



# NEED TICKETS TO AN UPCOMING CONCERT? THE TRUTH ABOUT TICKET SCALPING LAWS

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## 1. Introduction

Have you ever wanted to attend a buzzed about concert but tickets were almost impossible to purchase? Don't worry, you aren't alone! Lisa, like many others, wanted nothing more than to take her family to the "Miley Cyrus as Hannah Montana" concert that was being held in North Carolina. Lisa was unsuccessful in purchasing tickets directly from the venue's website. Lisa was forced to turn to the online ticket resale website known as StubHub. By utilising StubHub's services Lisa was able to purchase four tickets to the upcoming concert for \$149.00 each.<sup>1</sup> In addition to the already overpriced tickets, Lisa was charged shipping and services fees for utilising the website.<sup>2</sup> And you ask ... why was Lisa so upset after finding the tickets she desired? Simply because the face value of each ticket was only \$56.00.<sup>3</sup> That means, Lisa overpaid for each ticket by approximately \$100.00. And to top it off the tickets were sold to Lisa in violation of North Carolina law.<sup>4</sup>

Thousands of people around the United States and the world face this issue. Like Lisa, many are forced to rely on ticket scalpers to get that coveted ticket. Regrettably, people are forced into this situation because ticket suppliers, such as the teams and venues, sell tickets for an amount less than the market will bear.<sup>5</sup> Teams and venues choose this option because they desire sold-out events. This creates a situation of excess demand and the secondary ticket market is inevitably created.<sup>6</sup> Concert, sporting, and theme park tickets often get swept up into the secondary market and the general public is forced to pay higher prices to get a ticket. States have attempted to regulate the secondary ticket market but they have often times been unsuccessful.

This article will inform consumers about the secondary ticket market and its regulation. To start, this article will explain precisely what the secondary ticket market is and why states are able to regulate the industry. Next, the article will examine how the secondary ticket market affects travellers and other consumers. To provide a clear understanding, the article then will categorise several state laws as low, moderate, and strict level regulation and explain the

1. Hill et al. v. StubHub, Inc. et al., 727 S.E.2d 550, 552 (N.C. Ct. App. 2012).

2. *Id.*

3. *Id.*

4. *Id.* North Carolina law barred any resale of tickets with a price of more than \$3 above the original face value.

5. Eric Schroeder, et al. *A Brief Overview on Ticket Scalping Laws, Secondary Ticket Markets, and the StubHub Effect*, Entertainment and Sports Lawyer, Nov. 2012, at 2.

current pattern of shifting levels. Finally, for comparison purposes the article will provide information on the secondary ticket market in various European countries. This article will conclude with a brief explanation of where the future of the secondary ticket market is headed.

## 2. What is the Secondary Ticket Market?

The secondary ticket market, also known as “ticket scalping”, is a popular and growing industry. Currently estimated at \$5 billion a year, the market is predicted to grow at an annual rate of twelve percent.<sup>7</sup> The secondary ticket market encompasses a wide range of services including the traditional ticket broker, internet sites, and individuals commonly known as “ticket scalpers.”<sup>8</sup> Although the secondary ticket market has caused thousands of individuals to pay prices above face value, it is a mainstream practice.<sup>9</sup> As the industry expands, lobbying efforts from both sides continue to grow.<sup>10</sup> Ticketmaster, a primary ticket seller, and StubHub, a secondary ticket reseller, have amped up lobbying efforts throughout the United States to influence state legislatures as well as the federal government to enact laws that favour their respective interests.<sup>11</sup> Although many states still favour strict ticket resale regulation, the trend is moving “toward leniency and acceptance of the practice.”<sup>12</sup> In 2011, the federal government made an attempt to move toward leniency with The Ticket Act (H.R. 950).<sup>13</sup> The Ticket Act sought “to prohibit restrictions on the resale of event tickets sold in interstate commerce as an unfair and deceptive act or practice.”<sup>14</sup> Even though The Ticket Act was not enacted, state legislators across the nation have continued to address the issue of ticket scalping.

State legislatures, using their state police power, first enacted anti-scalping legislation to protect consumers from paying exorbitant ticket prices, to prevent event-goers from being harassed at the venue by ticket scalpers, and to protect consumers from being tricked into buying bogus tickets.<sup>15</sup> Although these concerns are still present today, the creation of the online ticket industry makes it more difficult for states to regulate the conduct of the secondary market.

Studies have shown that the most popular reason individuals have bought resold tickets is because they were unable to find other tickets.<sup>16</sup> Followed by simple chance where they were

6. *Id.* The secondary ticket market may consist of traditional ticket brokers, internet sites such as StubHub, and individuals selling tickets outside of venues.

7. *Id.*

8. Common term used to describe individuals who sell tickets outside of venues prior to the event.

9. Danielle Moore, *The Times They are a Changing: Secondary Ticket Market Moves from Taboo to Mainstream*, 11 Tex. Rev. Ent. & Sports L. 295, 296 (2010).

