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NFT Ticketing: The Happy Medium for Venues, Live Entertainers, and Fans

Cathryn Howell

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INTRODUCTION

Live entertainment come in all shapes and sizes and spans across a wide variety, including sports games, music concerts, comedy shows, and musical theaters. Attendees of these types of shows have always enjoyed the intangible, in-person experience that only live entertainment provides. In a digital era where people can easily download music online or stream a movie from the comfort of their own homes, live entertainment continues to be a powerful magnet drawing people to its raw energy and powerful connectivity amongst entertainers and spectators.²

However, obtaining tickets and access to various live events has become problematic due to issues rooted in the primary ticketing industries and subsequent secondary markets³, which influence price and distribution of tickets. Scalpers, powerful computers (“bots”), and large, conglomerate companies, such as Ticketmaster⁴, dominate both primary and secondary ticketing spaces in ways that ultimately harm venues, artists, and consumers. Large, primary ticketing companies maintain exclusive access to venues, forcing them to utilize the companies’ preferred platforms for ticketing.⁵ Scalpers may use bots to buy as many primary sale tickets as they can

¹ J.D. Candidate, Golden Gate University School of Law, Expected Graduation, May 2022; B.A., International Relations, San Francisco State University, 2014.

² *Global Live Music Market 2020-2024|Increased Popularity of Live Events to Boost Market Growth|Technavio*, BUSINESSWIRE (Apr. 2, 2020), <https://www.businesswire.com/news/home/20200401005850/en/Global-Live-Music-Market-2020-2024%C2%A0Increased-Popularity-of-Live-Events-to-Boost-Market-Growth-Technavio>. (Industries project an increase in the popularity of live events in the global live music market from 2020 to 2024 due, in part, to the younger generation’s increased interest in seeing live shows).

³ Primary markets refer to the initial purchase of a ticket when it goes on sale, and secondary markets refer to the subsequent selling of a ticket previously purchased.

⁴ This essay is not purporting that Ticketmaster is equivalent or similar to a scalper or bot. Here, it is asserting that these types of large, nationwide entities in general can influence ticketing prices in both primary and secondary markets.

⁵ See generally Dylan Smith, *Live Nation and Ticketmaster Face Class-Action Antitrust Lawsuit Over ‘Blatant, Anti-Consumer Behavior’*, DIGITAL MUSIC NEWS (Jan. 6, 2022), <https://www.digitalmusicnews.com/2022/01/06/ticketmaster-live-nation-monopoly-lawsuit/>.

with the sole purpose of reselling them for inflated prices on the secondary market.⁶ By controlling ticket distribution and spaces for resale, practices by these types of various entities have inflated prices and pocketed the profits at the expense of fans seeking those tickets. This affects the overall experience of attendees when they are either unable to obtain a ticket at all, and if they do, they pay a skyrocketed price for it. Even if fans are able to dish out the money and snag a ticket, they may opt out of buying amenities, such as drinks and snacks, or merchandise, such as clothing and various memorabilia, which affect profits for the venue and performers.

With the rise of blockchain technology and its vast potential, non-fungible tokens (“NFTs”) could be the key to solving these various problems associated with the primary and secondary markets. NFT tickets come with a substantial array of benefits, including guaranties for authenticity, sale transparency, and can create more direct links between fans and artists, as the smart contracts within each NFT can be encoded with various immutable rules. NFT ticketing would place more control in the hands of venues, artists, and fans, which would allow for more personalized experiences and direct relationships between hosts-attendees and artists-fans. Tokenizing the tickets for entry into all live entertainment events and allowing for both the sale and resale of those tickets on a blockchain may eliminate, or at least mitigate, seemingly monopolistic-like tendencies of primary ticketing companies as well as control the price inflation of secondary markets.

Part I of this essay will provide some technical background for blockchain technology and NFTs to allow for a basic understanding of the NFTs’ underlying technology. Part II will assess legal problems within the current ticketing system through analyzing potentially anti-

⁶ Darian Woods, Stacey Vanek Smith, *Ticket scalpers: The real ticket masters*, NPR (Nov. 23, 2021), <https://www.npr.org/2021/11/23/1058704237/ticket-scalpers-the-real-ticket-masters>.

competitive practices of primary ticketing markets as well as price inflation of secondary markets. It will also make some general recommendations for venues and artists in implementing NFT ticketing, as well as how intermediary companies themselves could fit into this new space. Part III will raise various counterarguments and valid concerns surrounding NFT ticketing but conclude that the potential benefits of NFT ticketing ultimately outweigh possible drawbacks.

