

Before the Federal Trade Commission

Advance Notice of Proposed Rulemaking
Unfair or Deceptive Fees Trade Regulation Rulemaking
Matter Number R207011
16 CFR Part 464, Federal Register No. 2022-24326

Comments of:
National Independent Venue Association

We are grateful for the opportunity to provide comments on the Federal Trade Commission's (FTC) exploration of unfair or deceptive fees, also referred to as "junk fees." The National Independent Venue Association (NIVA), a trade association that works to preserve and nurture the ecosystem of independent venues, promoters, and festivals throughout the United States, submits these comments for the "Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011".

Distinguishing "Junk Fees"

NIVA understands the FTC has defined junk fees as "unnecessary, unavoidable, or surprise charges that inflate costs while adding little to no value" and support its efforts to eliminate unnecessary fees to protect and keep costs low for consumers. We share this goal. Independent venues and promoters are motivated to keep prices as low as possible to attract the largest crowds for as many live events as possible.

It is important, however, to recognize that not all fees are "junk fees" and many do add value, such as the facility fee. Most independent venues and promoters work to reserve the base ticket price for the artists and utilize a facility fee to account for the overhead costs that ensure the venue can afford to host shows for the fans. These fees are clearly labeled and included in the cart before checkout to ensure the consumer is not caught off guard before purchase. Venues use the revenue from facility fees for costs such as staffing, rent, insurance, heating and cooling, repairs and maintenance, and property taxes -- costs associated with maintaining the facility.

Further, there is a substantial and meaningful difference between the facility fees that venues and event promoters collect from customers on primary ticketing sites that go towards venue and promoter overhead costs, compared with the often exorbitant and arbitrary fees encountered by fans on secondary resale exchanges during the final steps of purchasing a ticket. To our knowledge, fees charged when purchasing tickets on secondary ticketing platforms do not go to those responsible for producing and ensuring a safe and quality experience for event goers. Moreover due to the prevalence of predatory and deceptive practices in the secondary market, fans are unable to understand when they are buying directly from a venue where fees might support the event versus buying from a secondary exchange where fees do not.

Mom-and-pop venues and promoters face the incredible challenge of trying to compete in an increasingly consolidated industry with one or two very well capitalized, vertically integrated companies. With shoestring margins and only one revenue stream, it is crucial that we clearly

define the difference between junk fees and the fees used by a venue or promoter to ensure the highest quality experience for the attending fans.

Predatory and Deceptive Ticketing Practices

Focusing exclusively on concerns related to fees in the ticketing marketplace also fails to acknowledge the rampant use of predatory and deceptive practices on secondary ticketing platforms and how this contributes to consumer's woes. For example, as the Government Accountability Office (GAO) noted in its 2018 report entitled "Event Ticket Sales: Market Characteristics and Consumer Protection Issues," "[w]hite-label' resale sites, which often appear as paid results of Internet searches for venues and events, often charged higher fees than other ticket websites—sometimes in excess of 40 percent of the ticket price—and used marketing that might mislead users to think they were buying tickets from the venue."

While many may think that sellers on the secondary markets are individuals simply seeking to recoup money for an event they cannot attend, GAO determined that professional brokers, "those who buy or otherwise obtain tickets with the intent of reselling them at a profit," represent either the majority or overwhelming majority of ticket sales on their sites. The report indicates that the price of a ticket purchased as resale averages between 41 percent and 112 percent higher than primary sales. Simultaneously, total ticket fees averaged 27 percent on the primary market and 31 percent on the secondary market. When taking into account the markup on the secondary market, this means that the actual dollar amount incurred as a result of fees on the secondary is more than double the fees collected from a ticket sale on the primary market. And those fees are not going to support those assuming the risk of the show such as the artist, the promoter, or the venue.

In short, scalpers make money from jacking up the price of a ticket and the secondary ticketing platform swipes fees off the sales, both by charging ten percent of the sales price to the seller and additional fees charged to buyers. Ultimately, the resale of concert tickets has become an essentially risk-free and highly lucrative cottage industry that is ripping off consumers. Fees are only a small part of the overall problem. NIVA believes that fees in the secondary markets require more scrutiny and detailed investigation.

All-In Pricing

We agree with many members of the live events industry that all-in pricing may resolve some of the confusion consumers face with junk fees. NIVA supports event ticket purchasers knowing the full price of the ticket inclusive of all fees before beginning their checkout process. All-in pricing should clearly lay out what the full final cost to the consumer is, with the "face value" of the ticket that the artist is charging and all fees separate and itemized, so that the consumer knows exactly what they are paying for.

Conclusion

Independent venues and promoters use every dollar that does not go to the artist or the ticketing company to sustain and support our small businesses, allowing us to continue offering live entertainment in small towns and big cities across America. The revenues we generate stay within our local communities and support our local workforces. Fans coming to our events

frequent nearby bars and restaurants, stores, car services, and hotels, giving a significant boost to local economies in every state in America.

Unlike resale platforms, when we collect fees that support venue operations from a ticket sale, we pump it right back into the live entertainment ecosystem. We want to get low-priced tickets into the hands of true fans. In fact, many independent venues across America have a box office or onsite ticket purchase option which offers the consumer the ability to purchase tickets with little or no fees added. While there are cases of exorbitant junk fees harming the consumer, certain reasonable and necessary fees added to the price of tickets sold help independent venues and promoters by providing a critical source of revenue that makes the difference between staying open and closing for good.