

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND  
INTERNET MEDIA

Kansen Chu, Chair

AB 1032 (Quirk) – As Amended April 3, 2019

**SUBJECT:** Ticket sellers: equitable ticket buying process: use or sale of services.

**SUMMARY:** Would narrow the scope of existing protections against use or sale of software to circumvent security measures under the Ticket Sellers Act, to benefit of ticket buyers who are intended event attendees, as defined in the bill, and expand the prohibited conduct to include use or sale of services to circumvent ticket seller's security measures. Specifically, **this bill:**

- 1) Adds "services" to circumvent a security measure, access control system, or other control or measure that is used to ensure an equitable ticket buying process to the prohibition against intentional use or sale of software to circumvent equitable ticket buying processes.
- 2) Narrows the scope of the equitable buying process protections to purchasers who are intended event attendees, and offers as an example the limitation on the number of tickets each purchaser could buy.
- 3) Would define "event attendee" to mean a person who purchases one or more tickets with the intent to attend the event for which the ticket or tickets are purchased.

Clarifies that an event attendee does not include a ticket seller.

- 4) States that for purposes of this section, "a control measure that is used to ensure an equitable ticket buying process" includes limits on the number of tickets that a person can purchase.

**EXISTING LAW:**

- 1) Provides a broad regulatory scheme in the Business and Professions Code for the conduct of the business of "Ticket Seller." (Business and Professions Code [BPC] § 22505, et. seq.)
- 2) Defines a ticket seller, as "any person who for compensation, commission, or otherwise sells admission tickets to sporting, musical, theatre, or any other entertainment event." (BPC § 22503)
- 3) States that, "this chapter does not apply to any person who sells six tickets or less to any one single event, provided the tickets are sold off the premises where the event is to take place, including, but not limited to, designated parking areas and points of entry to the event." (BPC § 22504)
- 4) Prohibits the using or selling of software to circumvent a security measure, access control system, or other control or measure that is used to ensure an equitable ticket buying process, as specified. (BPC § 22505.5)

**FISCAL EFFECT:** Unknown. This measure has been keyed fiscal by the Legislative Counsel.

**COMMENTS:**

- 1) *Author's statement.* According to the author, "Illegal bots are limiting Californians ability to attend the events they want. Ticket brokers use bots to rapidly purchase tickets in bulk in order to raise the prices and charge additional fees, pricing out average consumers. However, as the State of California has moved to limit the influence of bots in manipulating the event ticket marketplace, a first-party platform has emerged which circumvents the law. Ticketmaster's Trade Desk platform allows brokers to network hundreds of Ticketmaster.com accounts, buy thousands of tickets, and instantly relist those tickets at inflated prices on Stubhub, Vivid Seats, or Ticketmaster's own resale platform. While it looks and acts like what we would consider a bot, the distinction may be drawn that TradeDesk is actually a service, which allows a ticket scalper to more effectively skirt the law against use of bots to circumvent the equitable ticket buying process for those fans who intend to attend sporting and entertainment events.

"California's laws preventing this type of practice were written with third-party bots in mind, and not first-party platforms. AB 1032 establishes parity between these ticket selling tools and services, thereby ensuring that hard fought protections for consumers remain effective."

- 2) *Background:*

- a) *"Bots" and Attempts to Curb Their Use.* California law defines "Bot" as an automated online account where all or substantially all of the actions or posts of that account are not the result of a person. BCP§17940(a). This includes bots that are ticket buying software programs which allow users to quickly buy tickets online, thwarting average consumers who are unable to compete with the speed of the automated purchase programs. Typically, these bots are used by unscrupulous actors like ticket scalpers to buy tickets, then turn around and sell the same tickets at increasingly higher prices. Over the past several years, numerous high profile concert ticket sales have been impacted by the presumed use of "bots" in that individuals wait online to purchase tickets while software programs allow their users to jump to the front of the line and purchase large numbers of tickets at one time. This scenario often leads to concerts and other high profile events selling out in a matter of minutes, leaving fans ticketless and forcing them to spend more money to attend an event.