I. BACKGROUND

A. Blockchain Technology

NFTs are built, sold, and bought using blockchain technology, which is a distributed database that is shared among nodes of many computer networks and electronically stores information in digital format.⁷ This database is a shared, transparent, and immutable ledger that records transactions of tangible and intangible assets.⁸ A blockchain is structured by collecting information as groups, or “blocks”, that have storage capabilities to hold said information.⁹ When that block is filled, it is “closed” and becomes linked to the previously filled block, which continues to form a chain, or “blockchain.”¹⁰ Any new information following a previously closed block will be added into a new block that will follow the end of the chain once filled.¹¹ Since each block is time stamped and confirmed regarding the sequence of transactions, each block is verified by the block before it, which makes it tamper-proof and prevents it from being altered.¹²

⁷ Adam Hayes, *What Is a Blockchain?*, INVESTOPEDIA - BLOCKCHAIN EXPLAINED (Mar. 5, 2022), <https://www.investopedia.com/terms/b/blockchain.asp>.

⁸ *What is blockchain technology?*, IBM, <https://www.ibm.com/topics/what-is-blockchain>.

⁹ Adam Hayes, *What Is a Blockchain?*, INVESTOPEDIA - BLOCKCHAIN EXPLAINED (Mar. 5, 2022), <https://www.investopedia.com/terms/b/blockchain.asp>.

¹⁰ Adam Hayes, *What Is a Blockchain?*, INVESTOPEDIA - BLOCKCHAIN EXPLAINED (Mar. 5, 2022), <https://www.investopedia.com/terms/b/blockchain.asp>.

¹¹ Adam Hayes, *What Is a Blockchain?*, INVESTOPEDIA - BLOCKCHAIN EXPLAINED (Mar. 5, 2022), <https://www.investopedia.com/terms/b/blockchain.asp>.

¹² *What is blockchain technology?*, IBM, <https://www.ibm.com/topics/what-is-blockchain>.

Blockchain's basic function is to create trust through transparency and reliability, as each party on the blockchain has their own copy of the distributed ledger without the need for a master ledger.¹³ Committing a transaction to a ledger in one location does so automatically everywhere, so there is no need for a third party because the nodes in the network are in "constant communication in order to remain synchronized."¹⁴ Since each new block is always stored linearly and chronologically, it is very difficult to go back and alter the contents of a block unless a majority of the network reaches a consensus.¹⁵ This would be highly unlikely in the event someone was trying to hack a blockchain or steal something from it.

Each block has its own hash with the hash of the block before it, and each has code is created by a mathematical function that turns digital information into a random string of numbers and letters. Consequently, if that information is edited in any way, the hash code will change too.¹⁶ Blockchain's distributed ledger technology allows digital information to be recorded and distributed but not edited, which allows a foundation for shared immutable ledgers and records of transactions that cannot be altered, deleted, or destroyed.¹⁷ Blockchain is decentralized in that the information is not stored in a single location, but rather is copied and spread across a network of computers that constantly update to reflect any changes.¹⁸

¹³ Kevin Werbach, *The Blockchain and the New Architecture of Trust*, 7 (2018).

¹⁴ Kevin Werbach, *The Blockchain and the New Architecture of Trust*, 7 (2018).

¹⁵ Adam Hayes, *What Is a Blockchain?*, INVESTOPEDIA - BLOCKCHAIN EXPLAINED (Mar. 5, 2022), <https://www.investopedia.com/terms/b/blockchain.asp>.

¹⁶ Adam Hayes, *What Is a Blockchain?*, INVESTOPEDIA - BLOCKCHAIN EXPLAINED (Mar. 5, 2022), <https://www.investopedia.com/terms/b/blockchain.asp>.

¹⁷ Adam Hayes, *What Is a Blockchain?*, INVESTOPEDIA - BLOCKCHAIN EXPLAINED (Mar. 5, 2022), <https://www.investopedia.com/terms/b/blockchain.asp>.

¹⁸ Adam Hayes, *What Is a Blockchain?*, INVESTOPEDIA - BLOCKCHAIN EXPLAINED (Mar. 5, 2022), <https://www.investopedia.com/terms/b/blockchain.asp>.

B. NFT Technology

An NFT stands for nonfungible token, which is an economic term for a unique item that is not interchangeable with another item.¹⁹ An NFT is a cryptographic asset on a blockchain with its own, unique identification code and metadata that specifically distinguishes it from any other NFT.²⁰ An NFT is “minted”, or created, as a digital asset and can represent tangible items, such as pieces of physical art, or intangible items, such as property rights, that may be bought and sold online with cryptocurrency.²¹ Each NFT has built-in authentication because it contains ownership details and distinguishing information that makes it easily verifiable, as each one can be traced back to the original issuer.²² NFT creators can add additional metadata to give additional rights or benefits to the subsequent owner.²³ Other than authenticity and verifiability, another key piece stemming from NFTs is market efficiency. Turning a physical asset into a digital one streamlines transactional processes and removes the need for intermediaries such as agents, art galleries, or any other transaction facilitator that may charge additional fees for their services.²⁴ NFTs also allow for more connectivity between NFT originators and subsequent buyers,²⁵ as artists can encode various benefits into the NFT, such as royalties, meet-and-greets, or access to pre-released albums.

¹⁹ *Non-fungible tokens (NFT)*, ETHEREUM, <https://ethereum.org/en/nft/>.

