



## I Want My Hannah Montana! The Regulation of Ticket Sales in Tennessee

by: Josh Mullen and Kelly Frey

Before tickets for the Hannah Montana 54-city concert tour went on sale in October 2007, thousands of young children (and presumably some of their parents) were sitting in front of their computers anxiously clutching credit cards and waiting for the internet ticket purchase link to activate. Frantically clicking the mouse, families raced to enter their credit card billing information to gain access to the coveted concert tickets. Much to their dismay, the concerts sold out in just a few minutes.<sup>1</sup> Almost immediately, tickets to the “sold out” venues could be found on internet ticket sites for prices much higher than their face value.<sup>2</sup> Angry parents (and angrier children) yelled at their computer screens (and each other). How could all of these concerts be “sold out” in mere minutes? Who could get access to enough tickets to sell out a whole arena? Why were “sold out” venue tickets almost instantaneously appearing at quadruple their face value on ticket resale sites?

The questions that angry families were asking about the legitimacy of the internet ticket sales process rapidly became questions before state legislatures all across the country.

### Who was to blame?

The answer was simple. Professional ticket brokers (using software created by RMG Technologies, Inc. to bypass internet ticket sale restrictions) had simultaneously bought thousands of tickets by creating numerous bogus user accounts.<sup>3</sup> Bypassing the ticket vendor’s quantity restrictions (and other terms of use) on internet ticket sales, professional ticket brokers purchased huge blocks of tickets at the most desirable venues—specifically for resale at multiples of the face—value of the tickets.<sup>4</sup>

### *Regulation of Ticket Resells and Ticket Scalping*

States have long struggled with how to enforce regulations related to the resale of tickets to concerts, sporting events, and other entertainment venues. A review of the law for states surrounding Tennessee provides an indication of the wide diversity of regulations. Alabama does not impose any price restrictions on ticket resells but requires anyone “offering for sale or selling tickets at a price greater than the original price . . . [to pay] . . . a license tax of \$100.”<sup>5</sup> In Mississippi, it is unlawful to sell tickets to any State college or State university sporting event, or any events held on state property, for above the face value price.<sup>6</sup> Similar to Mississippi, Arkansas specifically outlaws the sale of tickets to high school or college athletic events for greater than the face value price.<sup>7</sup> The Arkansas statute also makes it

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unlawful to sell any concert tickets above face value (but allows sellers to charge a “reasonable” service charge).<sup>8</sup> Virginia’s statute provides no statewide regulation of ticket resells, instead providing that local municipalities have the authority to enact ordinances to regulate ticket sales.<sup>9</sup>

Georgia provides an example of a more complex set of ticket resale regulations.<sup>10</sup> In Georgia, ticket brokers are allowed to sell tickets at any price, but to do so they must first receive a license from the state.<sup>11</sup> Sellers without a ticket broker license may not charge more than \$3 in excess of the face value ticket price.<sup>12</sup> To receive a ticket broker license, the broker must maintain a permanent office or place of business in Georgia, pay a \$500 annual license fee,<sup>13</sup> and must also post at the established place of business both the purchaser’s rights related to canceling orders and the seller’s ticket refund policy.<sup>14</sup> To address the problem of ticket brokers buying up significant portions of event tickets, the Georgia statute prohibits ticket brokers “from acquiring and reselling in excess of 1 percent of the total tickets allocated for any contest or event.”<sup>15</sup> The Georgia statute also addresses where brokers may sell tickets (brokers are allowed to sell tickets from their place of business or through the internet, but brokers may not sell tickets within 1,500 feet of the venue if the event admits less than 15,000 people and cannot sell tickets within 2,700 feet of the venue if the event admits more than 15,000 people).<sup>16</sup> In addition to such statutory restrictions, Georgia event sponsors may contractually ban the resale of their event tickets by giving notice in writing on the back of the ticket.<sup>17</sup>

#### Difficulty of Enforcement

Regardless of whether states implement simple or complex statutes addressing ticket resale, enforcement of these regulations has been difficult.

For example, in a 1998 ruling by the Supreme Court of Connecticut, the court re-

versed criminal penalties imposed against a ticket broker who was selling tickets to Connecticut events from an adjoining state for more than the ticket’s face value.<sup>18</sup> The Connecticut statute considered specifically prohibited ticket sales for more than \$3 above face value.<sup>19</sup> However, the Supreme Court of Connecticut concluded that because the ticket broker’s actions “occurred” in the adjoining state, not Connecticut, criminal penalties could not be imposed.<sup>20</sup> The Supreme Court of Connecticut’s decision essentially made it impossible to enforce the ticket scalping statute (because brokers lining the Connecticut borders could easily bypass any ticket resale restrictions by operating from outside the state). In July 2007, Connecticut amended its ticket resale laws and now allows individuals to resell tickets at any price.<sup>21</sup>

