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STUDENT ARTICLES

Ticket Scalping: Same Old Problem with a Brand New Twist

Jonathan Bell*

To many people, Sunday, October 16, 2005, was just another day of the year. For diehard Chicago White Sox baseball fans, it went down as the day which ended forty-six years of agony and frustration. Shortly after 11 p.m. central standard time, Paul Konerko stepped on first base, ending the baseball game and sending the Chicago White Sox to the World Series for the first time since 1959.¹ This was the first time that any Chicago baseball team had made it to the World Series since 1959.² While more than half of the Second City rejoiced, the real battle was about to begin. Winning the World Series was one issue. Getting a ticket to witness what many fans had waited their whole lives to see was a completely different ballgame. Ticket demand for the World Series was high, and ticket brokers and scalpers salivated at the prospects of making a fortune off of Chicago's newfound success.³ The White Sox publicly stated that "several thousands"⁴ of tickets would be made available to the public,

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¹ Rick Morrissey, *America, Here Come the Sox*, CHI. TRIB., Oct. 17, 2005, at CN3.

² The Chicago Cubs, the other Chicago baseball team, has not played in a World Series since 1945. Dave Van Dyck, *Ringling Out the Old*, CHI. TRIB., Feb. 15, 2006, at C8.

³ Jessica E. Vascellaro, *Scalping World Series Tickets Gets Easier*, WALL ST. J., Oct. 20, 2005, at D1.

⁴ Brendan McCarthy, Tonya Maxwell & James Janega, *The Golden Ticket: They Sold Out in 18 Minutes*, CHI. TRIB., Oct. 18, 2005, at C1. The White Sox

however, they never explicitly confirmed the exact number of tickets being released.⁵ Additionally, they never emphasized whether these “thousands” of tickets were being made available for each game or for the four possible home games combined.⁶ As a result, the vast majority of seats were reserved for season ticket holders, Major League Baseball affiliates, and others.⁷

The White Sox proved to be the hottest ticket in town. The few World Series tickets released for the four home games⁸ went on sale to the public at noon through Ticketmaster⁹ on October 18, 2005, and sold out within eighteen minutes.¹⁰ Thus, for many fans, some of whom were not even alive to witness a Chicago baseball team playing in a World Series, to see a game meant shelling out hundreds, even thousands of dollars per ticket to ticket brokers and scalpers

sold their tickets exclusively by telephone and online and not at the box office. *Id.*

⁵ *Id.*

⁶ *Id.* As of the 2005 baseball season, U.S. Cellular Field, the White Sox stadium, held a seating capacity of 40,615. Adam Zoll, et al., CHI. TRIB., Mar. 19, 2006, at C8.

⁷ ABC News, *Hottest Tickets in Town: World Series Sold Out in Minutes*, Oct. 18, 2005, <http://abclocal.go.com/wls/story?section=local&id=3546603>. Because of the anticipated high demand of World Series tickets, the White Sox capitalized by marketing packages for season tickets for the following season with the premise that some who signed up before the end of the playoffs could secure World Series tickets. Tribune Staff Reporter, *Need Tickets?*, CHI. TRIB., Oct. 18, 2005, at C1. Yet not everybody was happy. While a great premise to sell season tickets, not all fans who ordered were able to secure seats for the World Series. Jon Yates, *Many Sox Fans Strike Out; Season-Ticket Offer Did Not Ensure Series Seat*, CHI. TRIB., Oct. 21, 2005, at C3.

⁸ Yates, *supra* note 7. Only two of the four home games were guaranteed to be played. In baseball, the league that wins the All-Star game is awarded home field advantage in the World Series. Press Release, Major League Baseball, *World Series Advantage to be Awarded to All-Star Winner* (Jan. 16, 2003) (on file with author). Because the American League won the 2005 All-Star game, the White Sox got to play the first two games of the best of seven series at home before heading on the road to Houston for at most the next three games. If, by the end of the fifth game neither team had won four, the series would have returned to Chicago for the final two games.

⁹ Ticketmaster, About Ticketmaster, http://www.ticketmaster.com/h/about_us.html?tm_link=tm_home_i_abouttm (last visited Mar. 24, 2006). Ticketmaster is the world’s largest on-line ticket company, with about 3,300 retail location outlets and 19 telephone conference centers throughout the world. *Id.* It services more than 9,000 clients worldwide for a variety of entertainment and sporting events. *Id.*

¹⁰ Vascellaro, *supra* note 3.

alike.¹¹

As is typical when a high profile event is in such high demand, obtaining a ticket to the World Series proved to be a lose/lose situation for average consumers. They could either spend a large sum of money with the potential of getting a glimpse of Chicago history, or, they could save their money, which in turn would force them to watch their favorite team on television instead of at the ballpark.

This article will provide a general overview of the ticket scalping industry and the effect that the existence of ticket scalping has had both on event promoters as well as the paying consumers. It will address the legislative reaction to ticket scalping as well as the changing judicial responses to such laws, specifically looking at Illinois legislative measures in this industry. Next, the article will look at how some promoters have directly entered the secondary market in terms of reselling their own product for a higher price, changing the ticket scalping landscape. Finally, the article will look to see what solutions may be available to further control ticket scalping and the effect that such measures might have on the scalping industry.

I. Ticket Scalping: A Basic Overview

Ticket scalping is broadly defined as the reselling of tickets to entertainment or sporting events at some price dictated by the marketplace.¹² Typically, the practice is associated with reselling tickets at a price higher than face value; the dollar amount printed on the face of the ticket and the price of the ticket as sold at the box office.¹³ In the vast majority of situations, the tickets are for entertainment events held on a specific date, at a stated time, and in a

¹¹ *Id.* Ticketmaster sold World Series tickets ranging from \$125 and \$185. McCarthy, et al., *supra* note 4. Yet online ticket sales skyrocketed. *Id.* Stubhub.com, an online ticket broker, reported selling two premium tickets for \$7,500 each and offering tickets in the upper deck of U.S. Cellular Field for a minimum of \$515. *Id.* The last time a Chicago baseball team had won the World Series prior to this past season, was in 1917. Van Dyck, *supra* note 2. This in turn drove the demand for tickets even higher.

¹² Thomas A. Diamond, *Ticket Scalping: A New Look at an Old Problem*, 37 U. MIAMI L. REV. 71, 71 (1982).

