

# ENTERTAINMENT AND SPORTS LAWYER

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## Idea Submission Impossible? *The Battle between Copyright and Breach of Contract*

BY SHELLY ROSENFELD

“There are only thirty-six fundamental dramatic situations, various facets of which form the basis of all human drama.”<sup>1</sup>

—Georges Politi, *The Thirty-Six Dramatic Situations*

JERRY: So, we go into NBC, we tell them we’ve got an idea for a show about nothing.

GEORGE: Exactly.

JERRY: They say, “What’s your show about?” I say, “Nothing.”

GEORGE: There you go.

(A moment passes)

JERRY: (Nodding) I think you may have something there.<sup>2</sup>

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## PROFILE Outgoing Editor-in-Chief Vered Yakovee

BY TYRRELL DUPEY

Vered Yakovee did not always think she would get into sports law, but had always hoped that she would. “It has always been ‘I need to make this happen,’ instead of ‘It will just happen.’ I worked hard to learn about the industry and to meet people.” Her hard work has paid off. Today, Yakovee is a prominent lawyer in the areas of sports and insurance coverage law.

Even when applying to law school, Yakovee did so because she hoped she would work in sports, which were always a part of her life. In high school, playing basketball was central to her assimilation after she moved from Athens, Greece, to Los Angeles after ninth grade. In college, she interned for San Diego’s ABC affiliate in the sports department, and subsequently worked as a runner for ESPN’s X Games. After obtaining her Juris Doctorate from the University of Southern California (USC), Yakovee continued on that path, including volunteering for the Southern California Outrigger Racing Association (SCORA).

Yakovee first started volunteering for SCORA as its insurance coordinator. She read insurance policies for adequacy and figured out what an insurance

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## A Brief Overview on Ticket Scalping Laws, Secondary Ticket Markets, and the StubHub Effect

BY ERIC SCHROEDER, JOSH FISHER, JOHN ORBE, AND JOHN BUSH

### BACKGROUND AND THE ECONOMICS OF TICKET SCALPING

The forces of supply and demand interact to help set the price on goods. In a perfect market situation, a good that is in limited supply, such as a ticket to a baseball game, would be sold by the supplier for the highest price that the market can stand. However, ticket suppliers (i.e., teams) routinely sell tickets for less than the highest price the market can stand. There are various reasons for this practice, including the desire to have consistent sellouts or develop a sustainable fan base.

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## Overview on Ticket Scalping Laws

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Because the tickets are sold for less than the market can bear, a situation of excess demand is created. The existence of the excess demand is responsible for the secondary ticket market.

Traditional ticket brokers, Internet sites such as StubHub, and individuals selling tickets outside of venues comprise what is known as the secondary ticket market. Despite attempts to regulate the secondary ticket market, which is sometimes referred to as scalping, the market continues to grow. Some estimate that the secondary ticket market is a \$5 billion dollar industry, with a forecasted annual growth rate of 12 percent. As the monetary value of the industry increases, so do lobbying efforts by both sides. Ticket companies such as Ticketmaster and large ticket brokers such as Stubhub have stepped up their efforts in statehouses across the nation and inside the Beltway, as part of an effort to align the laws with their respective interests.

TRADITIONAL TICKET BROKERS, INTERNET SITES SUCH AS STUBHUB, AND INDIVIDUALS SELLING TICKETS OUTSIDE OF VENUES COMPRISE WHAT IS KNOWN AS THE SECONDARY TICKET MARKET.