²⁰ Rakesh Sharma, *Non-Fungible Token (NFT) Definition*, INVESTOPEDIA (Feb. 26, 2022), <https://www.investopedia.com/non-fungible-tokens-nft-5115211>.

²¹ Robyn Conti, John Schmidt, *What Is An NFT? Non-Fungible Tokens Explained*, FORBES ADVISOR (Apr. 8, 2022), <https://www.forbes.com/advisor/investing/nft-non-fungible-token/>; Rakesh Sharma, *Non-Fungible Token (NFT) Definition*, INVESTOPEDIA (Feb. 26, 2022), <https://www.investopedia.com/non-fungible-tokens-nft-5115211>.

²² Ollie Leech, *What Are NFTs and How Do They Work*, COINDESK (Feb 1, 2021, updated Mar. 24, 2022), <https://www.coindesk.com/learn/what-are-nfts-and-how-do-they-work/>.

²³ Rakesh Sharma, *Non-Fungible Token (NFT) Definition*, INVESTOPEDIA (Feb. 26, 2022), <https://www.investopedia.com/non-fungible-tokens-nft-5115211>.

²⁴ Rakesh Sharma, *Non-Fungible Token (NFT) Definition*, INVESTOPEDIA (Feb. 26, 2022), <https://www.investopedia.com/non-fungible-tokens-nft-5115211>.

²⁵ Rakesh Sharma, *Non-Fungible Token (NFT) Definition*, INVESTOPEDIA (Feb. 26, 2022), <https://www.investopedia.com/non-fungible-tokens-nft-5115211>.

To create or own an NFT, one must first have a digital wallet that allows you to buy and store cryptocurrencies as well as any NFTs you may purchase with those cryptocurrencies.²⁶ Users then shop on NFT sites, such as OpenSea, Rarible, and Foundation,²⁷ for a wide array of NFT items. Since NFTs can only have one owner at a time, ownership is managed through uniqueID and metadata that no other token can replicate.²⁸ The NFTs are minted through smart contracts that assign ownership and manage transferability.²⁹ When someone creates or mints an NFT, they execute code stored on a smart contract that conforms to different standards, and the information is added to the blockchain where the NFT is managed.³⁰ Each token minted has unique identifier linked to a single address, so each token owner and the NFT information is easily verifiable.³¹ This allows owners to prove that they own the NFT, as the ownership of the unique NFT token is transferred from the originator's address to the new owner's wallet.³² The token proves that the owner's copy of the digital file is the original, and their private key is proof of ownership of the original.³³ The originator's public key serves as a certificate of authenticity for that NFT, because the creator's public key is a permanent part of the token's history and can show that the token is not counterfeit.³⁴ Due to these attributes, NFTs have recently exploded in

²⁶ Robyn Conti, John Schmidt, *What Is An NFT? Non-Fungible Tokens Explained*, FORBES ADVISOR (Apr. 8, 2022), <https://www.forbes.com/advisor/investing/nft-non-fungible-token/>.

²⁷ Robyn Conti, John Schmidt, *What Is An NFT? Non-Fungible Tokens Explained*, FORBES ADVISOR (Apr. 8, 2022), <https://www.forbes.com/advisor/investing/nft-non-fungible-token/>.

²⁸ *Non-fungible tokens (NFT)*, ETHEREUM, <https://ethereum.org/en/nft/>.

²⁹ *Non-fungible tokens (NFT)*, ETHEREUM, <https://ethereum.org/en/nft/>.

³⁰ *Non-fungible tokens (NFT)*, ETHEREUM, <https://ethereum.org/en/nft/>. Please note that smart contracts as a whole are outside of the scope of this paper. They are mentioned to give a more robust explanation of how NFTs work but do not give explanations on the functionality.

³¹ *Non-fungible tokens (NFT)*, ETHEREUM, <https://ethereum.org/en/nft/>.

³² *Non-fungible tokens (NFT)*, ETHEREUM, <https://ethereum.org/en/nft/>.

³³ *Non-fungible tokens (NFT)*, ETHEREUM, <https://ethereum.org/en/nft/>.

³⁴ *Non-fungible tokens (NFT)*, ETHEREUM, <https://ethereum.org/en/nft/>.

popularity and created new paths for revenue streams, as people can now buy and sell digital representations of intangible items, such as a tweet or a meme.³⁵

II. ANALYSIS

This analysis takes a consumer-based and venue/artist-based approach to solving problems associated with primary and secondary markets. This essay does not necessarily advocate for the complete elimination of intermediary entities, but due to the decentralized nature of blockchain technology, it could potentially lead to a market space where intermediaries are simply not needed. Utilization of NFT ticketing has the potential to directly combat concerns surrounding alleged monopolistic-like tendencies, potentially anti-competitive behaviors, and price inflation of intermediaries. Further, there are various uses of NFT tickets that could have positive effects specifically targeting venues, organizers, and artists.

