

TICKET SCALPING – AI GONE TOO FAR? IN SEARCH OF AN OPTIMAL LEGAL SOLUTION

D. STOYANOV

Received 22.03.2025; accepted 21.05.2025

First online publication: 28.05.2025

DOI: <https://doi.org/10.55516/ijls.v5i1.255>

Dimitar STOYANOV

Ph.D., Senior Assistant Professor in Civil Law

Faculty of Law, Sofia University “St. Kliment Ohridski”, Bulgaria

E-mail: dimitarstoyanov2011@gmail.com; dimituris@uni-sofia.bg

ORCID ID: <https://orcid.org/0000-0001-9080-8641>

Abstract

The rise of artificial intelligence (AI) has significantly transformed the ticketing industry, with the proliferation of ticket scalping bots posing a major challenge to fair consumer access. This paper explores the historical context of ticket scalping, its evolution in the digital age, and the legal and technological measures implemented to counteract its adverse effects. The discussion highlights key legislative responses, including the BOTS Act in the United States, the Digital Economy Act in the United Kingdom, and the EU’s Omnibus Directive, assessing their effectiveness in regulating AI-driven scalping practices. Additionally, the paper examines industry-led solutions such as blockchain-based ticketing and personalized tickets, alongside contractual restrictions imposed by event organizers. Through a comparative legal analysis, this study argues for a balanced approach that integrates legislative, technological, and contractual measures to mitigate AI-driven ticket scalping while ensuring fair access for consumers.

Key words: Artificial Intelligence, Ticket Scalping, AI Bots, Secondary Ticket Market, Consumer Protection, BOTS Act, Digital Economy Act, Omnibus Directive, Contractual Restrictions on Transferability.

INTRODUCTION

Hardly anyone will claim that the rise of artificial intelligence (AI) and its rapid implementation in everyday affairs did not bring about a significant change. One of the areas dramatically affected by the introduction of AI is the ticket business. Nowadays, we are witness to an ever-growing application of software bots that facilitate the process of online ticket purchase, but also create new issues

that need to be resolved. This article has the humble aim to focus briefly on the impact of artificial intelligence upon ticket scalping in search of an optimal legal solution to the conflict between the legal interests of all parties involved.

I. A BRIEF OVERVIEW OF TICKET SCALPING AS A SOCIAL PHENOMENON UNTIL PRESENT TIMES

1. Origin of ticket scalping

Despite the fact that the notion of “*ticket scalping*” cannot be found in legislative acts, there is hardly any doubt that it is used to denote the speculative practice of buying tickets for an event with the sole purpose of reselling them later, often at a much higher price than their face value (*Black’s Law Dictionary* p. 1162). Ticket scalping has been part of human history since Antiquity. One of the very first instances of ticket scalping was to be observed in ancient Rome, at gladiator fights, held at the Colosseum. Specific people, called *locarii*¹, bought tickets for specific places at the arena, where one could see and be seen by the Emperor, and resold them to those eager spectators for a profit. The *locarii* have even been immortalized by Roman poets (*Rawson, 1987, p. 96*), albeit in an ironic fashion (*Martial 5.24.9*)² Overall, despite the lack of specific rules on the matter in Roman legal sources, it can be assumed that ticket scalping was a practice frowned upon by the Roman public from the outset.

Nevertheless, the practice of obtaining tickets and reselling them later for a price substantially higher than their face value outlived ancient times, as modern scholars assume that ticket scalping could have occurred at Shakespeare’s plays at the Globe theatre in the 17th century (*Cross, A., 2023*). The true scale of the problem became evident during the 19th century, as the industrial revolution brought about an unprecedented intensity of human interaction. Modern scholars point out that this practice was not limited to specific areas or types of social interaction. Throughout the 19th century ticket scalping became a global phenomenon, as it was observed on both sides of the Atlantic Ocean - in the USA and in France, affecting entertainment as well as railway tickets (*Segrave, K., 2007, p. 4*).

¹ One who first took possession of a seat in the theatre and let it out to one who came later - <https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3Dlocarius> (last accessed on 20.01.2025)

² The epigram of Martial “*Hermes, divitiae locariorum*” is literally translated as “*Hermes, wealth of the scalpers*” - https://en.wikisource.org/wiki/Translation:Martial_V.24 (last accessed on 20.01.2025). However, some modern scholars use a descriptive method in the translation of this epigram and bring a much needed context to it – “*Hermes, divitiae locariorum, - a famous gladiator, who filled the theatre, and thus brought much gain to those who parted with their seats for hire*”

<https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3Dlocarius> .