10. Schroeder, *supra* note 5, at 2.

11. *Id.*

12. *Id.*

13. The Ticket Act, H.R. 950, 112th Cong. (2011).

14. *Id.*

15. Lynn Considine Cobb. *Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events*, 81 A.L.R.3d 655, 655 (1977).; Moore, *supra* note 9, at 296-97.

16. Kate Palmer, *Ticket scalping: Men and high earners more likely to buy from barkers*, YouGov, (Jun. 14, 2013, 9:27 AM), <https://today.yougov.com/news/2013/06/14/ticket-scalping-men-and-high-earners-more-likely-b/>.

outside the venue and decided to buy a ticket.<sup>17</sup> A majority of individuals believe that ticket scalpers should be subject to regulations even when ticket scalping is legal.<sup>18</sup> Others believe that ticket scalpers should be limited in the price to which tickets can be increased.<sup>19</sup>

Sadly every event-goer knows that Ticketmaster is no longer the go-to place for tickets.<sup>20</sup> Normally, tickets sold through original brokers like Ticketmaster are gone within seconds of being released online due to the use of computer-based siphoning programmes. The only option becomes purchasing them through a secondary ticket reseller.<sup>21</sup> The prices are often significantly above those listed by the original broker but consumers are almost guaranteed to find a ticket.

### *How does the secondary ticket market affect travel?*

Many individuals are unaware that the secondary ticket market and the laws relating to it can affect travellers throughout the United States and the world. Each year many individuals travel to attend a sold-out concert starring their favourite musician, to the “big game”, or to take their family to a theme park. Like many locals, they are faced with higher prices and the potential for receiving a fake or invalid ticket. Ticket scalpers have even resorted to using online websites such as Craigslist to sell bogus theme park tickets to unsuspecting travellers.<sup>22</sup> Often times, travellers are unaware that the tickets purchased are fake or invalid until they arrive at the park.<sup>23</sup> Even worse, a sheriff’s office recently uncovered a convicted drug dealer selling fake tickets to tourists because the penalties for such a crime aren’t severe.<sup>24</sup> After purchasing fake tickets, the travellers will have lost money and potentially have a ruined family vacation.

Also, travellers may be faced with differing state regulations in regard to ticket reselling. These differences force travellers into situations they never anticipated. It is essential for travellers to be informed about any ticket reselling laws in their destination and should be aware of the potential scams regarding ticket resale. Individuals may begin to have difficulty trusting ticket sellers and may become leery of any person selling a ticket at a reasonable price. These occurrences don’t affect just one person; they can have lasting effects for all future travellers.

17. *Id.*

18. *Id.*

19. *Id.*

20. Moore, *supra* note 9, at 296.

21. *Id.*

22. Police: Kissimmee man sold fake theme park tickets to tourists, (Jan. 11, 2013, 7:49 AM), <http://www.clickorlando.com/news/Police-Kissimmee-man-sold-fake-theme-park-tickets-to-tourists/-/1637132/18088364/-/hgx82oz/-/index.html>.

23. *Id.*

24. Jason Garcia, *After investing in wristband passes, Disney lobbies to rewrite ticket law*, Orlando Sentinel, (Mar. 29, 2013), [http://articles.orlandosentinel.com/2013-03-29/the-daily-disney/os-disney-nextgen-ticket-laws-20130329\\_1\\_walt-disney-world-ticket-law-theme-parks](http://articles.orlandosentinel.com/2013-03-29/the-daily-disney/os-disney-nextgen-ticket-laws-20130329_1_walt-disney-world-ticket-law-theme-parks).

### 3. Hawaii's Low Regulation

Hawaii, a popular travel destination, demonstrates a low-level regulation state. Currently, Hawaii's ticket resale statutes restrict only the resale of tickets to boxing and mixed martial arts contests. Hawaii Statute 440-17 specifies that "[a]ll tickets of admission to any boxing contest for which admission fees are charged and received shall have printed clearly upon the face thereof the purchase price of same, and no ticket shall be sold for more than the price as printed thereon."<sup>25</sup> In addition, Hawaii Statute 440-13 specifies that "[a]ll tickets of admission to any mixed martial arts contest" should not be sold for more than the face value of the ticket.<sup>26</sup> Besides boxing and mixed martial arts events, Hawaii does not regulate the industry for any other entertainment event or venue.

Further, ticket resellers, known as ticket brokers in Hawaii, have very minor limitations on their ability to resell event tickets. As part of Hawaii's Unfair and Deceptive Practices regulations, a ticket broker may not charge the consumer a fee for the use of a credit card if the fee charged is not disclosed to the consumer.<sup>27</sup> Also, a ticket broker must refund any and all service fees charged for the purchase of a ticket if the event is cancelled.<sup>28</sup> According to the regulation, Hawaii does not require the ticket broker to refund the cost of the ticket if the event is cancelled.

