



Examining the effectiveness of anti-scalping laws in a United States market

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ABSTRACT

The secondary ticket market has existed for decades. Historically, this industry has been dominated by street scalpers located outside of venues and by local and regional ticket brokers. These individuals often took advantage of uninformed consumers and charged extremely high prices or sold fraudulent or misrepresented tickets. Subsequently, state governments created laws protecting consumers from such behavior. More recently, however, this industry has grown as the Internet has facilitated transactions in a safe and secure environment which has led to the increased legitimacy of the industry. Despite this growth in size and sophistication, existing anti-scalping laws remain. Given the significantly altered form of the industry, it is important to examine the appropriateness of these laws and their effect on current industry practices. The findings of the current study suggest that these laws do little to accomplish what they were originally set out to do: protect consumers. Instead, they serve as minor inconveniences for those engaging in ticket resale and major frustrations for those attempting to enforce the laws as written.

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1. Introduction

The practice of reselling tickets has existed for decades. Historically, this industry has been dominated by those ticket resellers located outside of venues on the day of events (often referred to as “street scalpers”) and by local and regional ticket brokers who often had physical store locations where consumers could come in and purchase tickets. Prior to the precipitous growth of the industry beginning in the 1990s, this industry was not self-regulated and this lack of accountability led to many instances of ticket fraud (counterfeiting and misrepresentation of seat locations) and price gouging (overpricing of tickets and misrepresentation of the market prices for tickets). As consumers filed repeated complaints over these issues, state governments began creating laws which punished unethical resellers.¹ In various places, individual cities have even created ordinances which restrict ticket resale in some form. These state and local laws take various approaches for restricting ticket resale; however, they all do so with the best interests of consumer protection in mind. Overall, while these laws still exist in many places, many states and municipalities have begun to re-evaluate their appropriateness.

The primary impetus behind the re-evaluation of ticket resale laws is the tremendous growth in the secondary ticketing industry in the past decade. Indeed, aided by improving web-based technology, the practice of ticket resale has grown into a multi-billion dollar industry (Belson, 2011; De Atley, 2004; Fisher, 2005; Lacy, 2005; Stecklow, 2006). As such, the industry is

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¹ While the U.S. Supreme Court has heard several cases involving ticket resale, they have repeatedly held that it is a state issue and has resisted the urge to create any federal legislation governing ticket resale (Bell, 2006).

now very much self-regulated with governing bodies, such as the National Association of Ticket Brokers (NATB), overseeing many industry practices and encouraging policies intended to legitimize the industry. The industry has further been legitimized by the presence of several large corporations, including primary ticketing giant Ticketmaster, as active participants in the secondary ticket market (Drayer & Martin, 2010).

However, despite the enhanced image of the industry and several instances of state deregulation of ticket resale, many state and local ticket resale laws remain. While those individuals with a vested interest in the continued growth in the secondary market advocate for a completely open market without any restrictions on ticket resale, there are those who still believe that these laws must remain in the best interests of consumers (Glantz, 2005). However, the laws which are in place in these areas were often written decades ago when the secondary ticket market had a very different structure. Therefore, using a qualitative case study design, the purpose of the current study is to determine the effect of such laws on current industry practices at the three levels of the industry: street scalpers, ticket brokers, and secondary ticketing websites.

2. Review of literature

Ticket reselling, or scalping, has historically been viewed in a negative light, based upon instances of ticket fraud, price gouging, and other unethical practices (Atkinson, 2003; Drayer, Stotlar, & Irwin, 2008; Hoppel & Jennings, 2002). Subsequently, some sport managers have been resistant to large-scale involvement in such resale activities and call for strict enforcement of local and state legislation, as well as implementation of ticketing policies designed to restrict ticket redistribution (Drayer et al.).

However, the ticket resale industry has seen dramatic change in the past decade. Indeed, the advent of the Internet allowed ticket resellers to instantly expand their potential consumer base. This expansion meant that ticket resale was no longer simply a local or even a regional business. Using the Internet, sellers are able to post tickets on a website for anyone with Internet access to see and buyers are able to find tickets from sellers that they previously may have not had contact with. As these sorts of transactions began to occur more often, several web-based companies, led by StubHub, created a platform for buyers and sellers to come together and exchange tickets. The presence of these websites allowed for the continued growth of the industry while further legitimizing the practice of ticket resale by providing a platform for the safe and secure transfer of tickets and money (Drayer & Martin, 2010).

However, as the secondary market has shifted to a largely a web-based industry, some have suggested that existing anti-scalping laws are almost unenforceable (Drayer et al., 2008; Glantz, 2005). Glantz stated that the primary issue with the existing state of anti-scalping laws is the fact that they exist on a state-by-state level. Anyone living in one state who sells to a person in another state (a common scenario in the current state of the secondary ticket market) is able to avoid prosecution of anti-scalping laws. Subsequently, Glantz advocated for a federal ticket resale law which would govern all transactions within and between states.

2.1. Ticket resale laws

Ticket resale laws can be split into two broad categories: acquisition and distribution. The most widely publicized stories reporting the prosecution of ticket resellers typically involve cases of the illegal acquisition of tickets. However, many of these laws, such as simple theft, do not apply specifically to tickets. Of course, individuals found to be stealing tickets, whether for resale or personal use, will certainly be prosecuted. Another example is computer fraud. The recent case involving a ticketing brokerage called Wiseguy Tickets in New Jersey did not involve the violation of any specific anti-scalping laws. Instead, these individuals were charged with conspiracy to commit wire fraud by hacking into various ticketing websites in order to gain access to the best tickets first (Federal Bureau of Investigation, 2010).

The laws most often written specifically for the ticket resale industry involve the distribution of tickets (TicketNews, 2009). These laws address issues of price gouging, place physical restrictions on the locations of ticket resellers, or require individuals to acquire licenses prior to engaging in the practice. The most common of these laws place restrictions on the price of the ticket (TicketNews). While it is legal anywhere in the country to sell tickets at or below the printed price on the ticket, many states have created laws which restrict whether or not one can sell tickets above this figure and by how much. As an example of a restrictive state, Massachusetts' ticket resale law allows a maximum ticket markup of only two dollars (plus fees associated with the original ticket purchase) (Vascellaro, 2005). On the other end of the spectrum, Colorado's current (2010) ticket resale laws (or lack thereof) are among the most lenient in the country, with no restrictions on ticket-resale transactions. As a consequence, Colorado ticket resellers can legally charge any amount for secondary market tickets.

Reflecting some municipal and state governments' increasing acceptance of secondary-ticket markets, many anti-scalping laws have been weakened in recent years. For example, in New York prior to 1984, resale for more than two dollars above face value was illegal. In 1984, the allowable ticket-resale markup was raised to five dollars or 10 percent above face value (whichever was greater). In 2001, the allowable margin on secondary tickets was increased to 20 percent above face value, and secondary-market pressures resulted in this allowable percentage being increased to 45 percent above face value soon after (Hoppel & Jennings, 2002). Finally, in 2007, the state introduced a three-year experiment completely deregulating ticket resale. The state legislature is currently debating whether to sign this into law permanently (Sisario, 2010).

Besides restricting the resale price, other laws restrict the location in which individuals may resell. Typically, these laws are geared towards street scalpers in an effort to keep them away from the event venue. Finally, the least common of these

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