### STATE-BY-STATE SUMMARY OF CURRENT TICKET SCALPING LAWS

The current trend in ticket scalping regulation is toward leniency and acceptance of the practice. This movement has taken hold in Congress where The Ticket Act (H.R. 950) seeks “to prohibit restrictions on the resale of event tickets sold in interstate commerce as an unfair or deceptive act or practice.” Although The Ticket Act has remained dormant in committee, the issue of ticket scalping has received greater attention from state legislatures across the nation in recent years. Although some states attempt to regulate scalping by introducing buffer zones around venues or requiring brokers to be registered, very few states completely ban ticket scalping. Instead, many states, such as Missouri, Minnesota, and Connecticut, have recently repealed their prohibition against scalping. (Note that some cities have local municipal ordinances which restrict ticket scalping beyond state regulations.) Additionally, state bills attempting to regulate the secondary ticket market further are generally unsuccessful as recently occurred in Colorado, North Carolina, and Arkansas. It remains to be seen what outcome awaits legislation pending in Massachusetts, New Jersey, Tennessee, and Minnesota. However, given the current trends toward allowing scalping, any attempts to ban the practice are likely to be unsuccessful. For a brief state-by-state analysis of current ticket scalping laws, see the chart beginning on page 27.

### RECENT LITIGATION AGAINST STUBHUB REGARDING TICKET SALES IN THE SECONDARY MARKET

To date, two court decisions consider StubHub’s business practices and whether StubHub is immune from suit for enabling ticket scalping under Section 230 of the Communications Decency Act. The cases are summarized below.

#### *NPS, LLC et al. v. StubHub, Inc. et al., No. 06-4874-BLS1, 25 Mass. L. Rptr. 478 (2009)*

**Summary.** Defendant StubHub, which provides a website through which people can resell tickets, including to NFL games, moved for partial summary judgment on the claim of the plaintiff, the New England Patriots (Patriots), who, along with their co-plaintiff, had seating rights in NFL games, claimed that StubHub intentionally interfered with advantageous relations. Among other things, StubHub argued that the immunity of the Communications Decency Act (CDA) shielded it from liability to the Patriots. The Massachusetts Superior Court denied the motion, holding that immunity under the CDA did not apply and that the Patriots could still establish the elements of their claim for intentional interference with advantageous relations.

**Relevant Facts.** The Patriots provide tickets to their home NFL games in exchange for payment. Each ticket styles itself as a license that cannot be transferred without the consent of the Patriots. The Patriots had a relationship with TicketExchange wherein a season ticket holder to Patriots games could submit his ticket for resale to another interested attendee. Upon identification of a buyer:

1. The former ticket holder would be reimbursed for the cost of his ticket,
2. The former ticket holder’s previously issued ticket would be electronically voided,
3. The new ticket holder would be issued a new ticket, and
4. The new ticket holder would pay the cost of the ticket plus a nominal fee.

StubHub provides a website through which people can sell their tickets to those willing to buy them. The seller is required to send the ticket directly to the buyer. StubHub, which is not licensed by the Patriots to sell tickets, does not ensure that the sale complies with anti-scalping laws. In return for providing its service, StubHub charges a fee based on the final sale price and has a program in place to provide benefits to more frequent resellers of tickets.

The Patriots contended that a number of its fans had purchased tickets through StubHub that were not valid. The Patriots further contended that such invalid tickets damaged the fans’ goodwill toward the team and increased the team’s administration costs. The Patriots also contended that StubHub hid the actual location of seat sales on its website so that the Patriots could not void the seats of those ticket holders who were reselling their tickets through StubHub.

**Procedural Posture.** StubHub moved for partial summary judgment solely on the Patriots’ claim for intentional interference with advantageous relations.

**Legal Analysis.** The Patriots' claim was an amalgamation of (1) tortious interference with contract, and (2) tortious interference with a prospective contractual relationship. The court identified the following elements for this claim:

1. The Patriots had an advantageous relationship with a third party (e.g., a present or prospective contract or employment relationship);
2. StubHub knowingly induced a breaking of the relationship;
3. StubHub's interference with the relationship, in addition to being intentional, was improper in motive or means; and
4. The Patriots were harmed by StubHub's actions.

For purposes of summary judgment, StubHub conceded that a material issue of fact existed as to the second element but contested the other three.