With minimal regulations standing in the way of ticket brokers, Hawaii has become a major locale for ticket resale. Recently, venues attempted to regulate the market by restricting entrance to only individuals with "valid" tickets. Some venues, such as the Hawaii Theatre Center, have stated that "[t]ickets found to be fraudulent or purchased from unauthorized sources will be void ..."<sup>29</sup> The Hawaii Theatre Center limits "authorized sources" to the Hawaii Theatre Box Office and Tickets.com.<sup>30</sup> Further, they specify, "other online ticketing entities, auction sites, and independent brokers are not considered authorized as outlets."<sup>31</sup> It is essential for consumers to find out in advance if the venue will permit tickets purchased through ticket broker websites or individuals.

Overall, Hawaii is deemed to have low-level regulation. At this time, the Hawaiian government has not placed higher restrictions upon ticket brokers and has allowed the market to flourish.

### 4. Florida's Moderate Regulation

Florida, one of the world's foremost travel destinations, has moderate level regulation. Florida does not prohibit the resale of tickets; however the state has several statutes restricting the reseller's conduct. First, Florida restricts "a person or entity that offers for resale or resells any

25. Haw. Rev. Stat. §440-17 (West 2013).

26. Haw. Rev. Stat. §440-13 (West 2013).

27. Haw. Rev. Stat. §481B-15 (West 2013).

28. *Id.*

29. Hawaii Theatre Center, *Ticketing Policies*, <http://www.hawaiitheatre.com/tickets/ticketing-policies/> (last visited Nov. 20, 2013).

30. *Id.*

31. *Id.*

ticket” from charging more than “\$1 above the admission price charged by the original ticket seller ...”<sup>32</sup> Florida places this limitation on “multiday or multi-event tickets to a park or entertainment complex, or to a concert, entertainment event, permanent exhibition, or recreational activities” as well as “[e]vent tickets originally issued by a charitable organisation.”<sup>33</sup> Further, Florida law makes it a first-degree misdemeanour for any person to “counterfeit, forge, alter, or possess any ticket ... designed for admission to ... any sports, amusement, concert, or other facility offering services to the general public, with the intent to defraud such facility.”<sup>34</sup>

Secondary ticket sellers are generally aware that venues and entertainment facilities do not want tickets being sold outside of the primary ticket market. Ticket scalpers aim to make a profit, which cheats the venue out of revenue. Under specific sections of the Florida Deceptive and Unfair Trade Practices Act, any person who “knowingly purchases from the original ticket seller a quantity of tickets to an event which exceeds the maximum ticket limit ... and intends to resell such tickets violates the Act.”<sup>35</sup> This provision allows venues to sue an individual or company that intentionally purchases a large number of tickets in order to resell them for profit.

Since the use of the Internet has become increasingly more common in the secondary ticket market, Florida law also places restrictions on its use. Overall, tickets may be resold online at any price with the original sellers authorisation.<sup>36</sup> Further, if the ticket is being sold online the website operator must disclose certain guarantees. These guarantees include that the operator will provide a full refund of the amount paid including any servicing, handling, or processing fees if the event is cancelled, the purchaser is denied admission, or the ticket is not delivered in a timely manner.<sup>37</sup> Further, the operator must disclose that “it is not the issuer, original seller, or reseller ... and does not control the pricing of the ticket, which may be resold for more than their original value.”<sup>38</sup> The website operator must ensure that the ticket reseller intends to sell in good faith otherwise they may be liable under Florida law.

Although Florida restricts resale conduct, ticket scalpers continue to profit from events held within the state every year. Throughout the state, many scalpers don’t believe the penalties are even a concern and continue to operate their profitable ticket scalping operations. In recent years, a few entertainment events were cancelled due to the severity of ticket scalping. Most recently, Tyler Perry, a director and actor, cancelled all of his upcoming Florida shows in an attempt to take a stand against the practice.<sup>39</sup> Mr. Perry wanted tickets to remain affordable so that everyone could see the show.<sup>40</sup> For some venues and entertainers, ticket scalping has created a personal dislike towards the practice.

32. Fla. Stat. Ann. §817.36 (West 2013).

33. *Id.*

34. Fla. Stat. Ann. §817.355 (West 2013).

35. Fla. Stat. Ann. §817.357 (West 2013).

36. Fla. §817.36, *supra* note 32.

37. *Id.*

38. *Id.*

39. *Furious over scalping, Tyler Perry cancels Florida shows*, Fox News Tampa Bay, (Nov. 15, 2012, 10:41 PM) <http://www.myfoxtampabay.com/story/19601139/2012/09/20/furious-over-scalping-tyler-perry-cancels-florida-shows>.