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2. The adverse consequences of ticket scalping

There might be many reasons to consider ticket scalping as immoral and detrimental to the interests of all parties, except scalpers themselves. Above all, organizers are interested in many ways to eliminate ticket scalpers. Usually, artists, football clubs and other persons hosting an event deliberately provide underpriced tickets in order to increase performance and to achieve a full venue (*Stein, 2014, p. 6.*) Setting the price of the particular ticket below its true economic value is part of a global marketing strategy by providing consumers an incentive to buy merchandise, as well as foods and drinks during the event. It can easily be assumed that people might not be willing to incur these additional expenses, if they regard the price they had to pay to gain access as too high. Moreover, by setting a low price for tickets and allowing many to enjoy the show, organizers and performers avoid being criticized for elitism and at the same time receive further profits from attenders.

Another reason why organizers would also prefer to sell tickets to identifiable natural persons, is public security. Should the tickets be bought by ticket scalpers using AI, this would allow ill-mannered fans of the rivaling team to obtain tickets and to cause mayhem on the stands. Moreover, someone who has been banned from entering the premises for whatever reason, such as racist misconduct, acts of violence, hooliganism and the like might contact a ticket scalper and try to circumvent this prohibition, thus gaining access to the venue (*Bach, Fl., 2007, p. 138*).

Consumers, who are compelled to pay a much higher price for the desired ticket than its face value, of course, experience the most intensive consequences of ticket scalping. Should they decide to deny dealing with ticket scalpers, consumers are faced with an uneasy decision either to settle for the remaining available tickets, usually the least attractive ones, or simply to abstain from attending this particular performance. Moreover, the excessive price they are forced to pay does not support the creator or the artist. It constitutes pure financial gain for someone who speculates with tickets. These issues have become even more pressing in contemporary times, where humans cannot compete with sophisticated AI that can obtain the best possible tickets in just mere seconds after they are released at the primary market (*Siwicki, 2024, p. 238 - 239*).

3. Ticket scalping in the digital age. The case of Kenneth Lawson and Wiseguys.

It is safe to say that speculative ticket resale actually became an international problem, when an USA-based company, *Wiseguys*, first implemented artificial intelligence in order to obtain batches of tickets online. Founded in the late 1990s, *Wiseguys* placed itself entirely within the ticket scalping business. Initially their employees were conducting an intensive bargaining process over telephone talks to obtain tickets from authorised vendors

in order to resell them later to desperate consumers at a higher price. The company's owner, Kenneth Lawson, decided to change this rather obsolete business model. He hired a Bulgarian programmer, commissioned him to develop a bot that is able to auto-complete drop-down menus, and to refresh pages automatically, thereby capable of buying an enormous quantity of tickets for seconds (*Waldstreicher, 2019, p. 2*). Thus, the first known AI ticket scalper emerged, enabling Wiseguys to achieve a dominant position in speculative ticket resale transactions (*Purtill, 2017*). Lawson's indictment by the FBI and the subsequent trial from 2010³, during which he and his accomplices pleaded guilty to charges of computer hacking and fraud, did not put an end to this practice, but ironically led to the popularity of software bots and the extensive use of AI for ticket scalping. It became evident that this practice is capable of affecting millions of users worldwide. Therefore, a more resolute legislative answer on both national and supranational level was a logical consequence.

II. Contemporary methods to overcome ticket scalping

From a bird's eye, one can distinguish between three main methods, used to restrict negative consequences of ticket scalping. More specifically, they include legislative, technological and contractual restrictions. It is worth mentioning that these three methods do not necessarily coincide and some of them can be implemented simultaneously.