As to the first element, the court found that the Patriots had an existing business relationship with their ticket holders and had a prospective business relationship with people on the waiting list to purchase tickets. As to the third element of improper means, the court found that StubHub's program for more frequent resellers might encourage violation of the state's anti-scalping statute. The court reached this ruling despite StubHub's policy that banned its users from using its service unlawfully. Moreover, the court rejected StubHub's claims that the CDA shield it from liability. The court paid particular attention to the appellate decision in *Fair Housing Council of San Francisco Valley v. Roommates, LLC*, 521 F.3d 1157 (9th Cir. 2008), wherein a website could not apply for the immunity under the CDA, 47 U.S.C. § 230(c)(1), when it provided a search engine that segregated individuals based on unlawful criteria. The Massachusetts Superior Court concluded that StubHub's use of a frequent seller program and apparent knowledge of illegal scalping by those frequent sellers foreclosed StubHub from applying for immunity under the CDA. The court surmised, however, that if StubHub had merely provided a service and knew of scalping through that service, then

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## Current Ticket Scalping Laws

### A STATE-BY-STATE ANALYSIS

#### ALABAMA

Ticket scalpers must pay a \$100 license tax. (Ala. Code § 40-12-167)

#### ALASKA

No state ticket scalping laws.

#### ARIZONA

It is unlawful to sell tickets for more than face value if within 200 feet of the venue, or to change face value of ticket. (Ariz. Rev. Stat. § 13-3718)

#### ARKANSAS

Scalping tickets to high school, college, or charity events is prohibited. Ticket resellers may not mark up prices of tickets to musical events but may impose a reasonable service charge, defined as the greater of a handling charge or a credit card fee. (Ark. Stat. § 5-63-201)

#### CALIFORNIA

Without written permission, may not resell a ticket for more than face value while at the event venue. (Cal. Penal Code § 346)

#### COLORADO

Bill to cap scalping prices failed to pass in 2009.

#### CONNECTICUT

Connecticut's prohibition on ticket scalping was repealed in 2007, and a bill introduced to impose new limits failed to pass in 2011.

#### DELAWARE

May not sell tickets for higher than original price on the day preceding or on the day of an event at the Bob Carpenter Sports/Convocation Center on the South Campus of the University of Delaware or of a NASCAR Race held at Dover Downs, or on any state or federal highway artery within Delaware. (11 Del. Code § 918)



## FLORIDA

Resellers may only charge \$1 more than face value for tickets (1) for passage on common carriers, or (2) to multi-day or multi-event tickets to a park or entertainment complex.

Generally, tickets may be resold at any price on a website if such resale is authorized by the original seller.

Unless authorized by the original seller, a website may resell tickets at any price as long as it makes and discloses the following guarantees:

- A full refund if the event is cancelled, the purchaser is denied entry for reasons other than his own fault, or the ticket is delivered in a way not requested by the purchaser, and this delivery results in the purchaser's inability to attend the event.
- That the seller is not the original issuer, seller, or reseller and does not control pricing. This provision is notable, as it seems to authorize only a website that facilitates third-party transactions (such as Craigslist or StubHub) but not direct resale by ticket brokers. (Fla. Stat. § 817.36)

## GEORGIA

Unlawful for anyone other than a ticket broker to sell tickets for more than face value.

May charge a \$3 service fee when tickets are sold by an authorized ticket agent through places of established business.

Owner/organizer of event may authorize in writing any person to charge a service fee for the sale of a ticket in excess of the face value.

A sponsor of an athletic contest may contractually restrict the resale of a ticket to such contest by giving notice of such restriction on the back of the ticket. In addition, a sponsor may contractually restrict the resale of the right of occupancy of any specific suite, seat, or seating area

by giving notice in writing of such restriction.

Ticket broker requirements:

- Must apply to commission for license and pay \$500 annual fee.
- Must maintain permanent place of business.
- Must disclose difference between face value and amount charged.
- May only sell at permanent place of business, or through Internet.
- Each broker, including affiliated brokers, may not purchase more than one percent of total tickets allotted for a contest.
- No person with a felony conviction may be a ticket broker.
- For venues that seat less than 15,000, may not offer tickets for resale within 1,500 feet of the venue. For venues that seat over 15,000, may not offer tickets for resale within 2,700 feet of the venue.