Similar to Connecticut, other states have repealed or significantly amended their ticket resale regulations because of the difficulty associated with enforcement. A Missouri law repealing the prohibition on ticket resells took effect on November 28, 2007.<sup>22</sup> Minnesota also recently repealed its laws prohibiting ticket resells because “the proliferation of online ticket brokers has made the law more difficult to enforce.”<sup>23</sup> In 2007, New York State also enacted legislation to repeal its laws prohibiting ticket scalping.<sup>24</sup>

Unfortunately, because market demand for tickets is high and internet sites reselling tickets are prevalent, states find it extremely difficult to police ticket sales. But rather than adopting legislation to protect individuals that can be more easily enforced, many states are instead repealing all of their laws regulating the resale of tickets.<sup>25</sup> And if difficulties with enforcement weren’t enough to push legislatures in this direction, economics appear to be. With a ticket resale market approaching three billion dollars annually,<sup>26</sup> states now have an economic incentive to legalize (and tax) the professional resale of tickets

(rather than create equity between “big business” and individuals competing for the same tickets).

#### Tennessee’s Approach to Ticket Regulation

In March 2008, the Tennessee General Assembly decided to directly address the “Hannah Montana” problem by passing House Bill 2420.<sup>27</sup> The new statute makes it unlawful to possess, use, give, or sell software “that is primarily designed or produced for the purpose of interfering with the operations of any ticket seller that sells, over the internet, tickets of admission . . . by . . . circumventing any controls or measures that are instituted by the ticket seller on its website to ensure an equitable ticket buying process.”<sup>28</sup> The legislation essentially makes it unlawful to use software to “circumvent any security measures on the ticket seller’s website” or to circumvent any “access control systems” that are designed to ensure that individuals have an equal chance as the professional ticket brokers to buy the same tickets.<sup>29</sup> Each instance of “knowingly” attempting to “sell, give, transfer, use, distribute or possess with the intent to sell” the software is a separate violation under the new statute (and each violation constitutes a Class B misdemeanor resulting in a fine equaling the greater of the profit made on ticket resells or \$500).<sup>30</sup> Such legislation makes it unlawful to use the RMG Technologies, Inc. (or similar) software to bypass internet ticket quantity restrictions.

Prior to 1989, Tennessee had in effect T.C.A. § 39-4101 (which made it “unlawful for any person to scalp an admission ticket, pass or admission card to any theater, auditorium, stadium, dance hall, rink, athletic field or any other place to which tickets, passes or admission cards are required as a condition upon admittance thereto . . . .”)<sup>31</sup> When the Tennessee General Assembly updated the Tennessee

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Criminal Code in 1989, they eliminated T.C.A. § 39-4101 (essentially making ticket scalping legal).<sup>32</sup> Between 1989 and 2008 there were no regulations specifically related to ticket resells in Tennessee—the market forces of “supply and demand” were the sole determinant of ticket resale prices in Tennessee. With the recent passage of House Bill 2420, the Tennessee General Assembly ventured back into the regulation of ticket resells. While only time will tell whether the Tennessee General Assembly’s approach will solve the “Hannah Montana” problem, there are positive aspects of the legislation that should effectively deal with several of the enforcement difficulties experienced by other states.

A primary advantage of the Tennessee approach is that it avoids regulating prices associated with resale of market tickets (in favor of merely outlawing the unfair technological advantage professional ticket brokers have historically used to control market availability and pricing on ticket resale). Because of the narrower approach, enforcement can be conducted on an event-by-event basis by monitoring who is buying large blocks of tickets (i.e., evidence of the use of the prohibited technology).<sup>33</sup>

Conclusion

States will surely continue to change their laws as concert and sporting event ticket sales and resells continue to upset the general public. While there is always a danger in taking regulations too far, the Tennessee General Assembly struck the appropriate balance with the passage of House Bill 2420.

So this year when you are trying to buy those tickets to see the Volunteers, the Titans, the Predators, or (go ahead and admit it) Hannah Montana, go boldly to those internet ticket sites knowing that in Tennessee at least you should have just as good a chance as the professional ticket scalpers.