1. Regarding **legislative** restrictions, one can establish an abundance of types of legislative approach from a comparative perspective. A preferred method in the pre-digital era was to provide penal law restrictions by pronouncing ticket scalping a criminal offence. For instance, such an approach was adopted in France, where art. 1 of *The Law of 27 June 1919*⁴ expressly prohibited ticket resale for a profit and imposed a fine upon perpetrators. A similar provision was adopted by the French legislator once again in 2012. The explicit rule of art. 313-6-2 of the *French Criminal Code*⁵ provides that the sale, offering for sale of access to a sporting, cultural or commercial event or a live performance, usually without the authorization of the producer, organizer or owner of the rights to operate the event or show, shall be punishable by a fine of EUR 15,000. Quite recently, a French court requested a preliminary ruling from the Court of Justice of the European Union whether the aforementioned provisions contravene the

³ Cf. <https://archives.fbi.gov/archives/newark/press-releases/2010/nk111810.htm> (last visited on 24.01.2025)

⁴ Loi du 27 juin 1919 portant répression du trafic des billets de théâtre; - available at <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006070724/> (last visited on 24.01.2025)

⁵ Article 313-6-2 Code Penal; - available at - https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000025492294 (last visited on 24.01.2025)

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mandatory rule of art. 56 of the *Treaty on the Functioning of the European Union*, providing that “*restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.*”. By an Order of 17. May 2024 regarding Case C-190/23, the Court of Justice considered the request as manifestly inadmissible. However, this ruling does not give a straight answer to the substantive subject whether there is potential conflict between both sets of rules.

In my opinion, such an approach can hardly be considered effective. It allows criminal law to “invade” a typical private law relationship between contractual partners. Whether an agreed upon price is adequate is a matter of contract law and cannot be resolved using criminal law methods.

Another legislative approach, aimed at keeping balance in mind, might be to not ban ticket resale outright, but to provide rules on the actual transfer of tickets, such as setting a price cap for resale. This approach has been previously adopted in the State of New York⁶ (*Gold v DiCarlo* 235 F. Supp. 817 S.D.N.Y. 1964), as well as in the US State of Georgia (*State v Major* 243 Ga. 255 1979)⁷, where the legislator had introduced a cap on ticket resale, thus limiting the maximum possible profit one can get from reselling the ticket. Such an approach might seem more balanced, since it does not impose an absolute prohibition on ticket resales. It rather attempts to reconcile profit-aimed entrepreneurs and consumers in need of protection.

Despite these good intentions, however, the aforementioned provisions of the States of New York and Georgia have long since been repealed. To my view, the legislative approach to provide a resale cap, consisting of a fixed sum of money that resellers can charge consumers with, is inadequate to the dynamics of contemporary economic affairs. It is evident that in order to try and keep up with the ever-changing value of money and inflation rates, the legislator should constantly amend these acts and adjust the maximum resale cap to the respective circumstances. To my view, this is far from being a sensible legislative approach, since it presupposes a constant “tracking” of prices and trends in ticket industry. This resource-heavy approach should constantly be applied, because the lack of an amendment will turn this fixed sum of money into an inadequate number very quickly (Sturman, Z., 2020, p. 965 - 966). Given the vast area of much more pressing issues in need of legislative attention, it might be wiser not to adopt such a rigid solution.

There is also another aspect to take into consideration regarding this, seemingly balanced, legislative approach. As early as 1927, the US Supreme

⁶ Section 169-c (repealed) of the New York General Business Law provided that it is unlawful to resell a ticket at a price exceeding its face value with more than \$ 1.50 USD plus taxes.

⁷ The provision of § 96-602 (repealed) of Georgia Code, in its version from 1979, provided a prohibition on resale of tickets for a price in excess of face value plus \$ 1 USD.

Court considered restrictions on the price of resold tickets as unconstitutional, cf. *Tyson & Brother v. Banton*, 273 U.S. 418 (1927). The provision in question, Sections 167 and 172 of the New York Laws 1922, declared prices for admission tickets a matter “*affected with public interest*” and forbade the resale of tickets “*or any other evidence of the right to entry at a price in excess of fifty cents in advance of the price printed on the face of such ticket*”. The court considered the right of the owner to set a price at which his property shall be sold or used as an inherent attribute of property itself. At the same time, Section 2 of the Fourteenth Amendment to the US Constitution⁸ provides that “...; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws*”. The court declared Sections 167 and 172 of the New York Laws 1922 unconstitutional on grounds of Section 2 of the Fourteenth Amendment, thus denying the possibility to set a price cap on resale of tickets. This understanding has been subsequently reversed in *Gold v. DiCarlo* (1964)⁹, where the judge found no grounds for discrimination of ticket brokers solely because of the introduction of a price resale cap in a New York Statute.