40. *Id.*

### *Walt Disney World's Legislative Proposition*

Walt Disney World, one of Florida's largest entertainment facilities, recently petitioned the Florida legislature to rewrite the state's ticket laws to cover their new "MagicBands."<sup>41</sup> In Walt Disney World theme parks, "MagicBands" will be replacing "conventional tickets with wireless transmitting wristbands that serve as all-in-one park passes."<sup>42</sup> Under current Florida law these wristbands are not protected. Walt Disney World believes that a change in state law is necessary as ticketing systems advance in its theme parks as well as elsewhere.<sup>43</sup> The language Walt Disney World hoped to implement was contained in a bill before the Florida House of Representatives. It was intended to stop the fraudulent sale of theme park passes.<sup>44</sup> Unfortunately Florida has become a source for criminal theme park ticket reselling. If it had passed, the legislation would have redefined "multiuse tickets" to include any form of "passes" designed for admission.<sup>45</sup> The current law covers theme park passes valid for admission to more than one park or on more than one day however, it is aimed towards the conventional printed tickets.<sup>46</sup> Currently, the "MagicBands" are not covered under Florida law, which could lead to a whole new source of resale issues for the state and Walt Disney World.

The proposed legislation extended further in an attempt to change current law. At the moment, it is illegal to resell multiuse passes that have been used at least once only if the ticket contains the printed phrase "nontransferable; it must be used by the same person on all days."<sup>47</sup> Walt Disney World looked to flip the requirement and make it illegal to sell any pass, unless "the ticket or venue owner's website clearly say the pass may be used by more than one person."<sup>48</sup>

Further, there was legislation that wanted to increase penalties for any individual who fraudulently resold tickets to parks or other entertainment venues.<sup>49</sup> Currently the fine for reselling tickets in violation of the law is no more than \$500 for a first offence.<sup>50</sup> The legislative change would have increased the penalty to a maximum of \$10,000 for a first offence and repeat violations would constitute a felony rather than a misdemeanour.<sup>51</sup>

The proposed legislation had much support in the Florida Legislature as well as amongst other theme park venues in Florida.<sup>52</sup> However, there were consumer and free-market activists attempting to defeat parts of the bill.<sup>53</sup> Overall, if the bill had passed it would have dramati-

41. Garcia, *supra* note 24.

42. *Id.*

43. *Id.*

44. *Id.*

45. H.R. 1353, 23rd Leg. (Fla. 2013).

46. Fla. §817.36, *supra* note 32.

47. Fla. Stat. Ann. §817.361. (West 2013).

48. Garcia, *supra* note 24.

49. S.B. 0394, 23rd Leg. (Fla. 2013).

50. Jennifer Curington, *Senate advances bill to crack down on theme-park ticket fraud*, Orlando Sentinel (Apr. 9, 2013), [http://articles.orlandosentinel.com/2013-04-09/business/os-disney-ticket-legislation-20130409\\_1\\_theme-park-ticket-fraud-senate-advances-bill-alan-hays](http://articles.orlandosentinel.com/2013-04-09/business/os-disney-ticket-legislation-20130409_1_theme-park-ticket-fraud-senate-advances-bill-alan-hays).

51. *Id.*

52. Garcia, *supra* note 24.

53. *Id.*

cally changed the way Florida dealt with the secondary ticket market. However, it is safe to say that Walt Disney World will most likely not give up on changing Florida law to benefit and protect their new technology.

## 5. Georgia's Strict Regulation

Georgia practises strict regulation and has implemented a number of laws regarding resale of tickets. Although strict, Georgia does not prohibit outright the resale of tickets. Under Georgia law, it is unlawful for anyone to resell tickets unless they have received a licence from the state.<sup>54</sup> This requirement permits only licensed ticket brokers to sell tickets of admission to any entertainment venue or event. Further, Georgia permits a service charge of no more than \$3.00 when an “authorized ticket agent through places of established business” sells the ticket.<sup>55</sup> These requirements help the state regulate the resale of tickets and provide a method for ticket brokers to be held responsible for such sale.

In addition, Georgia protects the venue or event operator by specifying that they may contractually restrict the resale of a ticket to an event by placing notice of the restriction on the back of the ticket.<sup>56</sup> This allows operators to control the type, quantity, and/or quality of tickets being resold. Certain entertainment events benefit greatly from selling tickets only through their sales offices and in those cases Georgia law provides a method for the event venue to restrict the resale of tickets outside the desired market. Also, an event operator may place a restriction on specific seating areas, suites, or individual seats.<sup>57</sup> Essentially the event operator may restrict individuals from reselling specific sections or seats if the tickets were received for a specialised reason.