People who buy tickets for personal use may resell them at any price, provided that such person does not sell or offer to sell such tickets within 2,700 feet of a venue which seats or admits 15,000 or more people.

Event organizer may provide an area within the prohibited zone where ticket brokers may lawfully sell tickets.

With regard to any single athletic contest or entertainment event which occurs no more often than once annually and with regard to any series of athletic contests which occur no more often than once annually and which occur within a time period not exceeding 10 days, the municipal corporation in which such contest, event, or series of contests is to be held, or if the contest, event, or series of contests is to be held in an unincorporated area, the county of such unincorporated area, is authorized to enact by ordinance regulations governing ticket brokers for such contest, event, or series of contests which are more restrictive than the provisions of this article.

The municipal corporation in which

an athletic contest or entertainment event is to be held, or if the contest or entertainment event is to be held in an unincorporated area, the county of such unincorporated area, is authorized to enact an ordinance prohibiting the resale or offering for resale of one or more tickets by a ticket broker or by a person who is the original purchaser for personal use of one or more tickets within 2,700 feet of a venue which seats or admits 15,000 or more persons.

(Ga. Code §§ 43-4B-25 to 43-4B-31)

## IDAHO

No state ticket scalping laws.

## ILLINOIS

May not sell tickets at more than face value unless sold by registered ticket brokers, Internet auction houses, and Internet websites.

Internet auction sites must register with state.

Ticket brokers must register with the state and pay \$100 annual fee.

Ticket brokers may not sell tickets "near" the venue or event.

A ticket seller, with consent of the event sponsor, may charge a service fee.

An event sponsor may not restrict a purchaser's ability to resell a ticket if the reseller is registered.

(720 ILCS §§ 375/.01 to 375/4)

## INDIANA

Ticket scalping is not allowed for boxing matches, sparring, or other unarmed combat events. Whether this would include professional wrestling is unclear. (Ind. Code § 25-9-1-26)

## IOWA

No state ticket scalping laws.

## KANSAS

No state ticket scalping laws.

## KENTUCKY

May not resell ticket for more than face value unless authorized by ticket issuer. (Ky. Rev. Stat. § 518.070)



## LOUISIANA

Tickets may not be sold for more than face value except via the Internet and, then, only if authorized by the original seller and the reseller makes and discloses guarantees that it will issue full refund if the event is cancelled, the purchaser is denied entry for reasons other than his own fault, or the ticket is delivered in a way not requested by the purchaser and this results in the inability to attend the event. (La. Rev. Stat. § 4:1)

## MAINE

No state ticket scalping laws.

## MARYLAND

Selling tickets for more than face value is prohibited in Baltimore. (B. City Ord., Art. 19, § 55-1)

Boxing, wrestling, and kickboxing promoters may not allow the sale of tickets for more than the admission price. (Md. Code § 4-318)

## MASSACHUSETTS

Ticket resellers must have and maintain a license issued by the state.

Licensed resellers may not charge more than \$2 higher than face value but may impose a reasonable service charge, defined as the reseller's costs incurred in procuring and reselling the ticket. (Mass. Gen. Laws Ch. 140 §§ 185A–G)

## MICHIGAN

May not sell tickets over face value without the event sponsor's permission.

If a ticket states that it is nontransferable and sold only to the person whose name appears on the face of the ticket or is registered with the original seller, it may not be resold. (Mich. Comp. Laws § 750.465)

## MINNESOTA

Minnesota's prohibition on ticket scalping was repealed in 2007, and new legislation governing the resale of tickets failed to pass in 2011.

## MISSISSIPPI

Unlawful to sell tickets for college

games or any event held on state property for more than face value. (Miss. Code Ann. § 97-23-97)

## MISSOURI

Missouri's prohibition on ticket scalping was repealed in 2007.