Many scholars have expressed their doubts about the sensibility of providing a cap on resale tickets by a legislative act. Some are even inclined to consider such measures as an intrusion into private law relationship in a manner that they claim resembles Soviet-era central planning economy (Sturman, Z., 2020, p. 962). While such a perspective may be considered a bit overstated, it is common knowledge that every legislative intervention into private law relationships needs to be adequate and to provide a stable and balanced solution to the conflict of legal interests. In the case with ticket scalping, none of this is achieved by provisions deemed to become inevitably obsolete and inadequate due to ever-changing prices, inflation and business relations.

However, it is fair to say that the circumstances around *Wiseguys* and the implementation of AI into the process of ticket scalping did not remain unanswered by national legislators. The main aim was to prevent the abuse of this unprecedented technological development in detriment to the interests of consumers and the public. Given the circumstances around *Wiseguys*, it is of no surprise that one of the first national legislators to adopt an act, specifically aimed at prohibiting the usage of software in order to tamper with the process of obtaining tickets online, is the *USA*. The purpose of the *Better Online Sales Act*, adopted on 14. December 2016, is to “*prohibit the circumvention of control measures used by Internet ticket sellers to ensure equitable consumer access to tickets*”. The drafters’ main concern is that scalpers use designated software to

⁸ The Fourteenth Amendment (Amendment XIV) to the United States Constitution was adopted on July 9, 1868.

⁹ Cf. *Gold v. DiCarlo*, 235 F. Supp. 817 (S.D.N.Y. 1964)

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prevent consumer access to tickets - a conduct deemed contrary to good commercial practice. The application of automated algorithms allows scalpers to gain an unfair advantage over regular ticket buyers. In their Official Report¹⁰ members of the Senate Committee on Commerce, Science, and Transportation identify a number of methods, implemented in the process of ticket scalping. They include the automated checking of the ticket seller website for ticket releases; the automated reservation and display of available tickets; the automated obtaining of tickets by bots, thus allowing to fill out relevant customer information for multiple tickets at once; as well as circumventing anti-bot security measures.

It is noted that the use of ticket bots frustrates the intentions of performers and other ticket sellers to make tickets available equitably and at a reasonable price. A primary concern is that ticket bots obtain the majority of the most desirable tickets for certain events, leaving customers with no other choice than to pay a significantly higher sum of money in order to be able to gain access to the venue. The application of this specific software allows scalpers to purchase and subsequently to sell multiple tickets on the secondary market at exorbitant prices, in violation of primary ticket sellers' terms and technical controls (Official Report, p. 2)

With the intention to overcome this practice, Section (2), (a), (1) of the BOTS Act prohibits the usage of artificial intelligence (bots). Pursuant to Section (2), (b), (1) a violation of this prohibition is considered as an unfair or a deceptive act or practice. Thus, the drafters enable the Federal Trade Commission to intervene into ticket scalping affairs.

The BOTS Act has been subject to intensive discussions in relevant literature. Some authors (McFadden, R., 2016, p. 445) emphasize on the circumstance that the act is ineffective in its application, since predatory practices, such as ticket scalping, occur mainly on an international level, just like the Wiesguys case clearly demonstrated. These perpetrators are usually based in another jurisdiction and thus remain outside the reach of American law enforcement and the provisions of the BOTS Act.

Others tend to attribute the lack of legislative effectiveness to political reasons. They claim that the Congress has deliberately “weakened” the legislative effect of the BOTS Act by refusing to incorporate a right of action for injured parties, as well as by refusing to impose federal criminal penalty for any violation of the BOTS Act (Elvove, Z., 2023 p. 348).

However, despite scholars' criticism one cannot deny that the BOTS Act of 2016 is among the first legislative examples where it is perceived that AI can also have negative implications on consumers' experience.

¹⁰ Cf. <https://www.congress.gov/congressional-report/114th-congress/senate-report/391/1> (last visited on 20.01.2025)

Just months following the BOTS Act, in 2017 the United Kingdom legislature enacted the ***Digital Economy Act***¹¹. Its Section 106 enables the State Secretary to “*make regulation providing that it is an offence for a person to obtain tickets in excess of a limit imposed by conditions*”. Carrying out this competence, the State Secretary adopted ***The Breaching Limits on Ticket Sales Regulation 2018*** (SI 2018/735)¹², which came into force on 5 July 2018. Its Section 3 provides that it is an offence to use automated computer programs to purchase tickets and where the intent is financial gain.

