29.

have addressed online ticket scalping often have simple ways for scalpers to move around the law and continue their practices with little effort. Even if U.S. States' scalping laws were effective in theory, the penalties are so insignificant that they would not deter scalpers in practice.

## VI. Conclusion

To meaningfully address ticket scalping in the digital age, the United States must move beyond piecemeal reforms and adopt a comprehensive federal framework. This includes (1) mandating full price transparency to ensure consumers are informed at the outset of a transaction, (2) strengthening enforcement mechanisms against automated ticket purchasing, and (3) imposing direct regulatory obligations on ticketing platforms that facilitate the resale market. Without these reforms, ticket scalping will continue to exploit gaps in the current legal system, leaving consumers vulnerable to inflated prices and limiting fair access to live entertainment.

The Unites States needs to implement legislation at the federal level in order to protect consumers from ticket scalpers. In its current form, the patchwork framework of anti-scalping laws at the State level do not do enough to protect consumers. The laws currently in effect are easily worked around through websites like Ticketmaster and StubHub, who are considered licensed ticket brokers, or have little to no consistent enforcement standards to deter ticket scalpers from engaging in ticket scalping. The Digital Services Act and the Uniform Commercial Practices Directive in the European Union can provide a framework for how the United States can implement federal anti-scalper legislation and how these laws can be prosecuted. In addition, States can look towards individual countries in the EU to implement further protections for consumers, such as only allowing tickets to be sold for face value plus any fees for handling, enforcing identifying information on tickets, and appointing enforcement bodies with strict guidelines for penalties. Until the United States takes this action, seeing concerts will continue to

be more affordable in the European Union and United States consumers will continue to be taken advantage of by professional ticket scalpers. Without comprehensive federal reform, ticket scalping will continue to exploit structural gaps in the law, leaving consumers vulnerable to inflated prices and limiting fair access to live entertainment.