## MONTANA

No state ticket scalping laws.

## NEBRASKA

No state ticket scalping laws.

## NEVADA

Nevada has no state ticket scalping laws, but the city of Las Vegas prohibits ticket scalping. (Las Vegas Mun. Code § 12.38.020)

## NEW HAMPSHIRE

No state ticket scalping laws.

## NEW JERSEY

Ticket brokers must maintain a permanent office, obtain a certificate to resell tickets that is good for two years, and pay a fee not to exceed \$500 every two years.

No person, other than a registered ticket broker, may resell a ticket for more than a 20 percent premium or \$3, whichever is greater, over the face value.

Ticket brokers may not resell tickets at a premium in excess of 50 percent of the price paid to acquire the ticket, plus lawful taxes.

There is no limit on the price of tickets sold by people, other than ticket brokers, over the Internet.

May not resell tickets in the vicinity of an event, except in designated areas.

May not give anything of value to an employee of a place of entertainment as an inducement for special treatment in obtaining tickets.

Original sellers may not hold back from the general public more than five percent of the tickets for an event.

Requires the licensing agency and event sponsors to create a way for

season ticket and other ticket holders to legally sell their tickets back to the venue.

Unlawful practice for a person to use a "digger" to acquire any ticket.

(N.J. Rev. Stat. §§ 56:8-26 to 56:8-38)

## NEW MEXICO

Ticket scalping is prohibited as to college sports, but resellers may impose a service charge. (N.M. Stat. Ann. § 30-46-1)

## NEW YORK

May not resell tickets within 1,500 feet of a venue that seats more than 5,000 people and within 500 feet of a venue that seats less than 5,000 people. However, an operator may designate an area to resell tickets within the venue's property line.

Must obtain certificate from secretary of state to resell tickets.

It is unlawful for any person to utilize automated ticket purchasing software to purchase tickets.

(N.Y. Arts & Cult. Aff. §§ 25.01–.35)

## NORTH CAROLINA

Scalping tickets is prohibited, but resellers may impose a reasonable service charge. (N.C. Gen. Stat. § 14-344)

## NORTH DAKOTA

No state ticket scalping laws.

## OHIO

State law allows municipalities to regulate or establish scalping laws. (Ohio Rev. Code § 715.48)

Columbus has no scalping ordinances in force. Cleveland allows tickets to be sold over face value. Cincinnati prohibits the sale of tickets over face value.

## OKLAHOMA

No state ticket scalping laws.

Ticket scalping is prohibited in Oklahoma City.

## OREGON

Use of software to interfere with ticket sales is prohibited. (O.R.S. § 646a.115)

## PENNSYLVANIA

Unless using the Internet to resell tickets, must obtain license from county where intend to resell the tickets for a \$50 annual fee.

Internet sellers must have a business presence in the Commonwealth, a foreign business license, or a certificate of authority issued by the Department of State.

May sell tickets for more than face value.

Illegal to purchase tickets using ticket purchasing software.

(4 P.S. §§ 201–15)

## RHODE ISLAND

Ticket scalping is prohibited by resellers, who may impose a reasonable

service charge up to the greater of \$3 or 10 percent of the ticket's face value. (R.I. Gen. Laws § 5-22-26)

## SOUTH CAROLINA

May not resell tickets for more than \$1 over price charged by original issuer.

For noncollegiate events, scalping law does not apply to Internet sales, or for sales at a permitted physical location when the reseller guarantees a refund. (S.C. Code Ann. § 16-17-710)

## SOUTH DAKOTA

No state ticket scalping laws.

## TENNESSEE

Illegal to use ticket purchasing software. (T.C.A. § 39-17-1105)

## TEXAS

No state ticket scalping laws.

## UTAH

No state ticket scalping laws.