The ticket industry has attempted to combat problems caused by "bots" by employing other technological means, such as "Completely Automated Public Turing tests to tell Computers and Humans Apart" (CAPTCHA), which include phrases and picture tests at the point of sale during the online transaction to differentiate between a human purchaser and a likely computer program. CAPTCHA tests, such as typing characters into a box, are designed to prevent the use of "bots" because the requested task is typically one that can be completed by a person but would be difficult for a robotic software program to accurately perform.

Supporters of efforts to restrict the use of "bots" assert that even these technological efforts are not completely successful because the problem of instant sellouts and increased resale prices for tickets continues to generate complaints from the ticket-buying public. California is one of a number of states including Tennessee, Michigan, New Jersey, New York, Connecticut and Minnesota that have waded into the debate and

considered or passed legislation imposing bans on “bots” and establishing stiff penalties to those who use these systems.

- b) *Ticketmaster is accused of aiding scalpers with their TradeDesk platform.* The author states that, “The TradeDesk service offered by Ticketmaster can be used to coordinate the actions of Ticketmaster accounts to purchase tickets, and resale accounts, either on Ticketmaster itself or other resale platforms like Stubhub or Vivid Seats. According to the Toronto Star, Ticketmaster employees have advertised TradeDesk in a way that is functionally indistinguishable from bots: with one saying, ‘I have brokers that have literally a couple of hundred Ticketmaster accounts,’ admitting, ‘They have to because if you want to get a good show and the ticket limit is six or eight [seats], you’re not going to make a living on eight tickets.’”

TradeDesk is Ticketmaster’s version of an inventory management tool for professional ticket resellers (brokers). Other resellers also have tools to organize a broker’s ticket inventory so the tickets can be priced and listed for sale on various ticket marketplaces, such as StubHub’s product called Ticket Utils or Vivid Seat’s Skybox. These tools serve a legitimate purpose in the marketplace for brokers who may have several sources of tickets, for instance multiple season ticket holders who source team seats (with demand for different sports and each team multiplying the number of sports accounts), accounts with theater venues for plays, and they often use multiple sources for concerts. It is therefore not in-and-of-itself a problematic tool. However, it can be used to circumvent the law.

The author adds, “California law limits the number of tickets someone can resell to six before they are classified as a ticket seller and additional restrictions apply, such as having a permanent business address. Not only does TradeDesk allow users to circumvent internal purchasing policy, but by making it easy for brokers to resale tickets in bulk, TradeDesk allows its users to circumvent state law. California has taken steps to prevent third-party bots from manipulating the ticket market place, increasing the cost of tickets and pricing out average consumers. These policies are undermined however, if first-party ticket issues develop and market tools that offer the same functionality.”

The author has pointed to the activities of TradeDesk in particular, based upon a series of articles in the Toronto Star where reporters went undercover at a ticket broker convention in Las Vegas in July 2018. Undercover reporters asked TradeDesk sales representatives if they could use multiple Ticketmaster accounts — a violation of Ticketmaster’s rules — they were told TradeDesk does not monitor or care how their users obtain their tickets. “We don’t spend any time looking at your Ticketmaster.com account. ... When asked about limitations on the number of tickets one could purchase, they replied, “The policing of bots, going after those types of things, falls completely on the primary side. We have no input on it, no involvement with it ...” he said. “I have a gentleman who’s got over 200 Ticketmaster.com accounts right into the point of sale, who syncs his tickets in every day. ... If you’ve got 100 Ticketmaster.com accounts and you’re out there buying inventory, the system is automatically going to sync them and move them over to create the (resale) listing,” said the TradeDesk sales executive in Las Vegas.

In addition to making it easier to operate multiple accounts and obtain tickets in excess of statutory limits using bots with impunity, “Ticketmaster rewards mass sales with

discounts on its commission for scalpers who reach \$500,000 and \$1 million in sales.”  
(*Ticketmaster’s Tradedesk scalper tool explained*, infra.)

