

Written Testimony of Franz Nicolay
Bicameral Spotlight Forum
**“Corruption Takes Center Stage: How the Live Nation – Ticketmaster Settlement
Threatens Antitrust Enforcement”**
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Good afternoon. My name is Franz Nicolay; I’ve been a professional touring and recording musician for almost thirty years. I’ve played on almost two hundred records and over two thousand concerts all over the world, as far as Siberia, Mongolia, Australia, and China; I’ve played Carnegie Hall and The Tonight Show; CBGB and no-name punk houses. I’ve taught at UC–Berkeley and Columbia University, and am currently on faculty in music and writing at Bard College; The New Yorker called my most recent book “one of the most honest...books ever published about the rock and roll life style.”

Those are my credentials, in brief—I’m a rock and roll lifer with a sideline in writing and teaching. That doesn’t mean I expect anyone in this room to know my name! The music industry, obviously, is always going to focus on the Taylor Swifts and Bruce Springsteens, but the monopolistic forces that control the industry equally affect the broad popular music middle class, the non-famous music workers who have been the focus of my writing and my own lived experience. When we talk about the US economy, the headlines focus on the biggest firms, but we all understand that the effects are felt by the millions of semi-anonymous individual entrepreneurs and small businesses—the same is true in the music economy.

I have also, because my career began in the late 1990s at a time of peak recorded-music profits, witnessed the shift from an industry in which live performance—touring—was a loss leader meant to promote record sales, to a contemporary one in which albums are given away, practically speaking, for free on streaming services, to promote our shows. Our business today lives and dies on ticket sales, and the merchandise we sell at those concerts. My personal income from music over the last five years, post-pandemic, has averaged about 10% from record royalties and 90% live-performance and non-album merchandise income (T-shirts, posters, and so on). For the band I spend most of my time with (though I’m speaking here as an individual, not a representative of any particular group), the divide is even starker: we average 5% of the band’s income from record royalties, and 95% from touring and merchandise. We aren’t in the recording business; we’re in the performance business.

This also means we’re in the repeat-customer and customer-service business. Being in a rock band in the 21st century is not the Dionysian bacchanalia conjured up by the term “rock star”—those of us lucky enough to do this are middle-class proprietors of small businesses which we’ve built over many

years, and which depend, like any small business, on maintaining a healthy relationship with loyal customers—or, as we call them, fans. That means we're not in the business of squeezing every penny out of them at every opportunity, and maximizing *our* profit in every transaction: what the middle-class musician wants is not a fan who spends \$2000 for a stadium concert once, but one who can afford a ticket with enough left over to buy a T-shirt and a poster, a couple drinks (which benefits the venue), and has the kind of good time that makes them want to come back next year when we return. They want to feel like we're in this together, band and audience, from a place of mutual respect, not that their love for what we do is being exploited.

We're like the local general store in a small town: we may be the only place that offers the things our friends and neighbors need, but that doesn't mean we want to take advantage of them—we want them as friendly, loyal repeat customers, who feel themselves to be members of the community we establish through our music.

But we, the bands and musicians are also, to fans, the face of ticket sales. So if concert tickets sell out in seconds and instantly appear on secondary markets for five times the price, or if mysterious fees add twenty or thirty percent at checkout, they can't complain to Ticketmaster—they come to our Facebook page. So, business practices we can't control hurt our crucial relationship with our fan community.

For example: due to new post-pandemic Ticketmaster policies, a fan who wants to attend a concert, a pre-show meet-and-greet, and a merchandise bundle, must pay *three separate fees*—including fees for transactions which, in the case of merchandise, they have no role in fulfilling—rather than one fee for a one bundled transaction. Eventually—and this took years—we found a workaround through a subscription fan club. But this, too, involved difficult explanations to aggrieved fans who thought we were saying they had to purchase a subscription to the band to receive this common-sense benefit.

In a healthy competitive market, with multiple independent venues, promotion, and ticketing options, predatory fee schemes—they are called fees, but they are effectively taxes—could be avoided without the burden falling on the relationship between artists and their audiences.

But live music hasn't been a healthy competitive market. Instead, a vertically-integrated corporation that controls venues *and* tour promotion *and* ticketing *and* artist management, to the almost total control of many music markets, is, to a comical degree, the epitome of the kind of monopolistic power that anti-trust law was created to address. We, as artists, simply don't have the range of city-to-city, venue-to-venue choices that would constitute a healthy competitive market, as non-Live Nation venues

are consolidated or forced out of business, as non-Ticketmaster options are gobbled up or fall victim to venue exclusivity contracts, or as conditions for fans and artists are degraded as independent venues feel pressured to raise fees and drink prices, and adopt other extractive Live Nation policies to compete.

It's a problem of affordability, in an economic climate which, through drastically increasing gas prices, airfare, postage and international shipping fees for merchandise, and hardening borders, is making the touring on which our livings depend increasingly unaffordable for musicians. And that increased overhead, plus the extractive policies laid out in the reports and testimonies under consideration here, has a corresponding effect on affordability and access for fans.

We ask that ticket resale and speculation be capped at or near face value, as is common in Europe, so that our fans are not being taken advantage of (at no benefit to us, the artists). We ask for *full* transparency about fees, going further than the floor set by the FTC rule, so fans are aware of who is responsible for high ticket prices. Hopefully, the remedies phase of the lawsuit results in a break up, not just separating Ticketmaster from Live Nation, but also separating the venue and artist management businesses from tour promotion.

Either way, we ask Congress to consider legislation to structurally separate the companies, in the name of allowing a vibrant musical ecosystem to flourish without being choked out by overwhelming and impersonal corporate power, divorced from the intimate relationship between musician and audience that is the core of this music—a music and community which is one of the great cultural innovations and inheritances of the United States, and which we owe it to ourselves to nurture.

Musicians relish the feeling of ourselves as small-capitalist entrepreneurs in the most literal sense. When I've been on solo tours, I love the feeling of counting my pay at the end of the night, the ability to feel the weight of an honest day's work of driving, of loading equipment and merchandise in and out, of performing, of working the dry-goods mart at the back of the bar. The shows may get bigger, but the feeling is the same. We simply want to be able to retain and manage that relationship, between musician and audience, without the influence of extractive corporate power. We try to do business in a sustainable way, that embodies respect for fans rather than squeezing every last dollar from, and we want the opportunity to partner with companies who share those values.

Thank you for your time, and I welcome any questions and clarifications.