## VERMONT

Use of software to interfere with ticket sales is prohibited. (9 Vt. Stat. § 4190)

## VIRGINIA

Localities are authorized to prohibit non-Internet ticket scalping except by religious or charitable entities engaged in fundraising. (Va. Code Ann. § 15.2-969)

## WASHINGTON

No state ticket scalping laws.

## WEST VIRGINIA

No state ticket scalping laws.

## WISCONSIN

May not scalp tickets for the state fair. (Wis. Stat. § 42.07)

## WYOMING

No state ticket scalping laws.

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StubHub would have been eligible for the CDA's immunity.

As to the fourth element of damages, the court was reluctant to find that the Patriots could allege damages but nonetheless found a "toehold." Specifically, the Patriots contended that the sales of invalid tickets through StubHub increased the Patriots' administration costs. Therefore, the court held that this contention was sufficient to survive summary judgment.

### **Hill et al. v. StubHub, Inc. et al., No. COA11-685, 2012 WL 696223 (N.C. Ct. App. Mar. 6, 2012)**

**Summary.** Plaintiffs were customers of Defendant StubHub, which provides a website through which people can resell tickets. The customers used StubHub to purchase tickets priced in violation of North Carolina's anti-scalping law and subsequently sued for unfair or deceptive trade practices. The trial court granted the customers' summary judgment on liability, but the North Carolina Court of Appeals reversed, finding that StubHub could avail itself of the immunity of the Communications Decency Act (CDA).

**Relevant Facts.** As stated in the decision:

In September, 2007, Plaintiffs decided to buy tickets to a "Miley Cyrus as Hannah Montana" concert to be held at the Greensboro Coliseum in November, 2007. After unsuccessfully attempting to purchase tickets to this event using the Coliseum's website, [a customer] purchased

four tickets to the concert through [StubHub's] website for \$149.00 each. In addition to the aggregate ticket price, Plaintiffs paid a shipping charge of \$11.95 and a fee for Defendant's services of \$59.60, increasing the total amount of her order to \$667.55. Tickets to the Hannah Montana concert had a face value of \$56.00 apiece.

Meanwhile, North Carolina law barred any resale more than \$3 above the face value of the ticket.

The seller lived in Massachusetts and selected the sales price to the plaintiffs. The seller had agreed to StubHub's user agreement, including that he would not engage in unlawful activities. StubHub provided several services that facilitate the transaction between the seller and the customer. First, StubHub acted as a broker in providing a marketplace for sellers to meet customers. Second, StubHub provided shipping labels for the seller to send the tickets to a customer. Third, StubHub collected payment from the customer and distributed the appropriate amount to the seller.

**Procedural Posture.** The trial court granted the customers' motion for summary judgment against StubHub on the issue of liability. StubHub appealed the decision on several procedural bases, and the North Carolina Court of Appeals granted certiorari to consider the appeal.

**Legal Analysis.** After addressing whether it had jurisdiction to consider the appeal, the North Carolina Court of Appeals focused its legal analysis on the immunity provision of CDA § 230(c)(1), particularly whether StubHub functioned as an

“information content provider” with respect to the ticket price at issue. The court began its analysis by turning to *Fair Housing Council of San Francisco Valley v. Roommates, LLC*, 521 F.3d 1157, 1172 (9th Cir. 2008), wherein a website could not apply for the immunity under CDA § 230(c)(1) when it provided a search engine that segregated individuals based on unlawful criteria. In reviewing the *Roommates* decision, the court emphasized that the users had no choice but to answer the questions that would then be the basis for the unlawful search parameters. Later, the court focused on *FTC v. Accusearch, Inc.*, 570 F.3d 1187 (10th Cir. 2009), where researchers were paid for information about the telephone records of third parties and immunity did not extend to the website provider for these illegal acts. In addressing *Accusearch*, the court emphasized the absence of any legality to the underlying endeavor of obtaining telephone records.