A. Combatting Potentially Anti-Competitive Behavior and Artificial Price Inflation of Primary and Secondary Markets

Despite the positive attributes of NFT tickets, venues can be inhibited from utilizing this technology because large primary and secondary ticketing companies benefit from serving as exclusive intermediaries governing ticket sales. For example, Ticketmaster, as a venue's contracted ticket distributor, may veto any attempt of an artist to use NFT ticketing for its event

³⁵ Katherine Roe, Chris Whittaker, Dan Jewell, Scott Thiel, *Non-fungible tokens: What are the legal risks?*, DLA PIPER (Oct. 18, 2021), <https://www.dlapiper.com/en/us/insights/publications/2021/09/non-fungible-tokens-what-are-the-legal-risks/>; Tim Copeland, *Beeple NFT Artwork Sells for \$69.3 Million in Christie's Auction*, DECRYPT (Mar. 11, 2021), <https://decrypt.co/60971/beeples-nft-artwork-sells-for-60-3-million-in-christies-auction>; Ollie Leech, *What Are NFTs and How Do They Work*, COINDESK (Feb 1, 2021, updated Mar. 24, 2022), <https://www.coindesk.com/learn/what-are-nfts-and-how-do-they-work/>. (As of the date of this paper, the most expensive NFT sold for a whopping \$69.3 million. Created by crypto artist Beeple and titled "Titled "Everydays: the First 5000 Days", it is described as an accumulative piece highlighting the artist's journey in creating art over the past 13 years. Another person bought a \$220,000 segment of the digital Monaco racing track in F1 Delta Time game. The NFT of this piece of digital track allows owner to receive five percent dividends from all races taking place on it. A gamer on Decentraland virtual land platform bought sixty-four lots and combined them to sell for \$80,000 because of the desirable location.)

by not offering NFT support at its affiliated venues.³⁶ “Artists want to reap the upsides here, but incumbents have forced them to stick with a centralized ticketing model.”³⁷

1. Pending Class Action Lawsuit Challenging Anti-Competitive Behavior

On January 4, 2022, parties filed a class action lawsuit in the Central District of California against Live Nation Entertainment, Inc. and Ticketmaster LLC³⁸ alleging violations of section 1 and 2 of the Sherman Act and sections 15 and 16 of the Clayton Act.³⁹ Although the complaint discusses problems with the Defendants’ recently amended arbitration requirements⁴⁰, the bulk of the complaint centers around its anti-competitive claims that the Defendants are asserting illegal dominance over both the primary and secondary markets within the ticketing industry.⁴¹

Ticketmaster has dominated the primary ticketing space for live music events, and Live Nation has been the largest concert promoter for main concert venues.⁴² When these two companies merged in 2010, the Department of Justice issued a temporary consent decree to permit the merger.⁴³ In terms of primary markets, the complaint alleged that Live Nation forced venues to choose Ticketmaster as their primary ticketing provider, else they would not route shows through those locations.⁴⁴ In terms of secondary markets, it alleged that Ticketmaster

³⁶ Rachel Wolfson, *Showtime: NFT tickets take the stage in 2022, connecting artists and fans*, Cointelegraph (Jan. 19, 2022), <https://cointelegraph.com/news/showtime-nft-tickets-take-the-stage-in-2022-connecting-artists-and-fans>.

³⁷ Rachel Wolfson, *Showtime: NFT tickets take the stage in 2022, connecting artists and fans*, Cointelegraph (Jan. 19, 2022), <https://cointelegraph.com/news/showtime-nft-tickets-take-the-stage-in-2022-connecting-artists-and-fans>.

³⁸ Complaint, Heckman v. Live Nation Entm’t, Inc., No. 2:22-cv-00047 (C.D. Cal. Jan. 1, 2022).

³⁹ Complaint at 16, 17, Heckman v. Live Nation Entm’t, Inc., No. 2:22-cv-00047 (C.D. Cal. Jan. 1, 2022).

⁴⁰ Complaint at 3-5, Heckman v. Live Nation Entm’t, Inc., No. 2:22-cv-00047 (C.D. Cal. Jan. 1, 2022) (The complaint makes reference to a previous lawsuit against Live Nation in which the court granted the defendants’ motion to compel arbitration against class action plaintiffs, as defendants claimed that “all users of their websites . . . affirmatively agreed to be bound by the website’s terms of use . . . every time a user creates an account, signs into the account, or purchases a ticket”, which included an arbitration clause.) *Oberstein v. Live Nation Ent., Inc.*, No. CV 20-3888-GW-GJSX, 2021 WL 4772885, at 1 and 9 (C.D. Cal. Sept. 20, 2021).

⁴¹ Complaint at 5-13, Heckman v. Live Nation Entm’t, Inc., No. 2:22-cv-00047 (C.D. Cal. Jan. 1, 2022).

⁴² Complaint at 5, 6, Heckman v. Live Nation Entm’t, Inc., No. 2:22-cv-00047 (C.D. Cal. Jan. 1, 2022).

