



November 17, 2005

Privacy Commissioner of Canada  
112 Kent Street  
Place de Ville  
Tower B, 3rd Floor  
Ottawa, Ontario  
K1A 1H3

Dear Commissioner Stoddart,

**Re: Ticketmaster non-compliance with PIPEDA**

Pursuant to section 11 of the *Personal Information Protection and Electronic Documents Act* (*PIPEDA* or the “*Act*”), we request that you investigate Ticketmaster, a company operating in Canada and headquartered in West Hollywood, California. Based on our review of Ticketmaster’s policies and practices regarding data collection, use and disclosure, we believe that Ticketmaster fails to comply with Principles 8 (Openness), 1 (Accountability), 3 (Consent) and 9 (Individual Access) of Schedule I of *PIPEDA*.

Ticketmaster, an operating business of InterActiveCorp., describes itself as “the world's leading ticketing company, providing ticket sales and distribution.” Ticketmaster acts as a central agent for sports teams, artists, venues and other event providers across Canada. It sells tickets on behalf of these organizations through its box offices, by phone and via its Canadian website, [www.ticketmaster.ca](http://www.ticketmaster.ca). Ticketmaster collects contact, financial, and demographic information about Canadian customers for the stated purpose of operating its website and providing customers with information on products and services that may be of interest to them. It shares customers’ information to varying degrees with a number of different entities, including Service Providers, Event Providers, third party Merchants who advertise on the Ticketmaster website, Non-Ticketmaster Affiliates, and other unaffiliated third parties. Ticketmaster describes its information practices in a “Privacy Policy” available on its website (see Attachment 1).

*Principle 8: Openness*

*4.8 An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.*

*4.8.1: Organizations shall be open about their policies and practices with respect to the management of personal information. Individuals shall be able to acquire information about an organization's policies and practices without unreasonable effort. This information shall be made available in a form that is generally understandable.*

Ticketmaster fails to meet the Openness Principle because it fails to explain its information management practices in a form that is generally understandable. Ticketmaster's detailed Privacy Policy, while readily available on the Ticketmaster website, is excessively long (3,827 words - approximately 3 screens or over 4 printed pages of small font), unnecessarily complicated, and unclear on a number of key issues. A third year law student interning at CIPPIC and CIPPIC's articling student both read the Privacy Policy several times, and even after detailed study, were unable to conclusively state how Ticketmaster collects, uses and discloses its customers' information.

The Privacy Policy is complicated in a number of respects. It applies different rules, found in various places throughout the Privacy Policy, to transactions conducted over the website vs. via call centres, to transactions with Canadian customers vs. US customers, to different kinds of data ("contact", "financial", and "demographic"), and to the disclosure of this data to five different kinds of entities. While the company is free to have as complicated a structure of corporate relations and information flows as it wishes, it must explain this to its customers in a manner that is generally understandable. The current policy does not do so.

For example, despite devoting an entire paragraph to the question of which corporate entities are covered by the Privacy Policy and which are not (para. 2), and despite a series of paragraphs dealing with different types of entities with whom Ticketmaster may share customers' information, it remains unclear to the ordinary person reading the Policy with whom and under what circumstances Ticketmaster shares its customers' information – not to mention what kind of customer information (contact information, financial information and demographic information) is shared in each instance.

Ticketmaster's Privacy Policy is also unclear on what limits it places on affiliate uses of personal information. For example, paragraph 9 notes that the Privacy Policy applies to Non-Ticketmaster Affiliates unless the Non-Ticketmaster Affiliate is an Event Provider or Merchant. The ambiguity of this statement makes it difficult to understand when the policy applies to affiliates. It is equally unclear under what circumstances Ticketmaster shares information with unaffiliated third parties. At paragraph 10, Ticketmaster states: "we may share your contact information if we believe it makes business sense" and "other instances where contact information may be shared" yet it doesn't describe what circumstances are included in these statements.