The North Carolina Court of Appeals treated *Roommates*, *Accusearch*, and other similar decisions as distinguishable in light of the approximately 300 reported decisions that it had found addressing immunity under the CDA. The court noted that most courts had found liability and that the trend was to bring a website operator within the immunity provision. Therefore, the court concluded that StubHub’s not requiring its users to engage in unlawful activity and the ability to use the site in a lawful manner enabled StubHub to avail itself of the CDA’s immunity.

#### BRIEF THOUGHTS ON WHAT THE FUTURE HOLDS FOR TICKET ISSUERS

Original ticket issuers, such as professional sports teams, understandably cast a skeptical eye on the secondary ticket market. Some organizations, such as the New England Patriots, have taken proactive measures to restrict ticket sales in the secondary market. A typically contrarian Mark Cuban, however, told *The New York Times* in 2008 that his Dallas Mavericks were then considering selling some of their own tickets through a site like StubHub “as a means of confirming the ‘actual value’ of the game; it allows us to be smarter in our ticket pricing.”<sup>1</sup> Confirming Cuban’s sentiment, Kansas City Royals Senior Director of Ticket Sales and Customer Service Steve Shiffman said in a recent interview that the high level of activity on the secondary market can be an indication that the industry is “not pricing [its] product correctly.”<sup>2</sup> Given the ever-increasing amount of data available to savvy consumers, teams and event organizers must be more flexible than ever before. Certainly, a team considering a new approach to its ticket sales must consider several factors.

The most obvious way for a team to discourage secondary market sales is to allow only a ticket’s original purchaser (or a permitted transferee) admission to the game or event for which the ticket was issued. One way to implement this approach is to require the purchaser of tickets to present photo identification upon redeeming the tickets at the venue. Not giving ticket purchasers a required element to engage in a sale on the secondary market (the ticket itself) until present at the venue would discourage secondary market sales. Alternatively, an event organizer could try to outpace the technology of the secondary market and offer admission by scanning unique bar codes that are not, as yet, hosted by StubHub or similar entities and not revealed to the purchaser until a time close enough to the

event to make a secondary market sale impractical. However, heavy-handed methods to restrict sales on the secondary market present two key problems.

Most immediately, imposing impediments to a consumer’s purchase of a ticket on the secondary market may deprive the event organizer of critical day-of-event revenue from streams such as concessions, merchandise, and parking. Policies that reduce the transferability of tickets may have more latent consequences, as well. With the rapid dissemination of information through Internet news sites, blogs, Twitter, and other social media, any measures taken that are even *perceived* as anti-consumer will be condemned minutes after they are announced. Because of the importance of day-of-event revenue streams and the less immediate but potentially longer-lasting consequences of brand damage, event organizers seeking to recapture the value of tickets sold on the secondary market should consider approaches that recoup ticket sales revenue, maintain day-of-event income, and provide a service consumers may find valuable.

In the sports context, teams face the difficult issue of balancing a season ticket holder’s desire to recover at least a portion of his cost for games that he cannot attend (or otherwise use the ticket for valuable business or social purposes). Teams have employed a number of strategies to serve the customer without driving down the value of their walk-up, single-game ticket offerings. Many teams allow season ticket holders to return their unused tickets—even after the game has been played—and allow the season ticket holder to select additional tickets to future games. Another approach rapidly gaining popularity is for teams to run their own secondary market in-house. This practice is currently in use throughout the NFL, NHL, and several other professional and collegiate teams. It is being explored by several high-profile MLB teams, including the New York Yankees. By allowing season ticket holders to sell their unwanted inventory through a team-sponsored marketplace, the team can at least recover a certain amount in fees and handling charges that would otherwise be diverted to third-party ticket resellers.