And, if you find you can’t use those precious UT football tickets – the authors can be contacted directly at their respective email addresses!<sup>34</sup> ■

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**(Footnotes)**

<sup>1</sup> Ellen Rosen, *In the Race to Buy Concert Tickets, Fans Keep Losing*, N.Y. TIMES, Oct. 6, 2007, at C6.  
<sup>2</sup> *Id.*  
<sup>3</sup> Bobby Kerlik, *Ticket Lawsuit Withdrawn Against Downtown Company*, PITT. TRIB.-REV., June 3, 2008, available at [http://www.pittsburghlive.com/x/pittsburghtrib/news/cityregion/s\\_570725.html](http://www.pittsburghlive.com/x/pittsburghtrib/news/cityregion/s_570725.html)  
<sup>4</sup> *Id.*  
<sup>5</sup> ALA. CODE § 40-12-167 (2008).  
<sup>6</sup> MISS. CODE ANN. § 97-23-97 (2007).  
<sup>7</sup> ARK. CODE ANN. § 5-63-201(a)(1)(A) (2008). However, to keep the institutional endowments full and assure that athletic scholarships were unaffected, the Arkansas statute indicates that the “subsection shall not apply to an institution of higher education that receives funds per ticket above the face value of that ticket.” *Id.* at § 5-63-201(a)(2).  
<sup>8</sup> *Id.* at § 5-63-201(a)(1)(B).  
<sup>9</sup> VA. CODE ANN. § 15.2-969 (2007).  
<sup>10</sup> GA. CODE ANN. § 43-4B-25, et seq. (2007).  
<sup>11</sup> *Id.* at § 43-4B-25(a).  
<sup>12</sup> *Id.*  
<sup>13</sup> *Id.* at § 43-4B-26.  
<sup>14</sup> *Id.* at § 43-4B-28.  
<sup>15</sup> *Id.* at § 43-4B-28(b)(2).  
<sup>16</sup> *Id.* at § 43-4B-28(c)(1) – (c)(2).  
<sup>17</sup> *Id.* at § 43-4B-25(b).  
<sup>18</sup> *State v. Cardwell*, 718 A.2d 954, 964 (Conn. 1998).  
<sup>19</sup> *Id.* at 955.  
<sup>20</sup> *Id.* at 964. Because the ticket broker advertised the Connecticut tickets from the adjoining state, made phone calls offering tickets from the adjoining state,

and delivered the tickets from the adjoining state, the Connecticut Supreme Court ruled that such actions occurred in the adjoining state and therefore did not violate the Connecticut criminal statute.

<sup>21</sup> Op-Ed., *That’s the Ticket*, WALL ST. J., Aug. 7, 2007, at A10. Connecticut currently regulates only the ticket broker’s refund policies and the locations where tickets may be sold. CONN. GEN. STAT. § 53-289c and § 53-289b(a) (West Supp. 2008).  
<sup>22</sup> Press Release, Governor Matt Blunt, Job Creation Initiatives Governor Blunt Signed Take Effect, <http://governor.mo.gov/cgi-bin/coranto/viewnews.cgi?id=EEAyklkuuVwCftCvcG&style=Default+News+Style&tmpl=newsitem>. Missouri Governor Matt Blunt advocated support for the change by referencing the professional sports teams that supported the repeal and arguing that the repeal would make it easier for sports fans to get tickets to see their favorite teams.  
<sup>23</sup> Tom Scheck, *Bill to Legalize Ticket Scalping on its way to the Governor* (Minnesota Public Radio broadcast May 2, 2007), available at <http://minnesota.publicradio.org/display/web/2007/05/02/ticketscalping/> (quoting Rep. Chris DeLaForest, R-Andover).  
<sup>24</sup> Op-Ed., *That’s The Ticket*, WALL ST. J., Aug. 7, 2007, at A10.  
<sup>25</sup> ESPN News, *Internet Sales Prompt Move to Ease Scalping Restrictions*, May 31, 2007, available at <http://sports.espn.go.com/espn/news/story?id=2887957>.  
<sup>26</sup> Op-Ed., *That’s The Ticket*, WALL ST. J., Aug. 7, 2007, at A10.  
<sup>27</sup> 2008 Tenn. Pub. Acts 731.  
<sup>28</sup> *Id.*  
<sup>29</sup> *Id.*  
<sup>30</sup> *Id.*  
<sup>31</sup> TENN. CODE ANN. § 39-4-101 (repealed 1989).  
<sup>32</sup> Bill Brewer, *Scalping of Tickets a Dilemma*, KNOX NEWS SENTINEL, Nov. 18, 2007, available at <http://www.knoxnews.com/news/2007/Nov/24/scalping-of-tickets-a-dilemma/>.  
<sup>33</sup> “Hannah Montana” Tour Sparks Legislation (WSMV television broadcast Mar. 17, 2008). Each computer on the internet has its own internet protocol address that identifies that computer. If regulators observe that large blocks of tickets were sold to just a few internet protocol addresses, then regulators can immediately focus their investigations to those addresses that purchased the significant portion of tickets. By using this procedure, regulators should have a smaller pool of ticket purchasers to investigate and the opportunity to address the problem of software use (without using a significant amount of resources to monitor the general market).  
<sup>34</sup> Go Vols!