Ticketmaster also does not appear to have procedures in place to respond properly to requests for access to one's personal information. Its Canadian Privacy Officer stated in response to one such request that the "only third parties with whom [Ticketmaster] shares information are the Event Partners" (see Attachment 2). This statement is inconsistent with Ticketmaster's Privacy Policy, which states that Ticketmaster may share contact information with "Service Providers", "Merchants", "Legal and Administrative" parties, "Non-Ticketmaster affiliates" and Unaffiliated Third Parties.

## *Principle 1: Accountability*

*4.1.3: An organization is responsible for personal information in its possession or custody, including information that has been transferred to a third party for processing. The organization shall use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.*

Ticketmaster discloses information to Service Providers, Event Providers and Merchants to process customer requests. Yet it fails to provide a comparable level of protection for this information while it is being processed by these third parties. Indeed, Ticketmaster expressly disclaims responsibility for personal information that it has disclosed to third parties, stating as follows at paragraph 11:

“Ticketmaster will not be responsible or otherwise liable for any use or disclosure of your contact information by a third party to whom Ticketmaster is allowed to disclose your contact information under this privacy policy.”

### Service Providers

Ticketmaster uses “Service Providers” to complete customer transactions. Ticketmaster’s Privacy Policy states that it “often” enters into confidentiality agreements with Service and Credit Card providers regarding customers’ information (para. 4). Ticketmaster provides no explanation as to the circumstances under which Ticketmaster does not enter into such agreements. CIPPIC submits that Ticketmaster should enter into such agreements with all Service Providers, consistent with Principle 4.1.3. If Ticketmaster transfers its customers’ personal information to a third party for processing, it must require such parties to provide at least as much protection from secondary uses and disclosures as Ticketmaster offers itself.

### Event Providers

Ticketmaster’s Privacy Policy states that it gives customers’ contact information to Event Providers “on [the customer’s] behalf” (para. 6) when the customer purchases a ticket. It also discloses customer financial information to Event Providers “to facilitate “will call” ticket pick-up, dispute resolution and customer service at the event venue on the date of the event” (para.13). This disclosure of contact and financial information constitutes a transfer of information to a third party to process the customer’s order. To comply with the Accountability Principle, Ticketmaster must use “contractual or other means” to provide a comparable level of protection for this information. Yet, Ticketmaster not only fails to protect the personal information transferred to Event Providers, it explicitly states that it does not control Event Providers’ subsequent use and disclosure of a customer’s contact information.

### Merchants

Ticketmaster’s Privacy Policy also states that Merchants may provide offers for goods or services on the Ticketmaster website (para. 7). When a customer elects to participate in a Merchant’s offer, Ticketmaster may “consequently” provide customer contact and financial information to the Merchant. In this context, it appears that Ticketmaster discloses customer

information to the Merchant in order to process the order. As a disclosure made to process the customer's order, it is subject to Principle 4.1.3. Yet, Ticketmaster fails to use contractual means to ensure the protection of the customer's information during processing

To the extent that any of these disclosures do not constitute transfers to a third party for "processing", they require customer consent to specified purposes. In this respect, Ticketmaster also fails to comply with *PIPEDA* (see below).

*4.1.4: Organizations shall implement policies and practices to give effect to the principles, including ...  
(b) establishing procedures to receive and respond to complaints and inquiries;*

Ticketmaster does not appear to have adequate procedures in place to respond to access to information inquiries. In response to one request (see Attachment 3), the Privacy Officer's response (see Attachment 2) stated that unless the inquirer provides Ticketmaster with the events for which she purchased tickets, Ticketmaster could not provide the customer with his or her information and transaction history. Ticketmaster's inability to provide its customer with an accounting of information that it has, even when the customer provides a full name, address and email address is surprising and merits investigation. At a minimum, Ticketmaster should have been able to verify whether it maintains an account on the customer, based on her email address.