As previously stated, Georgia law requires an individual or company to obtain a ticket broker licence in order to resell event tickets within the state. In order to become an authorised ticket broker, the individual or company must comply with several requirements. These requirements range from maintaining a permanent office or place of business within the state; applying and paying a \$500 annual fee to the state commission; and paying all required local taxes.<sup>58</sup> Further, Georgia law prohibits any individual who has been convicted of a felony and has not had his or her civil rights restored from being a ticket broker or general manager of a business engaged in ticket brokerage.<sup>59</sup>

In an attempt to ensure consumer awareness, Georgia law requires licensed ticket brokers to post policies in a manner accessible to the consumer. The ticket broker must visibly post at its place of business the “terms of the purchaser’s right to cancel the purchase of a ticket from a ticket broker.”<sup>60</sup> In addition, the ticket broker must disclose to the purchaser the refund policy should the event be cancelled and disclose in writing the difference between the face value

54. Ga. Code Ann. §43-4B-25 (West 2013).

55. *Id.*

56. *Id.*

57. *Id.*

58. Ga. Code Ann. §43-4B-26 (West 2013).

59. Ga. Code Ann. §43-4B-27 (West 2013).

60. Ga. Code Ann. §43-4B-28 (West 2013).

and the amount charged.<sup>61</sup> The law requires that the ticket broker must refund any payment received for the purchase of a ticket if the requested cancellation is within 36 hours from the time of purchase and if the return is made more than 72 hours before the event.<sup>62</sup> Next, Georgia law requires that ticket brokers operate and sell tickets only at their permanent place of business or through the Internet.<sup>63</sup> If sold through the Internet, the ticket broker must disclose their licence number with the sale of each ticket in order to further ensure consumer safety.<sup>64</sup> And overall, Georgia requires ticket brokers, who guarantee delivery of a ticket(s), to provide within 15 days a full refund and a refund fee of three times the amount paid for each ticket should the ticket(s) fail to be delivered.<sup>65</sup> These restrictions are designed to be consumer friendly and to ensure better business practices within the secondary ticket market.

Although Georgia law places many restrictions on the business of ticket brokerage, it does allow tickets purchased for personal use to be resold at any price and without meeting the licensing requirements.<sup>66</sup> The law merely prohibits such individuals from selling within 2,700 feet of a venue.<sup>67</sup> Therefore, the ticket must be resold prior to the day of the event and in a location separate from the event venue.

Finally, Georgia law provides that any person who violates the ticket brokerage laws will be “guilty of a misdemeanor of a high and aggravated nature.”<sup>68</sup> This places criminal penalties against the violator and provides the state or city with a method of holding the violator responsible for his or her actions. Several cities throughout Georgia aren’t afraid to arrest individuals for violating its strict ticket scalping laws. In recent years, individuals were arrested for violating ticket-scalping ordinances.<sup>69</sup> Although Georgia law does allow ticket resale, it places strict restrictions on the practice. Georgia aims to keep the practice safe and consumer friendly as well as provide an arena for business growth within the secondary ticket market.

## 6. New York's Changing Laws

New York, along with many other states, is currently in flux when it comes to the secondary market. Beginning in the 1920’s, New York practised a strict regulation policy and imposed limits on the price which tickets could be resold.<sup>70</sup> However, in 2007, New York changed its laws to remove restrictions on the price of resold tickets. New York wanted to encourage the free market to flourish.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Ga. Code Ann. §43-4B-29 (West 2013).

67. *Id.*

68. Ga. Code Ann. §43-4B-31 (West 2013).

69. Steve Crawford, *Richmond County deputies charge 24 with scalping Masters tickets*, The Augusta Chronicle, (Apr. 4, 2012, 2:16 AM), <http://chronicle.augusta.com/news/crime-courts/2012-04-03/richmond-county-deputies-charge-24-scalping-masters-tickets>.

70. Anthony J. Dreyer, *Hold All Tickets: New York Adopts (Yet Another) Ticket Resale Law*, New York Law Journal, 1 (2010), [http://www.skadden.com/sites/default/files/publications/Publications2176\\_0.pdf](http://www.skadden.com/sites/default/files/publications/Publications2176_0.pdf).

The 2007 Ticketing Law, as it was commonly known, removed the long-standing price cap on the resale of tickets.<sup>71</sup> Prior to 2007, the price limit at which tickets could be resold was increased from around 50 cents (in the 1920's) to 20-45% over the original price.<sup>72</sup> In 2007, New York repealed the price cap provisions for a designated period of time in order to investigate its effectiveness.<sup>73</sup> The law contained a "sunset provision" wherein the law would be repealed absent further legislative action in June 2009.<sup>74</sup> In 2009, the New York legislature extended the 2007 law and continued the repeal of price caps until May 2010.<sup>75</sup> In 2010, after fully investigating the effectiveness, the New York Department of State determined that "an open and unfettered secondary market benefits the public as a whole."<sup>76</sup> Despite the New York Department of State's determination, the 2007 Ticketing Law expired in May 2010 due to the legislature's inability to agree on extending or replacing it.<sup>77</sup>