In an article headlined, *Ticketmaster Issues Statement on Scalper-Collusion Accusations*, published in *Variety*, Ticketmaster responded saying, “We do not condone the statements made by the employee as the conduct described clearly violates our terms of service. ... Ticketmaster’s Seller Code of Conduct specifically prohibits resellers from purchasing tickets that exceed the posted ticket limit for an event. In addition, our policy also prohibits the creation of fictitious user accounts for the purpose of circumventing ticket limit detection in order to amass tickets intended for resale.” *Variety*, (Sept. 20, 2018) <https://variety.com/2018/biz/news/ticketmaster-issues-statement-on-scalper-collusion-accusations-1202950272/>

However, In an interview with *Billboard* magazine published shortly thereafter, (September 24, 2018), “Ticketmaster boss Jared Smith conceded his company isn’t effectively policing its TradeDesk platform, where scalpers with multiple Ticketmaster accounts can upload and resell industrial-scale inventories of seats to major sports and concert events — in breach of the company’s own rules (Setting the Record Straight on TradeDesk and Ticketmaster Resale,” *The Star* (Sept. 24, 2018) <https://www.thestar.com/news/investigations/2018/09/25/ticketmasters-tradedesk-scalper-tool-explained.html>)

Ticketmaster has since stated the following, in response to a US Senate inquiry into the *Star* articles (*Ticketmaster’s TradeDesk scalper tool explained*, id): Ticketmaster is rigorous about limiting box office sales to ensure fans get a fair shot at seeing the sports teams and artists they love. “Ticketmaster’s general terms of use prohibit customers from buying a number of tickets for an event that exceeds the stated limit for that event. That limit, posted when tickets go on sale, is typically six or eight seats per buyer. If we identify breaches of these limits ... we reserve the right to cancel any such orders ... Use of automated means to purchase tickets is strictly prohibited.” In the past, Ticketmaster has said it blocked more than five billion purchase attempts by bots in 2016.

As for whether Ticketmaster’s ticket-purchasing limits and associated detection practices apply to users of its online program, TradeDesk, Ticketmaster admitted, “We probably don’t do enough to look into TradeDesk,” Ticketmaster’s president of North American operations said, “The reality is, yeah, (TradeDesk users) could have more than their ticket limit” and acknowledged, “the company needs to be more vigilant about ensuring TradeDesk clients aren’t gaming the system.”

- 3) *Committee comment.* As was noted above, Ticketmaster’s TradeDesk service is not unique, however their experience serves as a cautionary tale for the industry as it moves to a resale dominated field - other resellers also have tools to organize a broker’s ticket inventory so the tickets can be priced and listed for sale on various ticket marketplaces, such as StubHub’s product called Ticket Utils or Vivid Seat’s Skybox.

This bill does not address the issue of whether the resale platforms and the services which assist them in managing their clients’ ticket sales must find ways to assure the clients and accounts they are managing have obtained their inventory in conformity with the law. That is another bill for another day. However, AB 1032 does add another tool in the arsenal of

enforcement by prohibiting brokers from using services to circumvent a security measure, access control system, or other control or measure that is used by the ticket sellers to ensure an equitable ticket buying process.

- 4) *Double-referral*. Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Privacy and Consumer Protection.
- 5) *Prior Related Legislation*.
  - a) AB 1832 (Calderon), Chapter 158, Statutes of 2014, made technical changes to existing law prohibiting software from circumventing ticket sellers' equitable ticket buying process to ensure the prohibition is not only limited to Internet Web sites.
  - b) AB 329 (Pan), Chapter 325, Statutes of 2013, made it a misdemeanor to intentionally use or sell software to circumvent a security measure, access control system or other control or measure on a ticket seller's Web site that is used to ensure an equitable ticket buying process.
  - c) AB 2612 (Plescia), of 2008, was a spot bill to amend the ticket seller's provisions of the Business and Professions Code. (Status: The bill was held in the Assembly Committee on Rules without referral.)
  - d) SB 1022 (Campbell), of 2006, would have included Licensed Ticket Sellers, and other businesses, eligible to organize as Limited Liability Corporations (LLC). (Status: The bill was not ever heard in a Senate policy committee.)
  - e) SB 1602 (Battin), of 2006, would have expanded the definition of scalping under the Penal Code, to extend the prohibition against selling event tickets purchased for resale above market value on the event premises, to any purchase of tickets for resale in an amount over the limitation on the maximum number of tickets allowed by the original ticket seller and for any amount of profit. The bill also would have criminalized the use of automated computer purchases of event tickets in order to accomplish the purchase above the seller's limit, by defining the practice as "criminal interference" with the seller's Web site. (Status: The bill was not heard on the Senate Floor at the request of the Author.)

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California District Attorneys Association

##### **Opposition**

There is no opposition on file.

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