¹³ Daniel J. Glantz, *For-Bid Scalping Online?: Anti-Scalping Legislation in an Internet Society*, 23 CARDOZO ARTS & ENT. L.J. 261, 262 (2005).

venue with a fixed seating capacity.¹⁴ Promoters, the persons hosting the event, must usually sell tickets in advance of the event with the price of the ticket printed directly on the face of the ticket.¹⁵ The popularity of the event dictates whether ticket scalping occurs, and, if so, the price of the ticket.¹⁶

The process of ticket scalping begins when the scalper purchases the tickets, usually in bulk, directly from the promoter of the event and then waits until the ticket supply is sold out.¹⁷ The scalper then offers to resell his or her tickets to consumers at whatever price the market dictates.¹⁸ This practice creates a secondary market, whereby the consumer purchases directly from the scalper, or a secondary producer, rather than from the producer.¹⁹ The more popular the event, the higher the demand for tickets, and consequently the higher the price charged by the scalper.²⁰

Ticket scalping is derived in part by the sports and entertainment industries common practice of selling tickets at prices below market value.²¹ The economic justification behind this practice is that when the producer sells its goods at lower prices, demand for the goods will rise, and more of the available supply will be sold.²² In doing this, the producer is hopeful that consumers will buy up all the

¹⁴ Stephen K. Happel & Marianne M. Jennings, *The Folly of Anti-Scalping Laws*, 15 *Cato J.* 65, 66 (1995), available at <http://www.cato.org/pubs/journal/cj15n1/cj15n1-4.pdf>.

¹⁵ *Id.*

¹⁶ *Id.* For the purposes of this article, ticket scalping will be used to reference both ticket scalping as well as ticket brokers and will be defined solely as the selling of tickets for a price higher than face value. Because of the nature of ticket scalping, tickets will usually be resold by scalpers or ticket brokers even if an event is in low demand or not sold out, but for face value or possibly below face.

¹⁷ Diamond, *supra* note 12, at 72.

¹⁸ *Id.*

¹⁹ Jasmin Yang, *A Whole Different Ballgame: Ticket Scalping Legislation and Behavioral Economics?*, 7 *VAND. J. ENT. L. & PRAC.* 111, 111 (2004).

²⁰ Diamond, *supra* note 12, at 73-4.

²¹ Phyllis L. Zankel, *Wanted: Tickets-A Reassessment of Current Ticket Scalping Legislation and the Controversy Surrounding its Enforcement*, 2 *SETON HALL J. SPORT L.* 129, 144 (1992).

²² Scott D. Simon, *If You Can't Beat 'em, Join 'em: Implications for New York's Scalping Law in Light of Recent Developments in the Ticket Business*, 72 *FORDHAM L. REV.* 1171, 1176 (2004).

available tickets, resulting in a sell out.²³ Usually, the price of the ticket is far less than the average consumer would be willing to pay for a ticket, increasing the likelihood of a shortage in tickets.²⁴ While a sellout is any promoters' ultimate goal, this practice of underpricing tickets becomes ideal not only for professional ticket scalpers but also for the disinterested ticket holder willing to sell his or her tickets.²⁵ Because many consumers are willing to pay higher than advertised prices for tickets to high demand events, scalpers can snatch up premium seats at face value and sell them to the highest bidder.²⁶

II. Nobody's Friend

The secondary ticket market is an exceptionally lucrative industry.²⁷ Because much of the activity is unreported, actual dollar figures made from ticket scalping are difficult to attain with actual certainty.²⁸ However one figure roughly estimated that the scalping industry cumulatively nets between \$2 and \$14 billion annually.²⁹ This is somewhat surprising, considering the fact that as of 2005, twenty-nine states had enacted statutes regulating the resale of entertainment tickets.³⁰ By comparison, Ticketmaster, the world's largest primary ticket seller,³¹ sold 119 million tickets valued at \$6

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* The ticket scalper often steps in as a middle man between the low-valuing ticket holder and the high-valuing ticket buyer. *Id.* The ticket scalper will pay the original ticket holder a price above face value and then sell to the buyer at an even higher price, creating a profit for both. *Id.*

²⁶ Robert E. Freeman & Daniel Gati, *Internet Ticket Scalping: If You Can't Beat 'em, Join 'em*, 21 ENT. & SPORTS LAW 6, 6 (2003).

²⁷ Simon, *supra* note 22, at 1172.

²⁸ *Id.*

²⁹ Stephen K. Happel & Marianne M. Jennings, *Creating A Futures Market for Major Ticket Events: Problems and Prospects*, 21 Cato J. 443, 449 (citing estimates made by TicketAmerica in 1998, EventTixx in 2000, and LiquidSeats in 2001. The companies made different assumptions as to the percentage of tickets that brokers would resell to the secondary ticket market).

³⁰ *Id.* at 445. See *infra* Part III for a discussion of ticket scalping legislation.

³¹ Ticketmaster, About Ticketmaster, *supra* note 9. As a primary ticket seller, Ticketmaster does its sales through pre-arranged prices between the producer and consumer. The majority of its profits, therefore, come from service and handling

billion in 2005.³² Thus, it should come as no surprise that ticket scalpers are despised by consumers and producers alike.³³

a. Consumers' Worst Enemy

For consumers, ticket scalpers represent those who exhaust the box office supply, thereby taking away tickets that the consumer could have purchased and then selling them at prices far higher than what the average customer can afford or is willing to pay.³⁴ Fans also resent the fact that ticket scalpers are most prevalent during high profile events such as playoff games, opening nights, and weekend events, making it more costly than normal to see a popular event.³⁵ Furthermore, the threat always exists of fans purchasing counterfeit tickets from ticket scalpers, thereby losing both money as well as the opportunity to see the event firsthand at the same time.³⁶

However even in a scalping-free world, all fans who wished to attend a specific event would not be able to as producers can only permit so many individuals in a certain venue. Additionally, the fact exists that promoters often withhold at least one-fourth of the tickets from the box office to accommodate season ticket holders and other VIPs.³⁷ For example, assume that a certain Broadway theater has a highly touted play which is debuting on the first Saturday of the following month. This theater has seating capacity for exactly 4,000

charges. See IAC/Interactive Corp., Annual Report (Form 10-K), at 8 (Mar. 13, 2006) ("Ticketing revenue is generated primarily through convenience charges and order processing fees received by Ticketmaster for each ticket sold by Ticketmaster on behalf of its clients").

³² Ticketmaster, About Ticketmaster, *supra* note 9.