Approximately two months later, New York was able to pass a new ticket law that largely resembled the 2007 Ticketing Law.<sup>78</sup> The 2010 Ticketing Law, which took effect in July 2010, restricted any operator from "denying access to a ticket holder who held a resold ticket to a performance based solely on the grounds that such ticket had been resold."<sup>79</sup> Further, the 2010 law added a restriction on the operator's ability to utilise paperless ticketing unless the operator provided the consumer with a method to transfer the ticket at any price, and at any time, without the operator's involvement.<sup>80</sup> If the operator intends to offer paperless ticketing, the operator is required to also offer transferable tickets, such as a paper ticket or e-ticket.<sup>81</sup> These changes further opened the doors for the secondary market to flourish since venue operators were no longer permitted to restrict entry to only those holding an authorised ticket.

Inevitably, New York law places many restrictions on the event and venue operators. The operators have very little leeway in denying purchasers entry to the event. However, New York provided an exception to this general rule in relation to tickets provided at a discount or for free.<sup>82</sup> If a ticket was provided at a discount or for free as part of a "targeted promotion" to specific individuals or groups, the venue operator could restrict admission to only individuals holding an authorised ticket.<sup>83</sup> Moreover, in order for the exception to apply, the promotion cannot be offered to the general public.<sup>84</sup>

71. *Id.*

72. *Report on Ticket Reselling and Article 25 of the Arts & Cultural Affairs Law*, New York Department of State, February 2010, [http://www.betterticketing.com/articles/Ticket\\_Reseller\\_Report.pdf](http://www.betterticketing.com/articles/Ticket_Reseller_Report.pdf).

73. *Id.*

74. *Id.*

75. *Id.*

76. Dreyer, *supra* note 70, at 1.

77. *Id.*

78. *Id.*

79. N.Y. Arts & Cult. Aff. §25.30.

80. *Id.* Paperless ticketing systems involve a form of admission which purchasers gain admission by presenting the credit card used to purchase the tickets.

81. *Id.*

82. N.Y. §25.30, *supra* note 79.

83. *Id.*

84. *Id.*

Although the 2007 Ticket Law already required operators and licensed ticket resellers to maintain records relating to the resold tickets, the 2010 Ticketing Law expanded this requirement.<sup>85</sup> Currently, secondary ticket sellers must report to the Department of State twice per year on “the total number of, and average resale or average final resale auction price of, all tickets to each ticketed event.”<sup>86</sup> The New York legislature finds that tracking these sales will allow them to regulate the industry and ensure that event-goers are treated fairly.

In recent years, New York, along with other states, has struggled with the use of “bots,” computer programmes used on ticket purchasing websites in order to bypass security measures.<sup>87</sup> These “bots” are used by secondary market sellers to gain an advantage over the general public.<sup>88</sup> Ticketmaster has reported that “bots” have siphoned off “more than 60 percent of the most desirable tickets for some shows.”<sup>89</sup> Ticketing services are now recognising that “bots” are a present force in the ticketing industry. Along with other states, New York banned the use of automated ticket purchasing software.<sup>90</sup> This ban prohibits any person from purchasing tickets using such software. In addition, any individual caught utilising the software can be required to pay a fine ranging from five hundred dollars to one thousand dollars for each violation.<sup>91</sup> Even though these laws are in place, they have been largely ineffective in restricting its use.<sup>92</sup> The industry continues to try and find ways to combat the use of “bots” in order to provide the fan with the first chance to purchase the ticket.<sup>93</sup>

Although these regulations only touch on the major legal changes made by New York thus far, the secondary ticket market continues to push for even greater freedom within the state. New York addresses these issues every few years when the ticket reselling laws are reaching expiration. Overall, New York has chosen to allow the secondary ticket market to flourish and generally only places minor licensing restrictions on the practice. While New York was the first state to pass legislation to protect consumers’ rights in transferring their event tickets, other states have joined in the change.<sup>94</sup>

85. Dreyer, *supra* note 70, at 2.

86. N.Y. Arts & Cult. Aff. §25.25.

87. Ben Sisario, *Concert Industry Struggles With ‘Bots’ That Siphon Off Tickets*, The New York Times (May 26, 2013), [http://www.nytimes.com/2013/05/27/business/media/bots-that-siphon-off-tickets-frustrate-concert-promoters.html?\\_r=0](http://www.nytimes.com/2013/05/27/business/media/bots-that-siphon-off-tickets-frustrate-concert-promoters.html?_r=0).