### *Principle 3 – Consent*

*4.3: The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.*

*4.3.2: The principle requires "knowledge and consent". Organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. To make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.*

When purchasing tickets online, Ticketmaster customers first must create an account. In the process of doing so, they are informed that their personal information may be shared with the event provider and used for marketing or other purposes by the event provider or by Ticketmaster itself (see Attachment 4). The warning in this context reads as follows:

"By purchasing a ticket to an event, or completing this registration form in order to be able to purchase a ticket to an event or to bid in an auction, you indicate that you consent to Ticketmaster sharing your email address and other information with those involved in the event (e.g., venues, teams, artists' representatives and fan clubs, promoters and leagues), and that you consent to those involved in the event using your information to contact you by email or other means to send you marketing or other messages or using or disclosing your information in other ways. Please contact them directly to learn about their policies. By completing this registration form, you also indicate that you consent to Ticketmaster contacting you by email or other means to send you marketing or other messages and using and disclosing the information you submit, as described in the Ticketmaster Privacy Policy."

When submitting an order online, the customer is warned as follows (see Attachment 5, page 2):

“By purchasing a ticket to this event, you are consenting to Ticketmaster sharing your email address and other information with those involved in this event (e.g., venues, teams, artists’ representatives and fan clubs, promoters and leagues), and you are consenting to those involved in this event using your information to contact you by email or other means to send you marketing or other messages or using or disclosing your information in other ways. Please contact them directly to learn about their policies.

By clicking the "Submit Order" button, you are agreeing to the Ticketmaster Purchase Policy including the Refund and Exchanges and Cancelled Events section, as well as the Privacy Policy.”

The online customer is thus warned of *Ticketmaster’s* possible future uses of her personal information only when creating an account, not when ordering tickets. In both cases, the customer is referred the Privacy Policy to learn more about what they are consenting to by creating the account or making the online purchase. As noted above, the Privacy Policy is so complicated as to fail the test of openness. Moreover, it is unclear on some critical points, such as the circumstances in which and purposes for which it may share the customer’s contact information with unaffiliated third parties (when it “believes it makes business sense”), and the purposes for which it may share a customer’s financial information with credit card issuers, financial institutions or credit card processors these companies’ (“to process transactions and for their other purposes”).

Online customers, however, are much better off than those who call in to purchase their tickets. With respect to customers using Ticketmaster’s Canadian Call Centres, the Privacy Policy states at paragraph 26:

“All information you provide to our Canadian Call Centres may be used and disclosed in the same way that the information you provide to the Site may be used and disclosed by us under this privacy policy or by any third party to whom Ticketmaster is not prohibited (under this privacy policy) from disclosing your information (including, but not limited to, being used in connection with contacting you). Also, if you provide an email address when placing an order through a Canadian Call Centre, then you agree that we may use that email address in order to send you promotional emails and may provide it to Event Providers.”

Yet, call centre customers are not properly advised that their information is to be shared for secondary marketing purposes. Our testing indicated that, during non-business hours when only the “automated ticket agent” was available, there was no notice at all given to customers of the policy quoted above. During business hours, an automated message plays before a ticket agent answers the call, informing customers that information collected during the call is subject to the Privacy Policy. It is then up to the customer to go online (note that the Call Centre provides no other option for accessing the Privacy Policy) and read the Policy, in order to find out that their personal information may be used for secondary purposes.

*4.3.3: An organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfil the explicitly specified, and legitimate purposes.*

As discussed above, Ticketmaster legitimately discloses customer information for essential purposes, required for the operation of the Site and for the processing of transactions. However, disclosures for secondary marketing purposes are not essential and should not be required as a condition of the supply of their services. Ticketmaster is not providing a free service in exchange for which customers agree to allow unnecessary uses and disclosures of their personal information. Customers pay for Ticketmaster's service through a fee per ticket. They should not have to pay again for the service through forced consent to unnecessary uses and disclosures of their personal information.

Ticketmaster allows customers to opt-out (via the website) of receiving promotional emails from it or its affiliates, and from having their information shared with unaffiliated third parties. However, it does not allow customers to opt-out of other non-essential uses and disclosures of their personal information, including disclosure to Event Providers, Merchants and Affiliates (where such disclosure is not necessary in order to provide the ticketing service requested). Ticketmaster's failure to give customers the option of not having their personal information shared with third parties purely for secondary purposes violates s. 4.3.3 of the Consent Principle.