³³ Doug Pappas, *Sell Outs: Major League Baseball Should Tell its Teams to Stop Scalping their Own Tickets*, LEGAL AFF., 20, 20 (2004).

³⁴ *Id.*

³⁵ Yang, *supra* note 19, at 112.

³⁶ Happel & Jennings, *supra* note 14, at 77. Counterfeit tickets are not wholly impossible to create at a level significant enough to convince the average consumer that what he or she is buying is a real ticket. Specifically with the increase in technology, specified marks can be duplicated right onto a ticket. Counterfeit items themselves are highly illegal and prohibited by both federal and state intellectual property laws. Colloquy, *Sports Law in the State of Wisconsin* 15 MARQ. SPORTS L. REV. 425, 518 (2005).

³⁷ Simon, *supra* note 22, at 1208. As was the case with the White Sox during the World Series, this number can rise much higher, perhaps to as high as three-fourths of the stadium.

people; however 5,000 Broadway enthusiasts wish to attend opening night. The theater has 200 season ticket subscribers and wishes to withhold an additional 800 for critics, families of the performers, and local politicians. Therefore, only 3,000 tickets can be sold to the public, meaning at least 2,000 of the enthusiasts will be unable to witness the opening night performance. The creation of the secondary market makes it possible for some of these people, the ones who have the strongest desire and are willing to pay a higher fee, to attend this event.³⁸

Additionally, scalpers also save consumers time and energy in terms of the effort of getting tickets for popular events through the box office.³⁹ The scalper therefore not only increases the likelihood that the enthusiastic fan can attend the event, but allows that individual to spare themselves of the frustration often associated with obtaining a ticket on their own.⁴⁰ Furthermore, the consumer retains some control with the amount of money spent to see certain events. While in the days leading up to a certain event the price for a ticket remains high, as the event nears, the price of the ticket drops, sometimes even below face value so that the scalpers do not risk losing their investment.⁴¹

b. Promoters' Big Headache

Event promoters have a similar distaste towards ticket scalpers. Promoters dislike scalpers who snatch up their tickets and then capitalize off their product, sometimes in close proximity to the event, annoying customers who have already paid, and creating a negative atmosphere in and around the venue.⁴² Additionally, as many scalpers are independent businessmen who deal in cash transactions only, promoters dislike their profiting without sustaining

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Brad Heath & David Shepardson, *As Game Nears, Ticket Costs Drop*, THE DET. NEWS, Feb. 6, 2006, available at <http://www.detnews.com/apps/pbcs.dll/article?AID=/20060205/SPORTS0106/602050394/1365/rss35>. (last visited Apr. 14, 2006). Tickets for the 2006 Super Bowl were at one point selling for as much as \$4,000. *Id.* By the Saturday before the game, the price on those seats had dropped to as low as \$2,500 and plenty of seats remained on game day, with the price dropping as kickoff got closer. *Id.*

⁴² Freeman & Gati, *supra* note 26, at 6.

any tax ramifications.⁴³ Furthermore, this secondary marketplace creates tension and distrust among consumers of the producers.⁴⁴ Although the producer may dislike the presence of the scalpers as much as, if not more than the consumer, the high price of admission that consumers are required to pay to the scalper in turn reflects, however unfairly, on the producer sponsoring the event.⁴⁵

Yet the presence of ticket scalpers does provide promoters with some important benefits. First of all, any ticket purchased by scalpers is guaranteed revenue for the promoter.⁴⁶ The more tickets sold increases the chances for a sellout, the ultimate goal for any producer.⁴⁷ The perception of a sellout in actuality enhances the popularity for consumers and attracts some into the marketplace who otherwise would not attend.⁴⁸ Second, the more consumers in attendance allows the producer to maximize revenue from additional sources, namely parking, refreshments, and souvenir sales.⁴⁹

Perhaps surprisingly, one recent development in the ticket scalping industry is that many promoters have indirectly entered the secondary ticket market in order to make a greater profit off of their product.⁵⁰ This seems surprising especially when considering the fact that this practice directly contradicts their traditional stance on ticket scalping. Perhaps it is that promoters disdain *others* who profit off of their product in this manner, but see no problems with doing so themselves.⁵¹

⁴³ *Id.*

⁴⁴ Diamond, *supra* note 12, at 73. The exhaustion of box office supply combined with the scalper with an abundant supply leads to accusations of fraud, complicity, and collusion by the consumer against the promoter. *Id.*

⁴⁵ *Id.*

⁴⁶ Simon, *supra* note 22, at 1210.

⁴⁷ Happel & Jennings, *supra* note 14, at 66.

⁴⁸ *Id.*

⁴⁹ Brian M. Pukier, *Exiled on Main Street: A Ticket Scalper's Dilemma*, 50 U. TORONTO FAC. L. REV. 280, 291 (1992).

⁵⁰ Pappas, *supra* note 33, at 20.

⁵¹ *See infra* Part IV for a detailed discussion of this aspect of ticket scalping.

III. Legislative v. Judiciary: Scalping Laws and the Judicial Responses

State legislators, in reaction to the negative connotation associated with ticket scalping, have been passing laws outlawing or restricting ticket scalping for over 100 years.⁵² These laws vary from state to state. The majority of state statutes permit the practice in some form, such as regulating where tickets can be resold,⁵³ limiting who can engage in the business, and capping the amount above face value that one is permitted to sell.⁵⁴ Other states strictly prohibit ticket scalping altogether.⁵⁵ For example, under New Jersey law, a scalper may resell a ticket, but for no more than \$3.00 or twenty percent of the ticket price, whichever is greater.⁵⁶ In Maryland, ticket scalping legislation is only applicable to boxing or kickboxing events.⁵⁷

Judicial reactions to these laws have varied over time. Early challengers to such statutes prevailed as laws were often struck down as violations of liberty interests and property rights.⁵⁸ Ticket scalping was considered a private industry, and therefore the courts held that state legislatures were overreaching their boundaries by regulating in that area, thereby invalidating many regulations an “impermissible

⁵² Matthew Siporin, *Cavoto v. Chicago Nat'l League Ball Club, Inc.: Chicago Cubs Ticket Scalping Scandal and the Relationship Between Separate Corporate Entities Owned by a Common Parent*, 2 DEPAUL BUS. & COM. L.J., 723, 724 (2004). This article specifically looks at Illinois's first response to ticket scalping in 1907. See *infra* Part III.A for an analysis of the Illinois law.