It is worth pointing out that legislative initiatives restricting the use of AI with malicious intent in the process of ticket scalping are present on EU level as well. The provision of art. ***Directive (EU) 2019/2161 of 27 November 2019*** (subsequently popular as the ‘*Omnibus Directive*’) amends Annex I to ***Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market*** by including a provision specifically aimed at ticket scalping. Annex I (*Commercial Practices Which Are In All Circumstances Considered Unfair*) is amended by introducing a new point 23a. - *Reselling event tickets to consumers if the trader acquired them by using automated means to circumvent any limit imposed on the number of tickets that a person can buy or any other rules applicable to the purchase of tickets*.

Recital (50) of the Preamble to the *Omnibus Directive* reveals that the Brussels legislator adopted an approach, similar to all aforementioned acts. The drafters consider ticket scalping to be detrimental to consumers’ interests and call for a general prohibition for traders to resell tickets to cultural and sports events that they have acquired by using software such as ‘bots’ enabling them to buy tickets in excess of the technical limits imposed by the primary ticket seller or to bypass any other technical means put in place by the primary seller to ensure accessibility of tickets for all individuals. Moreover, “*that prohibition is without prejudice to any other national measures that Member States can take to protect the legitimate interests of consumers and to secure cultural policy and broad access of all individuals to cultural and sports events, such as regulating the resale price of the tickets*”. Thus, it can be claimed that the *Omnibus Directive* is not aimed at providing an exclusive set of rules, intended to replace any pre-existing national provisions on the matter. It rather strives to dismiss the unfair advantage scalpers gain over consumers by the use of bots and other automated software that facilitates obtaining tickets in bulk. The *Omnibus Directive* was adopted on 27 November 2019 and Member States were expected to implement it within their national legislations as late as 2022 (Siwicki, 2024, p. 243).

¹¹ Cf. <https://www.legislation.gov.uk/ukpga/2017/30/section/106/enacted> (last visited on 20.01.2025)

¹² Cf. <https://www.legislation.gov.uk/ksi/2018/735/contents/made> (last visited on 20.01.2025)

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There are currently more legislative initiatives specifically aimed at improving consumers' vulnerability vis-a-vis the usage of bots. In December 2023, a legislative bill, called "*Stopping Grinch Bots Act of 2023*" was introduced as an attempt to overcome "*grinch bots*". In recent times, "*grinch bots*" refers to a type of AI used by merchants to buy large batches of toys, children's books and other products commonly exchanged as Christmas presents in order to create a superficial shortage prior to a big holiday and to allow their resale for a substantially higher price (Herrmann, L., 2022, p. 357). In order to broaden consumer protection and taking into consideration that AI is being used for speculative resale of other movables than tickets, this legislative bill introduces a prohibition of the circumvention of control measures used by internet retailers to ensure equitable consumer access to products, and for other purposes. As of February 2025, the "*Stopping Grinch Bots Act*" has not been enacted yet¹³.

Moreover, in January 2025, the Department of Business and Trade, as well as the Department of the United Kingdom created an open consultation on the resale of live event tickets, labelled "*Putting fans first*"¹⁴. The main aim is to enhance consumer protection even further by a) tackling the incentives behind ticket scalping, b) making resale platforms more accountable, c) enhancing enforcement of legislation and d) promoting industry-led action to improve access for fans.

2. Many scholars who consider legislative attempts to overcome ticket scalping as lacking effectiveness, call for **technological industry-driven solutions** to the issue (Fenton, Gr., 2020, p. 58). This approach neither calls for prohibiting ticket resales, nor does it oppose reselling them for a profit. Their main aim is to enable fair prices and to facilitate consumer access to tickets. Some of these scholars propose introducing a ticketing system, based on blockchain and digital ledger technology. As it is known, blockchain is a method to record and store information. It consists of "blocks" containing relevant information. Authors believe that the implementation of blockchain into the process of obtaining tickets would allow all transactions to be traced and would thus promote transparency in ticket transactions (Waldstreicher, B., 2019, p. 6). At the same time, the ones in favour of introducing blockchain in the process of ticket resale admit that both technological and legislative limitations prevent a full implementation of this idea (Fenton, 2020, p. 59).

However, it is worth sharing that ticket issuers and event organizers have long since applied various technological means to restrict scalpers and the usage of bots within ticket transactions. It should be noted, however, that standard

¹³ Full text available at - <https://www.congress.gov/bill/118th-congress/senate-bill/3511/text> (last visited on 22.01.2024).