One novel approach may be for teams to use season ticket holders’ unwanted inventory as a valuable marketing opportunity. Teams that do not consistently sell out may consider allowing season ticket holders to sell excess inventory first to existing season ticket holders, limiting the market for returned season tickets in such a way as to minimize cannibalization of the team’s walk-up sales. In one conception of this approach, an existing season ticket holder who needs more tickets to a particular game can obtain high-quality seats, perhaps at a price point in between the season ticket price and the single-game price. This approach could have particularly useful application in the context of partial season ticket holders. A team could allow partial season ticket holders to buy a certain amount of additional single-game returned season tickets depending, perhaps, on the number of tickets purchased in the partial plan. This approach potentially benefits each party involved in the transaction. The returning ticket holder has a mostly painless way to recover some costs, the partial ticket holder gains flexibility and the opportunity to attend more games, and the team gets the benefit of the resale, maintenance of game-day revenue streams, and a ready-built marketing strategy with respect to season tickets.

Another hot-button issue in the sports ticketing world is the often-beneficial, often-tenuous relationship among teams, leagues, and ticket brokers. Once spoken of in the same breath as ticket scalpers, ticket brokers represent to consumers an increasingly attractive alternative to scalpers (on one end) and team websites and box offices (on the other). Russ Lindmark, who created the e-commerce platform on which StubHub was first based and later founded national ticket broker Ticket Solutions, says that fans do not have the same authenticity concerns with an established broker as they might with someone hawking tickets outside a stadium. "Where do you find them the next day?" Lindmark asks, referring to the anonymous peddlers of last minute tickets. Brokers may have an advantage, too, over teams in that, compared to team websites, brokers' platforms are often more streamlined. Providing even an incremental efficiency advantage can prove to win a consumer's business.

Although some teams are understandably wary of brokers as competition, many—if not most—form mutually advantageous relationships with such supposed competition. "Brokers are not bad people—just business people," says Shiffman, who points out that resellers view tickets not as fans might, but as traders. Indeed, the Royals, like many professional and collegiate teams, release a certain amount of inventory to brokers as another method of moving tickets. Such relationships require a good amount of business savvy and an even greater amount of trust. The teams certainly desire to bring customers to the stadium—Shiffman: "an empty seat doesn't make you a dime"—but ill-conceived sales to brokers can have a deleterious effect on a team's relationship with its valuable season ticket holders. After all, no purchaser of a \$50 season ticket wants to go to the park and discover that his neighbor in the stands bought an equivalent ticket from a broker for \$20. For this reason, teams often sell to brokers inventory not located in sections heavy on seats purchased as season tickets, or require the brokers to sell tickets at or above a certain price point.

One relatively unexplored secondary ticket market is that for suites. While pairs of seats in premium sections—think Yankee Stadium's Legends Club—hit the secondary market with regularity, single-game rights to enjoy a club's luxury suites are a much rarer sight on ticket resellers' web pages. Neither teams nor brokers are unaware of this unfilled space in the secondary market. Brokers are actively recruiting corporate suite holders with the enticement of recovering value for dates on which their suite goes unused, and teams in certain cities are discussing the notion of suite exchanges, whereby the holder of a suite for an NFL game, for instance, could exchange the rights to one NFL game for the rights to a certain amount of NBA or NHL games, or other events such as concerts, shows, or collegiate tournaments.

Lindmark, for his part, supports the application of pure property rights to tickets, and advocates for a "free market that is fair to everybody. Part of that is being fair to the consumer. The consumer has to be able to hold [his seller] accountable." This sort of consumer protection argument has become a favorite of ticket brokers in their lobbying efforts, and has found support from lawmakers. As a result, ticket scalping laws continue to be relaxed under the guise of consumer protection.

In reaching a comprehensive, multi-faceted approach to the issues presented by ticket sales on the secondary market, the most successful organizations will be the ones that creatively and

simultaneously benefit the consumer and the organization. The ideal solution will recapture the value of secondary market sales in a way that positively engages both existing and new customers. ♦

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#### ENDNOTES

1. Joe Nocera, *Scalpers Are Arbitrators of the Arena*, N.Y. TIMES, January 18, 2008.
  2. Telephone Interview by Josh Fisher with Steve Shiffman, Senior Director of Ticket Sales & Customer Service, Kansas City Royals (July 18, 2012).
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