⁵³ ARIZ. REV. STAT. § 13-3718 (2005). Arizona prohibits selling tickets above face value within 200 feet of an entrance to an event and additionally requires written permission from the promoter. *Id.*

⁵⁴ Yang, *supra* note 19, at 111. As stated above, as of 2005, twenty-nine states had enacted laws that restricted ticket scalping in some way and many municipalities have some type of ordinance in effect. Happel and Jennings, *supra* note 14, at 66. See also Nat'l Conference of State Legislatures, Ticket Resale Laws, available at <http://www.ncsl.org/programs/lis/ticketscalplaws.htm> (last visited Apr. 16, 2006) (summarizing state ticket resale statutes).

⁵⁵ FLA. STAT. ANN. § 817.361 (2006).

⁵⁶ N.J. STAT. ANN. § 56:8-33 (2006).

⁵⁷ MD. CODE ANN., BUS. REG. § 4-318 (2006). See also Nat'l Conference of State Legislatures, *supra* note 54.

⁵⁸ Zankel, *supra* note 21, at 129.

stretch of state police power.”⁵⁹ This era, historically referred to as the “Lochner”⁶⁰ era, was dominated by courts actively scrutinizing state legislation and striking economic laws down as unconstitutional violations of the due process clauses of both the Fifth and Fourteenth Amendments of the United States Constitution.⁶¹

In 1927 the United States Supreme Court struck down a New York law which prohibited the resale of any ticket for more than fifty cents above face value.⁶² A ticket broker who sold nearly 300,000 tickets annually brought suit seeking a judicial declaration that the price regulation in the statute was unconstitutional.⁶³ The Court held that the state’s police power in such areas, aside from emergencies, existed only in situations in which “the business or the property involved has become ‘affected with a public interest.’”⁶⁴ The Court held that ticket scalping was not an area of public interest and determined that the law invaded both the rights of property and the freedom of contract.⁶⁵

State courts followed the Supreme Court’s lead in striking down their own legislatures’ laws.⁶⁶ In *Kirtley v. State of Indiana*, the Supreme Court of Indiana struck down a state statute that prohibited the resale of tickets at a price either greater or less than the price on

⁵⁹ *Id.*

⁶⁰ *Lochner v. New York*, 198 U.S. 45 (1905). The United States Supreme Court struck down a New York law restricting the number of hours that a worker in a bakery could work in a given week because it affected a private industry and did not promote the health, safety, and morals of the people of the state and was therefore a violation of state police powers. *Id.* at 57. Legal historians refer to the Lochner-era as notorious for the Supreme Court’s practice of laissez-faire constitutionalism, in which most legislation, state or federal, was struck down as unconstitutional when it disrupted the natural laws of economics. Simon, *supra* note 22, at 1192.

⁶¹ Zankel *supra* note 21, at 130.

⁶² *Tyson & Bro.—United Theatre Ticket Offices v. Banton*, 273 U.S. 418, 437 (1927). It should be noted that three years earlier, the Supreme Court considered the constitutionality of a different New York Scalping Law that prohibited reselling tickets without a license. *Weller v. New York*, 268 U.S. 319, 323 (1925). In *Weller*, the Court held that a distinction existed between requiring a license and limiting a resale price and found that the legislature was justified in enacting the law. *Id.* at 325.

⁶³ *Tyson*, 273 U.S. at 420.

⁶⁴ *Id.* at 428.

⁶⁵ *Id.* at 431.

⁶⁶ *Kirtley v. State*, 84 N.E.2d 712, 715 (Ind. 1949).

the face of the ticket.⁶⁷ The defendant was charged with soliciting tickets for an Indiana High School Basketball game at a price twenty-five dollars greater than the price of the three dollar ticket.⁶⁸ The court held that the right to pursue a proper occupation was an "unalienable right and a privilege not to be restricted except perhaps by a proper exercise of the police power of the state."⁶⁹ The court further reasoned that the statute had no relation to the protection of the public's health, safety, and morals, and therefore was an improper use of state police power.⁷⁰

The Supreme Court first signaled an end to the Lochnerization method of invalidating state and federal laws in 1934, and developed a different approach for analyzing state economic regulations.⁷¹ In *Nebbia v. New York*, the Court upheld a New York statute that fixed the selling price of milk as a valid exercise of state's police power.⁷² The Court acknowledged that the phrase "affected with a public interest" was tantamount to the idea of police powers and a statute regulating the use or the price of the use of ones property is not necessarily a violation of due process.⁷³ In upholding the law, the Court declared that the democratically elected state legislatures are free to adopt whatever economic policy they deem necessary so long as it is reasonably related to promoting the public welfare.⁷⁴

Because *Nebbia* concerned the constitutionality of price regulations, there was no reason to believe that this new approach laid out by the Supreme Court would not apply to cases involving ticket scalping legislation. Indeed, in *Gold v. DiCarlo*,⁷⁵ the Southern District of New York upheld a New York anti-scalping statute restricting the resale of a ticket for more than \$1.50 above face value as a valid exercise of state police power and not, as the Supreme Court had done in *Tyson*, as an unconstitutional violation of the due

⁶⁷ *Id.* at 713.

⁶⁸ *Id.*

⁶⁹ *Id.* at 714.

⁷⁰ *Id.* at 715.

⁷¹ *Nebbia v. New York*, 291 U.S. 502 (1934).

⁷² *Id.* at 558-59.

⁷³ *Id.* at 533.

⁷⁴ *Id.* at 538.

⁷⁵ *Gold v. DiCarlo*, 235 F. Supp. 817 (S.D.N.Y. 1964).

process clause.⁷⁶

The New York legislature enacted the statute to protect the public from “fraud, extortion, exorbitant rates and similar abuses.”⁷⁷ The court stated that for such a law to be upheld, the regulation must bear a rational relation to a legitimate, constitutionally permissive objective.⁷⁸ The court also made clear that the days of using “. . . the due process clause as a weapon ‘to strike down state laws, regulatory of business . . . conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought . . .’” were over and that they would be most deferential to the determinations of the states’ elected legislative officials.⁷⁹ In declaring the law constitutional, the court held that regulating resale prices was a matter of public interest because it affected the price that the public was forced to pay, thereby making it a proper exercise of state police power.⁸⁰

State judiciaries have followed the federal model, upholding various state-enacted anti-scalping laws as a proper exercise of legislative power.⁸¹ The majority of challengers argue that the laws are unconstitutional, violating due process, and interfering with private property rights.⁸² To date, since the *Nebbia* approach changed the landscape of these lines of cases, no such challenge has prevailed.⁸³

a. Illinois Legislation and Judicial Response

Illinois’ first ticket scalping law, enacted in 1907, outlawed the sale of tickets above face value for “theaters, circuses, and places of amusement.”⁸⁴ This law, however, was short lived.⁸⁵ In *People v.*

⁷⁶ *Id.* at 819.