⁴³ Complaint at 12, Heckman v. Live Nation Entm’t, Inc., No. 2:22-cv-00047 (C.D. Cal. Jan. 1, 2022).

⁴⁴ Complaint at 8, Heckman v. Live Nation Entm’t, Inc., No. 2:22-cv-00047 (C.D. Cal. Jan. 1, 2022).

maintains harmful, long-term, exclusive contracts with venues.⁴⁵ These contracts, it explains, create conditional copyright licenses that place limitations on consumers, such as prohibiting them from buying multiple tickets for resale and limiting primary ticket holders to only resell their tickets on Ticketmaster.⁴⁶ Rather than an exhaustive list, these explanations are some key points of the complaint. This essay’s goal is not to predict the outcome of this lawsuit, but rather uses this case as an example of issues associated with ticketing intermediaries and how NFTs can solve those issues.

The complaint asserts the Defendants’ behavior has constituted illegal anticompetitive behavior that is in violation of parts of the Sherman Act and Clayton. Created by Congress in 1890 and codified as 15 U.S.C. §§ 1-38 in Title 15 of the U.S. Code, the Sherman Act sought to protect competition and promote business innovation that would benefit society as a whole.⁴⁷ The first section of the Sherman Act centers around general restraints on trade, stating “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce . . . is declared to be illegal.”⁴⁸ The second section specifies the prohibition of monopolies, stating “[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce . . . shall be deemed guilty.”⁴⁹ Congress later introduced the Clayton Act in 1914⁵⁰ to address specific practices that its predecessor was vague on, which allowed for companies to

⁴⁵ Complaint at 10-12, *Heckman v. Live Nation Entm’t, Inc.*, No. 2:22-cv-00047 (C.D. Cal. Jan. 1, 2022).

⁴⁶ Complaint at 10-12, *Heckman v. Live Nation Entm’t, Inc.*, No. 2:22-cv-00047 (C.D. Cal. Jan. 1, 2022).

⁴⁷ *Sherman Antitrust Act*, CORPORATE FINANCE INSTITUTE, <https://corporatefinanceinstitute.com/resources/knowledge/finance/sherman-antitrust-act/>.

⁴⁸ Sherman Antitrust Act 15 U.S.C. § 1

⁴⁹ Sherman Antitrust Act 15 U.S.C. § 2.

⁵⁰ Clayton Act 15 U.S.C. §§ 15 and 16.

bypass its intended prohibitions.⁵¹ It added additional details to eliminate some of the loopholes, but it still addressed the same general topics of mergers, monopolies, and price discrimination.⁵²

If fully implemented, NFT ticketing could eliminate the need for intermediary entities and put full control in the hands of venues and artists selling the tickets. Venues could utilize a blockchain platform to create and sell NFT tickets to their shows with a wide array of benefits or restrictions placed onto the smart contracts embedded into the NFT ticket. Venues could control the ticket's price, quantity, and ability to resell tickets. This would directly differ from any notion of monopolistic-like behavior because they would be dealing exclusively with their own venue. They would likely not be violating terms of the Sherman Act or Clayton Act because they would only be controlling the tickets associated with their own place of business, rather than serving as intermediary companies that influence ticketing markets across the nation.

Venues would not need to rely on long-term, exclusive contracts for intermediary companies to facilitate sale transactions because the smart contracts within the NFTs would be doing the work of the intermediaries. This would relieve venues from doing that work themselves or contracting the work out. The blockchain platform would allow venues to see exactly where tickets are going and how often they are resold. Theoretically, NFTs could eliminate the need for any secondary party, which would allow the event space to create its own rules surrounding the purchase, use, and resale of the ticket itself and reap any monetary benefits derived from subsequent sale of tickets bought on a primary market.

⁵¹ *The Antitrust Laws*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws>; Will Kenton, *Sherman Antitrust Act*, INVESTOPEDIA (Sept. 20, 2021), <https://www.investopedia.com/terms/s/sherman-antitrust-act.asp>.

⁵² Will Kenton, *Sherman Antitrust Act*, INVESTOPEDIA (Sept. 20, 2021), <https://www.investopedia.com/terms/s/sherman-antitrust-act.asp>.

2. Price Inflation

The secondary markets surrounding the ticketing industry, particularly scalpers and their utilization of bots, have had the unfettered ability to manipulate prices and control the market, which continues to have which have had detrimental effects on entertainers, venues, and fans. Within seconds of an event space putting up tickets for sale online, tickets are bought by automated bots and other scalpers by the thousands using techniques like multiple credit cards to bypass limits on the number of tickets people can purchase.⁵³ Due to the limited supply and the high demand for certain tickets, the scalpers will resell these tickets at a significant markup.⁵⁴

Even U.S. lawmakers have noted this prevailing problem and recently introduced a bill aimed at “prohibit[ing] the circumvention of control measures used by Internet retailers to ensure equitable consumer access to products.”⁵⁵ Introduced on November 20, 2021, the Stopping Grinch Bots Act of 2021 “makes it unlawful to use automated tools (i.e., bots) to intentionally bypass a website’s security measures in order to purchase and resell its products or services in interstate commerce.”⁵⁶ Whether or not this bill ultimately passes, it shows the known concern policy makers have for scalpers taking advantage of market demand for popular tickets and using technological means to circumvent rules placed by venues.