¹⁴ Cf. <https://www.gov.uk/government/consultations/putting-fans-first-consultation-on-the-resale-of-live-events-tickets/putting-fans-first-consultation-on-the-resale-of-live-events-tickets-html> (last visited on 22.01.2024).

CAPTCHA technology and multi-factor identification¹⁵, which were specifically intended to limit bots access to websites, can now be bypassed (Elefant, 2018, p. 14). Therefore, in order to provide equitable access, various technological solutions have been implemented into the process of ticket sale and resale. For instance, some event organizers have commissioned the development of an online resale platform available on their website. According to the general terms and conditions of the respective organizer, these ticket resale platforms are intended to be the only legitimate online platform for authorized ticket resale. Should a ticket be obtained elsewhere or via using another means of transfer, the ticket holder will be denied admission. This method has been extensively used by FIFA and UEFA, even in the latest UEFA European Football Championship of 2024¹⁶.

A similar approach regarding ticket resales was implemented by the organizers of the Paris Olympics of 2024. They commissioned the design of a specific application, called “*Paris 2024 tickets*” and intended as the only possible valid means for ticket resale and other ticket transactions, while denying entry to any ticket holder who has used another platform or method to transfer Olympics games tickets¹⁷.

Such an approach does, however, require substantial finances to develop and maintain an independent ecosystem used for ticket transactions and is therefore not applicable to smaller event organizers. A preferred method for them is to enter into a mandate contract with a ticket resale platform. One of the very few drawbacks of this approach is that organizers and artists lose their control over the contents of ticket sales contracts, since they cannot influence the content of applicable general terms and conditions. This is not a major flaw, however, since it allows smaller companies and organizers, who do not want or cannot allocate financial resources to develop and maintain a specific ticket resale website on their own, to make sure that the interests of their audience are not damaged. Usually, such ticket resale platforms allow resale for a higher price and charge additional taxes, but set a margin, usually not higher than 20 % of the face value. After the ticket resale has occurred, the platform generates a new unique barcode, solely available for the buyer, whereas the old barcode becomes invalid. Thus, the seller can neither use the old barcode in order to gain access to the venue, nor can he or she conclude a subsequent sale contract, purporting to

¹⁵ “*CAPTCHA (Completely Automated Public Turing test to tell Computers and Humans Apart) is a type of security measure known as challenge-response authentication. CAPTCHA helps protect you from spam and password decryption by asking you to complete a simple test that proves you are human and not a computer trying to break into a password protected account.*” - available at <https://support.google.com/a/answer/1217728?hl=en> (last visited on 25.01.2025)

¹⁶ Cf. <https://euro2024-sales.tickets.uefa.com/> - As of February 2025, the website is non-functional, since the UEFA Euro 2024 Tournament ended on 14.07.2024.

¹⁷ Cf. <https://press.paris2024.org/news/the-paris-2024-tickets-app-to-access-your-tickets-for-the-games-is-now-available-36bc-7578a.html> (last visited on 28.01.2025)

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transfer the ticket to someone else. This approach actually leads to eliminating both ticket scalping and any other purported ticket frauds.

Another method, whose implementation brings about the same desirable result, is the introduction of personalized tickets. It consists of including the names of initial buyers on the ticket. At the same time, the event organizer shall include a limitation on further transfer of tickets in the general terms and conditions. Thus, transferability is virtually eradicated, since the event organizer will be entitled to deny entry to any person other than the initial ticket buyer (Stein, 2014, p. 47 - 48).

3. The aforementioned approach is possible due to a special clause, included into the ticket sale contract, and can usually be found within the general terms and conditions, drafted by the event organizer. Actually, it consists of “attaching” the ticket to the original ticket buyer, thus creating an *intuitu personae* contractual bond. This is one of the possible **contractual restraints** used by event organizers in an attempt to retain control over ticket circulation. It should be noted that such a clause actually resembles a contractual prohibition of assignment, also known as “*pactum de non cedendo*”. The latter allows parties to restrict or even to exclude a receivable from participation in civil and commercial affairs altogether. Given the fact that issuing personalized tickets reveals a similarity in legal consequences, a comparison between these two institutes seems to be justified.

3.1. One can establish a number of differences between contractual prohibitions on assignment and clauses imposing restrictions on ticket resale. Above all, they are applied to different objects of civil and commercial affairs. While there is little doubt that *pactum de non cedendo* is applicable to receivables of any kind, speculations do arise regarding the legal nature of tickets. More specifically, it is debatable whether they can be encompassed by the notion of “receivables” as well.