⁷⁷ *Id.* at 818.

⁷⁸ *Id.* at 820.

⁷⁹ *Id.* (quoting *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488 (1955)).

⁸⁰ *Gold*, 235 F. Supp. at 820.

⁸¹ *Freeman & Gati*, *supra* note 26, at 6.

⁸² *Id.* (citing *State v. Spann*, 623 S.W.2d 272 (Tenn. 1981); *NJ Assoc. of Ticket Brokers v. Tickertron, Div. of Control Data Corp.*, 543 A.2d 997 (N.J. Super. Ct. App. Div. 1988); *State v. Trabucchi*, 408 N.W.2d 563 (Mich. Ct. App. 1987)).

⁸³ *Id.* at 7.

⁸⁴ *Siporin*, *supra* note 52, at 724-25.

Steele, the plaintiffs were charged and convicted of violating the statute for selling theater tickets at a price higher than face value.⁸⁶ The plaintiffs' alleged constitutional violation of due process, specifically a violation of freedom of contract in carrying on a lawful business of selling theater tickets.⁸⁷ The Illinois Supreme Court agreed, striking down the statute as an unconstitutional violation of the due process clause of the Illinois Constitution.⁸⁸ The court acknowledged that the legislature had general police powers to regulate and even interfere with a private industry insofar as the health, safety, and general welfare of the public required.⁸⁹ Yet the court determined that the sale of tickets at a price higher than face value was neither immoral nor injurious to the public, and legislation prohibiting this was both arbitrary and an unreasonable interference to the individuals affected.⁹⁰

Shortly after *Steele*, the city of Chicago enacted a city ordinance that permitted ticket scalping, but prohibited alliances between promoters and ticket scalpers.⁹¹ Not surprisingly, this statute was almost immediately challenged as an unconstitutional violation of due process rights by theater owners who formed collusive agreements with ticket scalpers in order to share in some of their profit.⁹² The statute's purpose was to protect the public consumers from paying higher prices from scalpers falsely disguised as independent proprietors when in reality they were acting as a part of a greater scheme on behalf of the promoter.⁹³ The theater owners argued that the intent of the legislation was not to prevent misrepresentation, but to destroy the business of ticket scalping altogether.⁹⁴

The Supreme Court of Illinois disagreed with the theater

⁸⁵ *People v. Steele*, 83 N.E. 236, 240 (Ill. 1907).

⁸⁶ *Id.* at 236.

⁸⁷ *Id.* at 237.

⁸⁸ *Id.* at 240.

⁸⁹ *Id.* at 237.

⁹⁰ *Steele*, 83 N.E. at 238-40.

⁹¹ Siporin, *supra* note 52, at 725.

⁹² *People ex rel. The Cort Theater Co. v. Thompson*, 119 N.E. 41, 42 (Ill. 1918).

⁹³ *Id.* at 42-3.

⁹⁴ *Id.* at 44.

owners, upholding the ordinance as a lawful exercise of police powers.⁹⁵ The court recognized that a place of public entertainment, such as a theater, was very much entrenched with public interest and therefore subject to regulation to some extent.⁹⁶ Protecting the public from falsification and misrepresentation was certainly a legitimate purpose, and the court made clear that the legislation did nothing to destroy the industry of ticket scalping; the consumer retained the right to purchase either from a scalper or directly from the box office.⁹⁷ The law simply prevented the scalper and the promoter from entering into private agreements.⁹⁸

It is interesting to note, especially considering the timing of this case, that the *Thompson* court declared the Chicago ordinance as a lawful exercise of police powers. This case was decided in 1918, more than fifteen years before the Supreme Court's decision in *Nebbia* signaling an end to the *Lochner*-era. Yet in *Thompson*, the statute at issue did not interfere with the private industry to the extent that the statute did in *Steele*. In *Thompson*, the court upheld the statute that simply restricted interaction between the promoters and scalpers.⁹⁹ It did not regulate price restrictions or prohibit a private enterprise altogether.¹⁰⁰

After the Supreme Court's decision in *Nebbia*, the Illinois state legislature followed suit, passing a statute which regulated ticket sales to different amusement events.¹⁰¹ In 1935, the legislature amended the Ticket Scalping Act of 1923 by adding Section 1.5, which prohibited the sale of such tickets at a price above face value and mandated a \$5,000 fine for a violation of the Act.¹⁰²

This statute was virtually identical to the one enacted and immediately struck down as unconstitutional in 1907.¹⁰³ Yet, this was a different era. By 1974, when the statute was challenged as an unconstitutional violation of protected due process rights in *People v.*

⁹⁵ *Id.* at 45-6.

⁹⁶ *Id.* at 45.

⁹⁷ *Thompson*, 119 N.E. at 45-6.

⁹⁸ *Id.* at 46.

⁹⁹ *Id.* at 45-6.

¹⁰⁰ *Id.* at 44.

¹⁰¹ Siporin, *supra* note 52, at 727.

¹⁰² *Id.* at 728; *People v. Patton*, 309 N.E.2d 572, 573 (Ill. 1974).

¹⁰³ *Patton*, 309 N.E.2d at 575.

Patton, it was a virtual lock that the Illinois Supreme Court would uphold the law as a valid exercise of police powers. Indeed the court in *Patton* upheld the law, holding, in accordance with the federal courts' holdings in *Nebbia* and *Gold*, that the test in determining the constitutionality of a statute is whether the legislative objective is reasonably related to a legitimate government purpose.¹⁰⁴ In explicitly overturning *Steele*, the court deferred to the legislature and found that it was acting pursuant to its legislative powers.¹⁰⁵

b. Illinois Today

The Illinois Ticket Scalping Act of 1923 remained effective until 1991 when the Illinois legislature affirmatively legalized ticket brokering in some situations.¹⁰⁶ The legislature acted primarily in response to a 1991 case in which the Illinois Supreme Court once again upheld the Act as a constitutional exercise of legislative powers.¹⁰⁷ This change in the law was not a completely surprising turn of events. After the court's decision in *Patton*, the legislature had amended the Act in 1978, permitting a reasonable service charge to be added on top of the price listed on the face of the ticket.¹⁰⁸ Thus, the legislature opened the door for greater changes, ultimately permitting ticket scalping under certain circumstances.