Antitrust laws, such as the ones mentioned in the section above, certainly try to combat large-scale price control that might stifle competition, but smaller-scale scalpers are technically not breaking the law by buying tickets with the intention of reselling them. This is the very heart

⁵³ Jordan Teicher, *Will blockchain rock the event ticketing industry?*, IBM (June 5, 2018), <https://www.ibm.com/blogs/industries/could-blockchain-rock-the-event-ticketing-industry/>.

⁵⁴ Jordan Teicher, *Will blockchain rock the event ticketing industry?*, IBM (June 5, 2018), <https://www.ibm.com/blogs/industries/could-blockchain-rock-the-event-ticketing-industry/>.

⁵⁵ Stopping Grinch Bots Act of 2021, S. 3276, 117th Cong. (2021-2022) (introduced), <https://www.congress.gov/bill/117th-congress/senate-bill/3276?r=2&s=1>.

⁵⁶ Stopping Grinch Bots Act of 2021, S. 3276, 117th Cong. (2021-2022) (introduced), <https://www.congress.gov/bill/117th-congress/senate-bill/3276?r=2&s=1>.

of capitalism and conforms to a basic supply-demand market; where there is a finite supply and a high demand, prices will increase, and vice versa. The problem comes in when they use technology or other means to try and bypass a venue's rules surrounding its ticketing sales. Venues and entertainers, and even primary ticketing companies typically do not have a lot of control over the ticket itself once it is sold. As discussed above in the pending lawsuit, ticketing companies are placing increased restrictions on the use of their tickets. However, NFTs could place flexible and reliable control back into the hands of the primary ticket issuers. Lawmakers would not have to create laws centered around controlling the sale and resale of tickets if the smart contracts within NFT tickets conformed to all the desired rules in the first place.

One of the most important features of NFT ticketing would be control over secondary markets, which would have positive effects in countering some of its most notable problems associated with counterfeiting, bad actors, fraud, and fragmentation of the market.⁵⁷ In terms of price, the NFTs could have restrictions on how many times a ticket could be resold or, most importantly, set a cap on a maximum price for resale. If ticket purchasers had access to their own wallets, they could buy tickets directly from the blockchain platform for prices that they know are fair and equitable, as well as ensure that the ticket is authentic. Like any blockchain platform, the basis of an NFT ticketing system would verify the identities of buyers and sellers and then act as an immutable ledger for all participating parties to track their tickets from their initial creation to its subsequent purchase. It could directly allow the ticket creator more control over rules around the ticket's resale. NFT ticketing would deem the Stopping Grinch Bots Act 2021 and any related legislation obsolete because there theoretically would not be a secondary

⁵⁷ Rachel Wolfson, *Showtime: NFT tickets take the stage in 2022, connecting artists and fans*, Cointelegraph (Jan. 19, 2022), <https://cointelegraph.com/news/showtime-nft-tickets-take-the-stage-in-2022-connecting-artists-and-fans>.

market for scalpers to profit off of if the tickets were restricted by rules on the blockchain network.

If NFTs eliminated the need for intermediary parties, this would reduce ticket cost by the amount of fees associated with those entities facilitating the transfers. Cheaper prices could then encourage attendees to spend more at the venue itself since they know they did not pay an inflated price on the ticket. These decisions would end up benefitting both the venues and artists due to the potential for increased sales during the shows, as well as the fans who wish to spend their money on something tangible at the show itself. Since NFTs are programmable to have built-in rules for anything the creators want, there is a potential for perpetual revenue with built in rules for merchandise, content, and royalties for ticket resales, which mean that parties have more control over profit sharing percentages.⁵⁸

Utilization of digital ticketing has numerous benefits that are already being utilized and seen through the use of QR codes. These are a lot harder to replicate and certainly provide the benefit of contactless mobile delivery to increase safety and convenience of patrons.⁵⁹ However, NFT ticketing on a blockchain network would provide added benefits such as security for ticket purchases on the blockchain encryption and rights management through smart contracts that enforce rules encoded into them.⁶⁰ NFT tickets would ultimately put more control in the hands of the ticket issuer and ensure equitable and fair pricing for all purchasers.⁶¹

⁵⁸ Akash Takyar, *How Can NFT Ticketing Disrupt The Ticketing Industry*, LEewayHERTZ, <https://www.leewayhertz.com/how-nft-ticketing-works/>.

⁵⁹ Matt Zarracina, *Reopening venues with contactless blockchain digital ticketing*, IBM (Nov. 11, 2020), <https://www.ibm.com/blogs/blockchain/2020/11/reopening-venues-with-contactless-blockchain-digital-ticketing/>.