It should be noted that, in paragraph 6 of the Policy, Ticketmaster suggests an alternative for customers to purchase tickets that does not require them to agree to secondary uses and disclosures of their personal information. It states:

“...you may contact an Event Provider directly to learn whether you may purchase tickets to the Event Provider's event anonymously (i.e., without having that Event Provider receive your contact information) by purchasing tickets directly through the Event Provider's box office using cash instead of purchasing through Ticketmaster. Alternatively, you may purchase tickets at a Ticketmaster in-store outlet and not provide any contact information.”

This alternative, however, does not constitute an opt-out of secondary uses and disclosures for customers who cannot take advantage of the in-person purchase option. Ticketmaster's online and telephone services are distinct services, for which an opt-out of secondary uses and disclosures should be available. The fact that customers can purchase tickets directly from Event Providers (where that option exists) or from a Ticketmaster in-store outlet does not relieve Ticketmaster of its duties under s.4.3.3 in respect of its online and telephone ticketing services.

Moreover, even if the in-person option were considered a valid opt-out mechanism for online and telephone purchasers, it is buried so deeply within the Privacy Policy as to be ineffective.

#### *Inadequate opt-out notice and procedure*

As noted above, Ticketmaster does allow customers to opt-out (via the website) of receiving promotional emails from it or its affiliates, and from having their information shared with unaffiliated third parties. However, its opt-out mechanism is inadequate in a number of respects.

First, customers can only opt-out on the website and only after opening an online account. This arrangement forces Call Centre customers to open an online account in order to opt-out. Those without Internet access have no ability to opt-out.

Second, the opt-out option is not adequately brought to the attention of customers. No notice of the opt-out option is given to customers when purchasing tickets online (see Attachment 4) or offline; customers are merely informed of Ticketmaster's Privacy Policy. As noted above, the policy is long, detailed, and complicated. The opt-out is hidden in a paragraph entitled "Contacting you for Offers and Promotions", and is not highlighted in any way. Moreover, it does not provide the customer with an easy, one-step way to opt-out; instead, it instructs customers to:

"visit the "My Account" section of the Site, where you will be given the opportunity to tell us not to use that email address to send you promotional emails (if you register with the Site using a Canadian postal code, please see "Special Provisions Regarding Canadian Call Centres and Customers" below)."

Yet, the "My Account" page offers no opt-out option, and does not clearly identify which of the many links leads to the opt-out page (see Attachment 6). In fact, the opt-out option ("Receive customer service emails only") appears on a linked page entitled "Manage My Alerts", and only at the bottom of the page (see Attachment 7).

Finally, Ticketmaster's opt-out notice is unclear as to whether, by opting-out of receiving promotional emails, the customer is also opting-out of having their personal information used or disclosed for marketing purposes. The opt-out notice makes no reference to policy set out in paragraph 10 of Ticketmaster's Privacy Policy that if customers "are opted out of receiving all promotional emails, we will not share your contact information with unaffiliated third parties".

#### *4.9 Principle 9 -- Individual Access*

*Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.*

In response to an access to information request made by one of its customers (see Attachments 2 and 3), Ticketmaster was purportedly unable to inform this customer of the existence, use or disclosure of her personal information because it files personal information "by event rather than by purchaser." Ticketmaster should at a minimum be able to verify what, if any, information it has on this customer's account. Ticketmaster's failure to inform this customer of the existence, use or disclosure of her personal information is a violation of the Individual Access principle.

*4.9.3: In providing an account of third parties to which it has disclosed personal information about an individual, an organization should attempt to be as specific as possible. When it is not possible to provide a list of the organizations to which it has actually disclosed information about an individual, the organization shall provide a list of organizations to which it may have disclosed information about the individual.*

The customer specifically asked for organizations to which Ticketmaster may have disclosed her information. Ticketmaster's failure to comply with this request is a violation of Principle 4.9.3 of the Individual Access Principle.

In summary, it is our opinion that Ticketmaster's information management practices violate Principles 8, 1, 3 and 9 of Schedule I of *PIPEDA*. Specifically, we submit that violations exist with relation to Ticketmaster's failure to clearly identify what they do with personal information once collected and how information is shared with affiliates and third parties, its failure to protect information transferred to third parties for processing, its failure to obtain adequate consent and its inadequate response to access to information requests.

We await your investigation, findings and response.

Yours truly,

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