The broad overarching Illinois Ticket Sale and Resale Act¹⁰⁹ makes it unlawful for any person or corporation, regardless of their title, to sell admission tickets at any place other than the box office for a price higher than stated on the face of the ticket.¹¹⁰ It also permits the promoter of the ticket to sell at a location outside of the box office so long as it sells at the same price as advertised.¹¹¹ However, Section 1.5 of the Act lays out four explicit, statutory

¹⁰⁴ *Id.* at 574.

¹⁰⁵ *Id.* at 575.

¹⁰⁶ See generally Ticket Sale & Resale Act, 720 ILL. COMP. STAT. 375 (2005).

¹⁰⁷ *People v. Waisvisz*, 582 N.E.2d 1383 (Ill. 1991). In *Waisvisz*, the defendant was charged, convicted, and fined \$3000 for selling two \$25 New Kids on the Block concert tickets, for \$40 each, outside of Assembly Hall, the venue for the show at the University of Illinois. *Id.* at 1384-85.

¹⁰⁸ Siporin, *supra* note 52, at 729.

¹⁰⁹ 720 ILL. COMP. STAT. 375/1(a).

¹¹⁰ *Id.*

¹¹¹ *Id.*

exceptions as to when the sale of tickets at a price higher than face value is permitted.¹¹²

First, subsection (b) permits a registered¹¹³ ticket broker to sell tickets above face value so long as the broker engages in the resale of tickets on a regular and ongoing basis from a fixed location within the state.¹¹⁴ This exception does not permit the broker to stand nearby the venue and sell tickets above face value on the day of the event, although they may do so with the direct permission of the promoter.¹¹⁵ The second exception permits a registered¹¹⁶ Internet auction listing service engaged in both interstate and intrastate commerce to sell tickets above face value, however requires that the operator of the web site be in compliance with all applicable laws regarding ticket sales.¹¹⁷ This subsection also requires certain consumer protection measures such as a standard refund policy and

¹¹² *Id.* § 375/1.5. First of all, it should be noted that the statute does not put a cap on the amount above face value that these tickets may be sold. Second, Illinois only recently removed its ban on Internet auction web sites allowing more than just the licensed broker to sell tickets above face value. *See* Vascellaro, *supra* note 3.

¹¹³ 720 ILL. COMP. STAT. § 375/1.5(b)(1). The ticket broker must be duly registered with the Office of the Secretary of State. *Id.*

¹¹⁴ *Id.* § 375/1.5(b).

¹¹⁵ *Id.* § 375/1.5(b)(3). A ticket broker who owns or rents property near the venue may sell tickets at that location regardless of whether or not they have the promoters permission. *Id.*

¹¹⁶ *Id.* § 375/1.5(c). The Internet auction listing service must be duly registered with “the Department of Financial and Professional Regulation under the Auction License Act and with the Office of the Secretary of State on a registration form provided by that Office.”

¹¹⁷ *Id.* § 375/1.5(c). eBay is an example of an Internet auction listing web site in which the initial ticket holder places their tickets into the open market for a specified period of time, and the highest bidder for the tickets gets to purchase the tickets for the price they bid on. Ticket sellers must include the ticket’s face value as well as the location of the event. eBay, Ticket Selling Policies, http://pages.ebay.com/buyselltickets/selling_policies.html (last visited Mar. 24, 2006). Selling tickets on eBay is perfectly legal and eBay’s policies are in accordance with the various state laws throughout the United States. eBay, Selling and Buying Tickets on eBay: Overview, <http://pages.ebay.com/buyselltickets/index.html> (last visited Mar. 24, 2006). eBay’s policies are based on where the event is located and not where the buyer and seller are located. eBay, Frequently Asked Questions, <http://pages.ebay.com/buyselltickets/faq.html> (last visited Mar. 24, 2006). Thus, if a seller in a restricted state wanted to sell tickets for a baseball game in an unrestricted area such as Chicago, they would not be subject to any restrictions and could receive as much over face value as possible.

“an independent and disinterested dispute resolution procedure”.¹¹⁸

Next, subsection (d) permits the selling of tickets above face value at an auction raising money for charitable purposes by or for a non-profit organization.¹¹⁹ Lastly, subsection (e) permits the resale of tickets above face value through an Internet web site whose operator has a business with a physical street address in Illinois and is in compliance with all applicable laws in regards to selling tickets.¹²⁰

The purpose of Section 1.5 of the Ticket Scalping Act is to carve out specific exceptions to the general rule that prohibits ticket scalping altogether. Penalties exist for people found selling tickets above face value who do not meet the explicit requirements exempted under Section 1.5 of the Act.¹²¹ Individuals convicted in violation of Section 1.5 are guilty of a Class A misdemeanor and may be subjected to a fine of up to \$5,000 for each offense.¹²² Violators may also be required to make restitution payments to each injured consumer and could forfeit their own right to attend the specified event.¹²³ A court may also permanently enjoin an individual or corporation found guilty of violating Section 1.5 from further engaging in offering or selling tickets.¹²⁴ Finally, an injured party has the right to bring a civil action against the individual in violation of this Section and may recover up to \$100.¹²⁵

IV. New Trends in Ticket Scalping: They Couldn't Beat 'em So They Joined 'em

Seemingly unable to gain ground against the never-ending existence of ticket scalping, or perhaps simply intrigued by the idea of excess profits, some entertainment promoters have discreetly put

¹¹⁸ 720 ILL. COMP. STAT. 375/1.5(c)(4)(B) & (c)(5).

¹¹⁹ *Id.* § 375/1.5(d).

¹²⁰ *Id.* § 375/1.5(e). At first glance, it seems redundant to have subsection (e) with the existence of subsection (c) already covering Internet web sites. However, subsection (c) governs Internet auction web sites whereas subsection (e) allows the ticket reseller to simply list the purchase price of the ticket on his or her web site.

¹²¹ *Id.* § 375/2(a).

¹²² *Id.*

¹²³ 720 ILL. COMP. STAT. 375/2(a) The scalper in violation of this Section may also have his or her tickets confiscated without any repayment. *Id.* § 375/2(b).