A brief comparative overview reveals that, regarding tickets, common law takes on a consistent approach of not including tickets into the notion of a receivable. Unequivocally, US case law considers admission tickets to be a revocable license (Dreyer, A., Schwartz, M., p. 766). The concept of revocability encompasses, *inter alia*, the possibility for event organizers to arrange resale restrictions, i.e. limitations of the transferability of a ticket. As early as 1905, in *Collister v Hayman* (1905)¹⁸, the court acknowledged that a ticket itself “*is not the contract, although to some extent it is evidence thereof*”. The court considers a theatre ticket to be a „*license, issued by the proprietor pursuant to the contract as convenient evidence of the right of the holder to admission to the theatre at the date named with the privilege specified, subject, however, to his observance of any reasonable condition appearing upon the face thereof. The license, although*

¹⁸ *Collister v. Hayman*, 183 N.Y. 250, 252 (N.Y. 1905)

granted for a consideration, is revocable for a violation of such condition by the holder of the ticket in the manner specified therein”.

Moreover, the court points out that there are no legislative prohibitions, restricting proprietors of a theatre from making reasonable regulations for the conduct of their business and, further, from imposing such reasonable conditions upon the purchasers of tickets as in their judgment will best serve the interests of that business. A ticket speculator is one who sells at an advance over the price charged by the management. Speculation of this kind, points out the court, frequently leads to abuse, especially when the theatre is full and just a few tickets are left, so that extortionate prices may be exacted. A regulation of the proprietor, which tends to protect his patrons from extortionate prices is reasonable and he has the right to make it a part of the contract and a condition of the sale. Unless he can control the matter by contract and by conditions appearing upon the face of the ticket that is evidence of the contract, he may not be able to control it at all, but must leave his patrons to the mercy of speculators¹⁹.

Despite some recent discussions, both modern case law and legal scholars are inclined to uphold the construction of tickets as revocable license (*Bosnjak, 2021, p. 347*) and do not regard them as receivables. Therefore, it is safe to assume that provisions on *pactum de non cedendo* in US law do not apply to tickets.

At the same time, US courts do not seem reluctant to acknowledge that contractual limitations on transferability on tickets exist as a separate legal institute. The prerequisites for the validity of any clauses aimed at such a restriction were set out by the court as early as 1905 in *Collister v. Hayman*. The court held such clauses to be enforceable, as long as they do not violate equal protection guarantees and that they have been communicated properly to the buyer (*Dreyer/Schwartz, 2007, p. 766*).

It is worth pointing out that tickets are not regarded as receivables in national legislations within the European Union as well. A typical example for that can be found in the German civil law doctrine. The esteemed representative of the Pandectist school Rudolph von Jhering was one of the first modern scholars to point out that tickets reveal legal features of bearer bonds (*von Jhering, R., 1886, p. 326*). This view has been subsequently adopted within German scholars and case law (*Wolf/Lindacher/Pfeiffer, 2020, p. 1140 - 1151*), who therefore unanimously perceive conveyance restrictions of personalized tickets as falling within the general provision²⁰ on contractual limitations of transfer of goods (*Holzhäuser, F., Bagger, T., 2014, p. 44*). It is acknowledged that event organizers

¹⁹ Cf. *Collister v. Hayman*, 183 N.Y. 250, 254 (N.Y. 1905)

²⁰ **Section 137 of the German Civil Code**, bearing the title “**Prohibition of dispositions in a legal transaction**” provides that “*The power to dispose over an alienable right may not be excluded or restricted by a legal transaction. This effectiveness of an obligation not to dispose over such a right is not affected by this provision.*”

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are entitled to impose various conditions and restrictions to free transferability of tickets. Should the ticket organizer issue a non-personalized ticket, the inclusion of a transfer limitation clause into the general terms and conditions, applicable to the ticket sale contract, is considered valid. However, this clause cannot be enforced vis-a-vis third parties, subject to Section 137 of the German Civil Code. Should the initial ticket holder purport to transfer the ticket, this would constitute a breach of a contractual obligation not to dispose of the ticket. Moreover, the problem to prove that a resale has actually occurred, is also present here. However, the opposite situation, where the ticket is issued as a personalized one and the name of the original ticket holder is printed on it, falls within the scope of application of Section 399 of the German Civil Code, regulating the contractual prohibition of assignment²¹. It would seem that both German scholars and case law acknowledge the possibility to effectively restrict a ticket from participating in civil and commercial affairs by rendering it intransferable, under the very same provision that allows parties to include a *pactum de non cedendo* into their contract. Thus, the purported sale of a personalized ticket would be considered null and void, just like the transfer of a receivable contravening a contractual prohibition on assignment within Section 399 of the German Civil Code.

