

# Ticketmaster Reaches Settlement with Ticket Broker over Unauthorized Use of Automated Bots

**New Media and Technology Law Blog** on July 24, 2019

In early July, Ticketmaster reached a favorable settlement in its action against a ticket broker that was alleged to have used automated bots to purchase tickets in bulk, thus ending a dispute that produced notable court decisions examining the potential liabilities for unwanted scraping and website access. ([\*Ticketmaster L.L.C. v. Prestige Entertainment West Inc.\*](#), No. 17-07232 (C.D. Cal. Final Judgment July 8, 2019)).

In the litigation, Ticketmaster alleged that the defendant-ticket broker, Prestige, used bots and dummy accounts to navigate Ticketmaster's website and mobile app to purchase large quantities of tickets to popular events to resell for higher prices on the secondary market. Under the terms of the settlement, Prestige is permanently enjoined from using ticket bot software to search for, reserve or purchase tickets on Ticketmaster's site or app (at rates faster than human users can do using standard web browsers or mobile apps) or circumventing any CAPTCHA or other access control measure on Ticketmaster's sites that enforce ticket purchasing limits and purchasing order rules. Prestige is also barred from violating Ticketmaster's terms of use or conspiring with anyone else to violate the terms, or engage in any other prohibited activity.

As part of the case, Ticketmaster brought a host of claims, including multiple state causes of action as well as federal causes of action, including for copyright infringement, CFAA unauthorized access claims, and DMCA anticircumvention claims. We previously [wrote about an the court's January 2018 decision](#) and its handling of the DMCA and CFAA claims as advanced in Ticketmaster's original complaint.

Subsequent to that decision, the court considered, among other things, Ticketmaster's novel copyright claims against the software bot developer and Prestige. The court's May 2018 opinion ([Ticketmaster LLC v. Prestige Entertainment West, Inc.](#), 315 F. Supp.3d 1147 (C.D. Cal. 2018)), which denied defendant's motion to dismiss the amended complaint, is particularly interesting as it addressed those claims. Ticketmaster alleged that the software developer, in the course of developing the ticket bots that were allegedly used later by Prestige to purchase tickets, must have downloaded, copied and stored the pages and code associated with Ticketmaster's website and mobile app on its local systems. Ticketmaster claimed that the sophistication of the bots – which allegedly enabled Prestige to evade Ticketmaster's multilayered security measures and launch thousands of concurrent and recurring ticket reserve requests, speedily regenerate new ticket reserve requests and mask bot behavior – could not be engineered without first accessing the website and app code.

The court noted that copyright protection for a website may extend to both the screen displays and the computer code for a website and stated that Ticketmaster had sufficiently alleged that the pages and code of the websites (e.g., the numerous proprietary functions and features that Ticketmaster has built into its website and mobile app) contained protectable content. The court stated that the act of downloading and storing the pages and code of a website qualified as making a "copy" under the Copyright Act because the pages and code become fixed on a hard drive, from which they could later be viewed and reproduced, citing the [Ninth Circuit's Oracle decision](#), which had found infringement of the reproduction right when a software support provider downloaded and maintained copies of a software company's program on the provider's own computers, in excess of the original customer's license rights.

With the foundation of a viable direct infringement claim against the software developer, Ticketmaster advanced a secondary copyright infringement claim against Prestige, alleging that it had induced or encouraged the software firm that created the ticket bots to directly infringe Ticketmaster's website displays and code.

Following the May 2018 decision, Ticketmaster reached a [settlement](#) in November 2018 with the software firm that allegedly developed and updated the bot software at issue, setting the stage for the current resolution of claims against the remaining defendants. Under this prior settlement, the software company agreed to an injunction prohibiting it from, among other things: creating ticket bot programs to reserve or purchase tickets on Ticketmaster's site or app and from exceeding web page request limits, circumventing CAPTCHA or other measures to distinguish between bot and human activity, creating fake accounts or violating Ticketmaster's copyrights in the course of using Ticketmaster's site.

Thus, the settlement with Prestige this past month brings an end to this important litigation which should be kept in mind when evaluating situations of unwanted web scraping.

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