¹²⁴ *Id.* § 375/2(c).

¹²⁵ *Id.* § 375/3.

on a new hat and plotted ways to collect additional revenue from ticket sales.¹²⁶ Specifically, with the advent of the Internet and ongoing advancements in technology-enhancing methods of scalping tickets, promoters are able to disguise themselves to capitalize on the secondary ticket market by scalping their own tickets.¹²⁷ The legality behind many of these practices is not only questionable, but ripe to jeopardize the credibility of the promoters and only further widen the gap between themselves and the average consumer.

a. The Chicago Cubs

In February 2002, the Tribune Company, owners of the Chicago Cubs baseball team, incorporated Wrigley Field Premium Ticket Services (“Premium”), a ticket brokerage firm, “to compete in the profitable business of brokering Cubs baseball tickets.”¹²⁸ On the surface, Premium, as a registered ticket broker, could lawfully sell tickets above face value under Section 1.5 of the Illinois Ticket Scalping Act.¹²⁹ However, because the Tribune Company owns both the Cubs and Premium, questions immediately began to surface as to whether this practice was legal.¹³⁰ The Illinois Ticket Scalping Act explicitly forbids reselling tickets at a price above face value unless one of the enumerated exceptions apply,¹³¹ and yet this was exactly what the Cubs appeared to be doing.¹³² Furthermore, Premium had a tremendous competitive advantage over other competing ticket brokers as it could receive tickets directly from the Cubs’ box office before any tickets were released to the general public and were therefore not forced to rely on traditional alternative sources such as season ticket holders.¹³³

¹²⁶ Pappas, *supra* note 33, at 20.

¹²⁷ Freeman & Gati, *supra* note 26, at 6.

¹²⁸ Siporin, *supra* note 52, at 739.

¹²⁹ *Id.* See also 720 ILL. COMP. STAT. 375/1.5(b).

¹³⁰ Simon, *supra* note 22, at 1198.

¹³¹ *Id.* See also 720 ILL. COMP. STAT. 375/1.5(a).

¹³² Pappas, *supra* note 33, at 20.

¹³³ *Id.* at 20-21. In fact, the existence of Premium actually affected season ticket holders. *Id.* at 21. Prior to Premium’s incorporation, season ticket holders were given the opportunity to buy individual tickets to specific games before they were offered to the general public. *Id.* While this overall policy did not change in theory, it was tweaked so that the most high-profile events went directly to

Naturally, the Cubs plan was met with hostility. The existence of Premium seemed to contradict the Cubs stance of ticket scalping.¹³⁴ Traditionally, the Cubs were against all forms of ticket scalping. If security reports indicated that a ticket holder was reselling his or her tickets at an inflated value, the Cubs would send a letter warning the ticket holder that if the practice did not stop, they would be in jeopardy of having their seat license revoked.¹³⁵ This was not all talk. The Cubs did indeed go as far as revoking season tickets of persons found engaging in the practice.¹³⁶ Yet, the existence of Premium seemed to catapult the Cubs directly into the same secondary market they forbade their season ticket holders from entering.¹³⁷

Additionally, Major League Baseball became suspicious of the Tribune Company's antics and with good reason.¹³⁸ Major League Baseball rules require that each ball club contribute to a revenue-sharing program by paying thirty-four percent of its local revenue into a common fund that is later divided equally among all teams.¹³⁹ This program was designed in order to help the teams with less revenue and who play in smaller market cities to stay competitive with the teams from the larger markets.¹⁴⁰ However, the Cubs were not willing to share any profits they made from Premium with the rest of the league.¹⁴¹ In 2003, the Cubs reported that because

Premium. *Id.* Prior to the 2003 individual game sale, the Cubs announced that no seats were available for the series against the New York Yankees (who were making their first ever regular season appearance at Wrigley Field), Chicago White Sox, or the St. Louis Cardinals. *Id.*

¹³⁴ Siporin, *supra* note 52, at 739-40.

¹³⁵ *Solerholm v. Chi. Nat'l League Ball Club, Inc.* 587 N.E.2d 517, 518 (Ill. App. Ct. 1st Dist. 1992).

¹³⁶ Siporin, *supra* note 52, at 739-40; *see generally Solerholm*, 587 N.E.2d at 518. The Cubs revoked all but six of the plaintiff's eighteen season tickets after it became known that he was engaging in ticket scalping by reselling his tickets at prices above face value. *Id.*

¹³⁷ Siporin, *supra* note 52, at 739.

¹³⁸ Pappas, *supra* note 33, at 21; Simon, *supra* note 22, at 1198. Premium's president was a vice president of the Cubs, its office was a block from Wrigley Field on property leased by the Tribune Company, and its books were kept by the Cubs' accounting department. *Id.*

¹³⁹ Pappas, *supra* note 33, at 21.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

Premium had not made an overall profit, they did not owe any money in excess of their box office sales to the common revenue-sharing fund.¹⁴²

Consumers were so irate with the existence of Premium that a class action lawsuit was filed on behalf of Cubs fans against the Cubs alleging that the common ownership that existed between the Cubs and Premium violated the Illinois Scalping Act.¹⁴³ The lawsuit was initiated by two fans who had previously purchased tickets with a face value of \$36 for prices between \$50 and \$130.¹⁴⁴ The lawsuit alleged that the Cubs, through Premium, had effectively scalped nearly 12,000 of their own tickets.¹⁴⁵ The suit demanded that Premium pay a \$100 fee for each ticket purchased by consumers, as provided as a civil remedy under the Act.¹⁴⁶ However, the case was decided in favor of the Cubs and Premium.¹⁴⁷ The court determined that all transactions between the two corporations were in fact sales, that Premium was an independent broker, and that current Illinois law permits ticket brokering and does not prohibit common ownership between an entertainment enterprise and a brokerage firm.¹⁴⁸ Basically, unless the legislature steps in and intervenes, under current Illinois law, a sports team may openly scalp tickets under such a format.¹⁴⁹ The decision of this case is currently awaiting appeal.

b. The Seattle Mariners

The Cubs are hardly the only team that has generated additional revenue by reentering their product into the marketplace. With the advent of the Internet and ever-increasing technology, online ticket sales have become a lucrative option.¹⁵⁰ Taking

¹⁴² *Id.* Needless to say, owners of other baseball clubs were not happy with the Cubs position on Premium. *Id.*

¹⁴³ See Yang, *supra* note 19, at 115; Cavoto v. Chi. Nat'l League Baseball Club, Inc., No 02 CH 18372 (Ill. Ch. Nov. 24, 2003).