A similar approach has been adopted in France as well. Despite the lack of an explicit provision within civil law legislation, French scholars and case law tend to regard tickets as a title, giving access to a show, which is an explanation, strongly resembling the US approach. In France, tickets are not considered as receivables, but are rather regarded as a proof that an innominate contract comprising elements of both lease and service contracts has been concluded between the event organizer and the ticket holder²².

This brief comparative overview reveals that national legislations do not consider tickets to be receivables. With some exceptions, among them Germany, tickets are not perceived as bonds, but rather as documents, signifying the existence of a contract. Therefore, by transferring the ticket the new ticket holder actually “steps into the shoes” of the previous one. By obtaining the ticket, he or she is not simply a new creditor, but rather takes the place as a contractual party and is subject to all rights and obligations, arising thereof.

²¹ Section 399 of the German Civil Code, bearing the title “**Exclusion of assignment in case of change of content or by agreement**” provides that “*A claim may not be assigned if the performance cannot be made to a person other than the original obligee without a change of its contents or if the assignment is excluded by agreement with the obligor.*”

²² Cf. Ticketzweithandel Schmidt-Kessel, M., <https://www.schmidt-kessel.uni-bayreuth.de/pool/dokumente/news-termine-pdfs/gutachten-ticketzweithandel-langfassung.pdf> The report itself is accessible via this link - <https://www.vie-publique.fr/files/rapport/pdf/114000588.pdf> (both visited last on 07.02.2025). The ticket is defined as “*un titre d'accès à un spectacle*”.

Another aspect in comparing clauses, limiting transferability of tickets, and the contractual prohibition on assignment, can be found in their **legal consequences**. The exact content of both clauses normally depends on the volition of contracting parties. Of course, since such arrangements are usually inserted into general terms and conditions, it should be noted that both are subject to control by the court regarding a potentially detrimental effect to consumers. Both types of clauses can present themselves in a stunning variety, provided that the legislator has not a priori limited their effect. Some national legislators allow the complete exclusion of receivables by virtue of a clause, as it is the case with Section 399 BGB. Personalized tickets share virtually the same effect, since their transfer is almost impossible. Such an approach is, just like with *pactum de non cedendo*, highly debatable.

A much more balanced approach is not to fully exclude transferability of tickets, but rather to include different conditions that should be met for the transfer to happen, for instance to transfer them via a particular platform etc. This resembles greatly the possibility for the debtor to retain an assessment right, whenever a receivable, encumbered with a contractual prohibition on assignment, is being transferred by the assignee to another party. In this case, the debtor can assess whether the legal consequences of the assignment are at variance with his or her legal position. A contractual prohibition on assignment is entirely intended to protect the individual interest of the debtor.

This is not quite the case with contractual restrictions imposed upon ticket conveyance. With a few exceptions, most notably security reasons, these clauses are not intended to protect the individual interest of the event organizer, but the public interest from interference by ticket scalpers. To put it from a *pactum de non cedendo* “perspective”, in the case of clauses imposing conditions on the resale of tickets, the debtor (i.e. event organizer or any other ticket issuer) purports primarily to protect the interests of their new creditor (i.e. the new ticket holder). Such an outcome is not expected with contractual prohibitions on assignment.

This brief comparison between clauses restricting the transfer of tickets, on the one hand, and contractual prohibitions on assignment, reveal that there is not a full overlap between these two institutes. In spite of allowing provisions on *pactum de non cedendo* to be applicable in the case of ticket resale restrictions, there is considerable difference between these institutes, mainly in terms of legal essence, functions and consequences.

CONCLUSION

Ticket scalping, an issue for millennia, has now become even more pressing by the use of artificial intelligence and “scalper bots”, specifically designed for gaining unfair advantage over consumers in the process of obtaining tickets. There are, however, legislative, technological and contractual restrictions

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that can be applied together in an attempt to restore fair dealing and to prevent consumers' harm.

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