88. Dreyer, *supra* note 70, at 2.

89. Sisario, *supra* note 87.

90. N.Y. Arts & Cult. Aff. §25.24.

91. *Id.*

92. Sisario, *supra* note 87.

93. *Id.*

94. Albert A. Foer, *Who Owns My Ticket*, The New York Times (Jan. 19, 2012), [http://www.nytimes.com/2012/01/20/opinion/who-owns-my-ticket.html?\\_r=0](http://www.nytimes.com/2012/01/20/opinion/who-owns-my-ticket.html?_r=0)

95. James C. McKinley Jr., *Bill Seeks to Make Resale of Tickets for Benefit Concerts Illegal*, The New York Times (Dec. 12, 2012), <http://artsbeat.blogs.nytimes.com/2012/12/12/bill-seeks-to-make-resale-of-tickets-for-benefit-concerts-illegal>.

### *Charitable Event Legislation*

New York was recently faced with public outrage after ticket scalpers profited from the resale of benefit concert tickets.<sup>95</sup> New York hosted a benefit concert, known as the “12-12-12” benefit concert, at Madison Square Garden for the victims of Hurricane Sandy.<sup>96</sup> This concert, through ticket revenue, was intended to help hurricane victims restore their homes and businesses. Unfortunately, scalpers were able to obtain tickets to the star-studded event. A ticket to the event held a face value of \$150 to \$2500.<sup>97</sup> Although quickly removed, a pair of tickets to the charity event was listed on StubHub for an amount of \$808,500 each.<sup>98</sup> In the end, tickets were being sold on the secondary ticket market for approximately \$10,400 each.<sup>99</sup> Sadly, the ticket scalpers were the greatest beneficiaries and were able to pocket the difference in price.

Due to public outrage a New York state senator submitted a “bill that would make it illegal to resell tickets to charitable events for more than their face value.”<sup>100</sup> The concert promoters would also be required to stamp the ticket with a warning that informs individuals that it is illegal to sell charitable tickets for profit.<sup>101</sup> This change in the law could encourage more charitable organisations to hold benefit events in New York. However, the likelihood of a change is uncertain since New York removed restrictions regarding the price of resold tickets.<sup>102</sup>

## 7. European Ticket Resale Laws

The secondary ticket market is not only present within the United States but has played a major role in ticket sales throughout Europe. Ticket scalping, also known as ticket touting in many European countries, has become prevalent in almost all entertainment and sporting events throughout Europe.

In an attempt to create positive change, the European Union implemented an association known as the EU Secondary Ticketing Association. The association is intended to “guarantee the quality and professionalism of the entrepreneurship of secondary ticket sellers, and to protect the individual and collective interests of its members.”<sup>103</sup> In an attempt to offer the consumer transparency and certain guarantees, the association executed rules of conduct and requirements for the secondary ticket market.<sup>104</sup> The code of conduct and requirements are intended to provide security for the industry as well as to the consumer. Many of Europe’s

96. *Id.*

97. Stephen Rex Brown, *Ticket scalpers making big bucks off 12/12/12 concert to benefit Hurricane Sandy victims*, The New York Times (Dec. 12, 2012, 10:40 PM), <http://www.nydailynews.com/new-york/scalpers-making-concert-article-1.1218497>.

98. *Id.*

99. *Id.*

100. McKinley, *supra* note 95.

101. *Id.*

102. *Id.*

103. EU Secondary Ticketing Association, <http://www.eusta.org/about-eusta.html> (visited Nov. 14, 2013).

104. *Id.*

largest secondary market sellers are members of the EU Secondary Ticketing Association and are bound by the code of conduct and requirements.

As well as EU wide initiatives, individual countries throughout Europe have dealt with the secondary ticket market by utilising an array of methods. On several occasions, German courts have ruled against the secondary ticket market and banned the resale of event tickets. Most recently, a German court banned a secondary ticket website from reselling tickets to a Depeche Mode tour.<sup>105</sup> Also, a German court ruled that the German Soccer Federation could refuse to transfer tickets into the name of the secondary market purchaser.<sup>106</sup> The German court found that the original ticket purchaser should have returned the tickets if they no longer desired to attend the event.<sup>107</sup>

Further with the upcoming 2014 Winter Olympics in Russia, Russian President Putin signed a bill that imposes fines of up to 1 million roubles (\$33,000) per sale of Olympic tickets above their face value.<sup>108</sup> This restriction demonstrates that European nations are aware of the secondary ticket market and hope to alleviate some of the consumer detriment.