⁶⁰ Matt Zarracina, *Reopening venues with contactless blockchain digital ticketing*, IBM (Nov. 11, 2020), <https://www.ibm.com/blogs/blockchain/2020/11/reopening-venues-with-contactless-blockchain-digital-ticketing/>.

⁶¹ Matt Zarracina, *Reopening venues with contactless blockchain digital ticketing*, IBM (Nov. 11, 2020), <https://www.ibm.com/blogs/blockchain/2020/11/reopening-venues-with-contactless-blockchain-digital-ticketing/>.

B. General Recommendations on Implementation of NFT Ticketing Unrelated to Intermediaries

Although blockchain platforms for ticketing purposes⁶², or even NFT tickets themselves⁶³, are not a novel idea, it is still a relatively new concept that this paper advocates should be utilized for live events. Venues and artists could further expand NFT tickets by attaching bonuses to the NFTs themselves, which would benefit fans as well as the show's organizers. These added bonuses could give fans a more personalized experience while monetarily benefiting all parties involved. For example, artists could stipulate that certain NFTs would include meet and greets, VIP access to certain shows, or pre-releases of recorded albums. "Owning an NFT does not equate to owning the underlying asset itself . . . [so] the purchaser . . . will not necessarily enjoy rights such as copyright of the underlying asset, which often remains with the creator of the NFT."⁶⁴ However, the purchaser would benefit from whatever added value the artist chooses to add onto the NFT ticket, and the artist would monetarily benefit from its initial purchase and resale. Artists could also financially benefit by encoding royalties into subsequent sales of their tickets if a primary ticket holder decides to resell.

Alternatively, NFTs could discourage scalper behavior by stipulating that the artist would receive the financial gain of a ticket resold for an amount higher than its fair market value. This would de-incentivize parties from buying tickets solely for the purpose of reselling them at

⁶² Jordan Teicher, *Will blockchain rock the event ticketing industry?*, IBM (June 5, 2018), <https://www.ibm.com/blogs/industries/could-blockchain-rock-the-event-ticketing-industry/>. Companies like IBM have already created a platform called "True Tickets" to "revolutionize ticketing" by selling tickets on a blockchain platform to reduce fees, eliminate fraud, create space for more dynamic and personalized relationships between venues, artists and fans.

⁶³ Some examples of NFT ticketing companies are Dystopia Labs and Yellowheart. These companies have already created platforms for NFT ticketing and are selling them for a variety of live entertainment shows. DYSTOPIA LABS, <https://dystopialabs.com/>; YELLOW HEART, <https://yh.io/>.

⁶⁴ Katherine Roe, Chris Whittaker, Dan Jewell, Scott Thiel, *Non-fungible tokens: What are the legal risks?*, DLA PIPER (Oct. 18, 2021), <https://www.dlapiper.com/en/us/insights/publications/2021/09/non-fungible-tokens-what-are-the-legal-risks/>.

higher values. If they are not the ones pocketing the money, then they do not have a use for buying and reselling for higher values. The only people reselling tickets would be the ones who genuinely wanted to attend but for unforeseen circumstances could not make it anymore. They would get their money back for the face value, and anything extra would go to the artist. That way people would know if they are paying for a higher-value ticket, and if they chose to do so, they would know it is going back to the event space or artist rather than an intermediary party.

Another recommendation is to encode halting mechanisms into the NFT in the event that it is stolen. Even if an NFT ticket is stolen or hacked from someone's digital wallet, which is highly unlikely given the secure nature of blockchain technology, the rightful owner of the NFT could somehow report it to the venue or on the blockchain. If someone tries to use the stolen NFT ticket, the venue would not let them in or allow the ticket to be used. This would eliminate the purpose of stealing because stolen tickets would automatically lose their value, which would de-incentivize hackers from stealing NFT tickets at all if they cannot resell them.

NFT ticketing is especially valuable to live entertainers. As a newer type of technology, the whole notion of NFTs creates many skeptics who do not fully agree with high values being placed on ownership of a digital asset that can easily be copied and shared. If you are an artist selling an NFT of an oil painting, buyers may want the physical oil painting to hang on the wall, and NFTs in that sense cannot necessarily satisfy that desire. For tangible work, tokenizing a work does not necessarily prevent the item from being downloaded, but it ensures that there is only one original assigned one person.⁶⁵ Smart contracts can clearly outline rights associated

⁶⁵ Dinusha Mendis, *When you buy an NFT, you don't completely own it – here's why*, WORLD ECONOMIC FORUM (Aug. 27, 2021) <https://www.weforum.org/agenda/2021/08/digital-art-what-do-you-actually-own-when-you-buy-an-nft>.

with that NFT and can be as specific or broad as they want it to be.⁶⁶ However, NFT ticketing can provide a way to tokenize the means of having the intangible experience of seeing and hearing a live show.