¹⁴⁴ Yang, *supra* note 19, at 113.

¹⁴⁵ Simon, *supra* note 22, at 1199.

¹⁴⁶ Yang, *supra* note 19, at 113.

¹⁴⁷ Simon, *supra* note 22, at 1199.

¹⁴⁸ *Id.* at 1199-2000.

¹⁴⁹ *Id.* at 2000.

¹⁵⁰ Hannah R. Short, *Implications of Grokster for Online Ticket Sale Companies: Why Online Ticket Resale Sites Should be Held Liable for Violating*

advantage of such opportunities, the Seattle Mariners set up an interactive web site called the Ticket Marketplace.¹⁵¹ Through this site, season ticket holders unable to attend a game can sell their tickets by posting them on the web site for any online consumer to purchase.¹⁵² There is no limit for how much the ticket holder can sell for and tickets resold through this site are usually sold at a price above face value.¹⁵³

The Mariners profit from this interactive marketplace by charging a ten percent commission for all buyers and a fifteen percent commission for all sellers using their Marketplace.¹⁵⁴ The team earned over \$100,000 in 2003 through commission prices on Ticket Marketplace.¹⁵⁵ Additionally, the Mariners began to withhold tickets typically reserved for sale to fans at the box office to sell directly through the Ticket Marketplace above face value.¹⁵⁶ Unlike the Cubs, however, the Mariners give the required percentage of the profits to Major League Baseball's revenue sharing plan.¹⁵⁷

Although the Mariners are the most recognized example of this practice, approximately twenty-five other sports franchises provide similar services through Internet ticket brokers.¹⁵⁸ The controversy centers on the hypocrisy of this plan—teams put in strong initiatives to get rid of the ticket scalper while simultaneously profiting off of their product by acting in a manner similar to the

State Scalping Laws, 7 N.C.J.L. & TECH. 181, 191 (2005).

¹⁵¹ Freeman & Gati, *supra* note 26, at 7.

¹⁵² *Id.*

¹⁵³ *Id.* This is in spite of the fact that a Seattle ordinance forbids the reselling of tickets above face value. The state of Washington, however, does not have such a law so as long as the sale does not take place in Seattle, the tickets may be resold at any price the market bears. Pappas, *supra* note 33, at 22-23. Yet ticket scalping does not rank high on the priority of local law enforcement who would rather focus their resources on issues such as drunk driving and domestic violence than ensuring compliance with the scalping laws. *Id.* The team has argued that LiquidSeats, the technology provider, has the capabilities of blocking sellers who live in Seattle thus maintaining compliance with the ordinance, however the truth behind this assertion is suspect. Freeman & Gati, *supra* note 26, at 7.

¹⁵⁴ Pappas, *supra* note 33, at 22.

¹⁵⁵ *Id.*

¹⁵⁶ Freeman & Gati, *supra* note 26, at 7.

¹⁵⁷ *Id.*

¹⁵⁸ Pappas, *supra* note 33, at 22.

exact type of behavior they are trying to prohibit.¹⁵⁹

c. **Broadway**

Ticket scalping is not just limited to the sporting industry. In 2001, the producers of the hit Broadway show *The Producers* began to withhold approximately fifty seats for each show from the public until the day of the performance.¹⁶⁰ They proceeded to sell the tickets, with a face value of \$100, to a brokerage firm they had created¹⁶¹ for \$400 a piece.¹⁶² The tickets were then marked up to the legal twenty percent to \$480 whereupon they were sold to the public.¹⁶³ The promoters of *The Producers* profited so heavily from this plan that as many as ten other Broadway shows have since latched onto the idea of withholding VIP tickets in an attempt to win the “war on scalpers.”¹⁶⁴

V. **Solutions: How Consumers Can Best Protect Themselves**

Ticket scalping has been in existence both legally and illegally for well over 100 years and recent changes in Illinois law, as well as many other states, point to the conclusion that the industry is a permanent fixture in our society. Yet consumers can begin to protect themselves merely by becoming knowledgeable of their state’s applicable laws on this matter. Consumers often have remedial rights afforded to them that they are completely unaware of. Additionally, consumers should be aware as to whom, if anyone, legally has the right to scalp tickets. Many states have laws similar to Illinois in which only certain individuals are allowed to engage in this practice.¹⁶⁵ Currently no federal law exists that deals with this issue, and although Congress could plausibly regulate this industry, because the scalping industry varies greatly by state, it is unlikely that they

¹⁵⁹ *Id.*

¹⁶⁰ Simon, *supra* note 22, at 1200.

¹⁶¹ *Id.* The brokerage firm is called Broadway Inner Circle. *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See, e.g., Ticket Sale & Resale Act, 720 ILL. COMP. STAT. 375/1.5(b)(1) (2005).

will take this power away from the states' elected legislatures.

Consumers dissatisfied with their state's scalping laws can always lobby their state legislature for changes. This is a distinct possibility in Illinois, specifically with the court's ruling in *Cavoto* effectively permitting promoters to scalp their own tickets. Given that the promoters have the right to set the initial price of the ticket, allowing them to enter the secondary market is not only unfair to the average consumer, but also to the independent legalized ticket broker to whom such laws were enacted to assist.

VI. Conclusion: The Future of Ticket Scalping

Ticket scalping, while still very prevalent, is certainly not what it used to be. Instead of the stereotypical ticket scalper holding an abundance of tickets above his or her head risking arrest in order to make a profit, most ticket scalping occurs behind the scenes, on Internet auction sites or through registered ticket brokers. State laws and local ordinances vary, making it difficult to keep the different laws straight, let alone attempt to punish any wrongdoers. The majority of statutes dealing with scalping allow the practice in some form, making it even more difficult to effectively enforce such laws.

Yet, what is the price of enforcement? As technology continues to grow, ticket scalping schemes become more complex, so much so that some promoters have begun scalping their own tickets. The ticket scalper illegally selling near the venue is easy to catch; yet those scalpers are few and far between. Combating this enterprise on a widespread level is impractical, if not downright foolish. The resources necessary to catch the majority of these enterprises would be astronomical. Therefore, the majority of resources used to fight this practice should be geared more towards prohibiting the promoter from entering the secondary market. These practices would not be as difficult to catch and would have the effect of alleviating at least some of the existing tension between producers and consumers.