Europe, similarly to the United States, is experiencing immediately sold-out shows due to computer-based programmes grabbing up all the tickets upon release. Recently, a Monty Python reunion show in London was sold out within 43 seconds of the tickets being released online.<sup>109</sup> Sadly, fans were unable to purchase the tickets at reasonable prices. For the Monty Python show, there were approximately 5,691 tickets immediately available online through secondary ticket sites.<sup>110</sup> Tickets held a face value of £32 to £162 and were listed for prices ranging from £130 to £1,200 per ticket on secondary market sites.<sup>111</sup> In addition to the Monty Python show, other concert, rugby, ballet, and event tickets have been swept up into the secondary market within minutes of being released. Unfortunately, London's Metropolitan Police has determined that "[t]he lack of legislation outlawing the unauthorised resale of tickets and the absence of regulation of the primary and secondary ticket market encourages unscrupulous practices, a lack of transparency and fraud."<sup>112</sup>

Throughout Europe venues are speaking out regarding ticket resale or "ticket touting" and implementing rules relating to their event sales. Manchester United and Chelsea FC, English professional football clubs, have stated that they are dedicated to removing "ticket touting"

105. *German courts ban Depeche Mode ticket resales*, CMU: Complete Music Update, <http://www.completemusicupdate.com/article/german-courts-ban-depeche-mode-ticket-resales/> (visited Nov. 16, 2013).

106. *German court rules against black market ticket resales*, ESPN FC, (April 20, 2006), <http://espnfc.com/news/story?id=365422&tcc=5901>.

107. *Id.*

108. Scott Antel, *Russia Passes Law Banning Ticket Touting and Regulating Hotel Prices at Sochi 2014*, DLA Piper (Jan. 11, 2013), <http://blogs.dlapiper.com/mediaandsport/2013/01/11/russia-passes-law-banning-ticket-touting-and-regulating-hotel-prices-at-sochi-2014-2/>.

109. Harry Wallop, *Touts making a mint from 'sell out' shows like Monty Python reunion*, The Telegraph (Nov. 29, 2013, 10:30 PM), <http://www.telegraph.co.uk/culture/culturenews/10483844/Touts-making-a-mint-from-sell-out-shows-like-the-Monty-Python-reunion.html>.

110. *Id.*

111. *Id.*

112. *Id.*

from their events.<sup>113</sup> All tickets to a Manchester United or Chelsea FC match are sold through specific authorised retailers and purchasers of any tickets sold outside those retailers may be denied admission.<sup>114</sup> These policies help reduce the number of tickets being sold through the secondary market. However, it's essential for fans to be aware of the policies and avoid purchasing tickets from unauthorised sources.

## 8. What the future holds

The secondary ticket market has been present in the United States for decades and the arrival of modern technology has only entrenched its existence. It seems unlikely that the secondary ticket market will ever decrease or disappear.

As in Europe, many venues and entertainment events have begun implementing their own regulations and restrictions on the secondary ticket market. The National Football League has recently stepped up and made an attempt at preventing the secondary market from price gouging Super Bowl tickets.<sup>115</sup> The league will prevent lottery ticketholders from reselling their tickets by only allowing the tickets to be picked up on game day.<sup>116</sup> If the individual leaves the stadium after picking up their tickets, the ticket will be considered void.<sup>117</sup> The NFL is not the only event organisation or venue that has implemented similar regulations.

In contrast, many states have enacted legislation in an effort to facilitate the expanding market and provide legal recourse for the consumers while other states are still attempting to combat the secondary ticket market. A large number of states are beginning to hope that they can provide “transparency” in the marketplace for consumers, as it seems to be the most reasonable method of regulating the industry.<sup>118</sup> The more consumers are informed of the laws throughout the United States, the better the industry will treat them. And as long as demand for tickets outweighs the supply, the secondary ticket market will continue to flourish and most likely continue to change at a rapid pace.

## 9. Conclusion

Ultimately the secondary ticket market is big business and even though the higher prices are disheartening, the secondary ticket market isn't likely to go away. Consumers must be aware of the risks associated with purchasing a ticket from the secondary ticket market. The most important thing to understand is “when you are buying from a secondary ticket market seller,

113. *Match Ticket Touting*, Manchester United, <http://www.manutd.com/en/Tickets-And-Hospitality/Tickets-And-Hospitality-News/2013/Mar/Ticketing-Touts.aspx> (visited Nov. 15, 2013); *Tout Information*, Chelsea FC, <http://www.chelseafc.com/tout-info> (visited Nov. 15, 2013).

114. *Id.*

115. Teri Thompson and Christian Red, *To avoid Super Bowl ticket scalping, and prevent price gouging, NFL will have lottery winners pick up tickets on game day*, NY Daily News (Sept. 17, 2013, 9:22 PM), <http://www.nydailynews.com/sports/football/nfl-working-cut-super-bowl-scalpers-article-1.1458483>.

116. *Id.*

117. *Id.*

118. Moore, *supra* note 9.

you run the risk of overpaying for the same location of a seat and you run the risk of paying for a ticket that may not be a valid ticket.”<sup>119</sup>

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*The article was originally submitted to the Travel Law Seminar, taught by Professor Joseph Harbaugh, an editor of the Travel Law Quarterly*

119. Eric Waxler, *Group wants ticket re-sale restrictions lifted*, ABC Action News (Mar. 20, 2013), <http://www.abcactionnews.com/dpp/money/consumer/group-wants-ticket-re-sale-restrictions-lifted>.