III. COUNTERARGUMENTS AND CONCERNS

Despite all of its potential benefits, NFT ticketing does not come entirely without concern. First, the primary and secondary market industry has resulted in huge intermediary ticketing companies that dominate the ticketing space, such as Ticketmaster, Stubhub, Vividseats, etc. These large companies are not likely to throw up their arms and surrender to new technology that directly threatens their entire business models.⁶⁷ Even though blockchain technology can potentially eliminate the need for intermediaries, these companies may still find space in NFT ticketing through utilization of consortium blockchains, such as Hyperledger⁶⁸, to combat assertions of anti-competitive practices. These types of permissioned platforms allow multiple organizations to govern a blockchain platform and collaborate together.⁶⁹ If large, intermediary companies and venues participated collaboratively on blockchain consortiums, there could be more transparency in terms of where tickets are going and how much they are being bought and sold to allow for more equitable competition.

⁶⁶ Dinusha Mendis, *When you buy an NFT, you don't completely own it – here's why*, WORLD ECONOMIC FORUM (Aug. 27, 2021) <https://www.weforum.org/agenda/2021/08/digital-art-what-do-you-actually-own-when-you-buy-an-nft>.

⁶⁷ As previously mentioned, this essay focuses on a consumer-based and venue-based approach. However, an entire, separate essay could certainly be written about the ways in which intermediary companies, such as Ticketmaster, can also use NFT ticketing in combating alleged monopolistic-like behaviors. That type of paper would dive deeper into the complaint allegations and subsequent filings concerning other relevant statutes and case law. Intermediary companies as a whole could also utilize blockchain technology in various ways to stay competitive through utilization of their resources, reputations, and general capabilities. Although that topic is outside the scope of this paper, this essay is not purporting that it simply cannot be done.

⁶⁸ HYPERLEDGER, <https://www.hyperledger.org/>.

⁶⁹ Diego Geroni, *Private Blockchain Vs Consortium Blockchain*, 101 BLOCKCHAINS (Nov. 3, 2020), <https://101blockchains.com/private-blockchain-vs-consortium-blockchain/#:~:text=Federated%20blockchain%20or%20consortium%20blockchain,to%20private%20blockchains%20as%20well>.

Further, one cannot deny the powerful promotional capabilities and reputations that these companies maintain. With all of their financial and business resources, they are able to attract fans to venues through various means of advertising and promotions. It is fair to say that people who have attended various live shows have at least heard of those companies, if they have not directly bought a ticket from them at least once. Switching to NFT ticketing could initially hurt show attendance in that people simply may not know or hear about a show at a certain venue. Promoting shows and facilitating ticket transactions for venues capable of holding tens of thousands of people is no easy feat. Venues and artists would have to do a significantly more amount of advertising to ensure their venues are filled to capacity and generating the same amount of income they would have if they used a popular intermediary company for handling the ticket sales.

Aside from a business perspective, NFTs and blockchain technology as a whole comes with problems associated with societal equity. Since it is all still relatively novel technology, many people do not understand how it works. There is an overall lack of education and understanding surrounding blockchain and the new use of NFTs. With the understandable skepticism surrounding this newer technology, there would need to be an increased effort in promoting blockchain and ensuring that the general public had a better understanding of its basic features. Additionally, utilization of blockchain platforms and buying and selling NFT tickets would require use of a smart phone, or at minimum internet access on some kind of device. Not everyone has easy access to this, so if all ticketing switched to NFTs, it may exclude portions of the population who want to attend live shows but may not have internet capabilities easily accessible to them.⁷⁰

⁷⁰ Linda Poon, *There Are Far More Americans Without Broadband Access than Previously Thought*, BLOOMBERG (Feb. 19, 2020), <https://www.bloomberg.com/news/articles/2020-02-19/where-the-u-s-underestimates-the-digital->

CONCLUSION

In a digital era that focuses on convenience and efficiency, technology can certainly merge with the notion of past nostalgia. NFT ticketing has the potential to guarantee authenticity and fair prices while simultaneously providing all participants with more personalized experiences and monetary gains. If NFT tickets can serve the myriad of seemingly divergent interests of venue, entertainers, and attendees without the need for any intermediary to impose on those interests, then all parties walk away satisfied. This would directly mitigate notions of anti-competitive behaviors if intermediaries were not the ticket distributors and price determinators. Further, lawmakers would not have a need to regulate scalpers' behavior provided that the NFT smart contracts created rules around ticketing buying and selling that could not be altered. NFTs could act as a means of preventative care in solving some of the current issues at their root, which would be more direct than legislations trying to create laws that deal with symptoms, or consequences, of current ticketing intermediary behavior.

NFTs have the potential to completely change the landscape upon which participants buy and sell tickets by allowing for increased collaboration between venue spaces, artists, and fans. The possibilities are endless in terms of what NFT creators can choose to encode into the smart contracts governing the NFT tickets. Provided that purchasers are given full disclosure of all bonuses and limitations, NFT tickets could create more personalized experiences for fans while monetarily benefiting venues and artists, leaving all participating parties with a happy, middle ground.

divide. In 2020, an estimated 20 million Americans still did not have access to high-speed internet, with many of those people living in rural, poor populations.