

# Problems and Legal Regulations of Railway Ticket Selling Platforms in China

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**Keywords:** railway ticket selling platform; reselling tickets; illegal business dealing.

**Abstract:** Today, there are many railway ticket selling platforms on the Internet. Good and bad platforms are intermingled. The obvious problems of ticket brushing and ticket grabbing seriously damage the right of fair trade of ordinary ticket buyers and disturb the normal management order of the state. Some people think that this kind of act is a civil agency behavior, which is reasonable; the opponents believe that it may constitute the crime of reselling tickets or illegal business dealing. According to the principle of necessity of criminal law, it is not appropriate to define the acts of grabbing and brushing tickets as crime in present legislation and judicial interpretation. Relevant departments should control the phenomenon of paid ticket grabbing on the Internet from the perspective of administrative laws, and improve the procedure of linking administrative law enforcement with criminal justice.

## 1. Introduction

As we all know, the contradiction between the limited rail capacity and the difficulty of ticket purchasing is still very prominent in China. The situation becomes even worse during the holidays. With the upgrading of the official 12306 online ticketing platform, the real-name system is implemented for passengers who buy train tickets, which plays a very important role in facilitating the masses to buy tickets and improving the efficiency of ticketing. But at the same time, a variety of “ticket brushing” and “ticket grabbing” platforms are emerging. So far, more than 50 e-commerce websites have launched paid ticket grabbing services. Some e-commerce platforms need customers to pay extra fees as high as thousands of yuan, and the final fare is nearly seven times higher than the original price.

There are different opinions on how to evaluate these paid ticket-grabbing platforms. There are three main points of view. The first opinion is that, paid ticket-grabbing is an act of purchasing agent; its essence is a civil agency behavior, which has its rationality. The second point of view is that online paid ticket-grabbing is a new way of reselling tickets. If the circumstances are serious, the crime of reselling tickets should be convicted to punish. The third view is that paid ticket grabbing on the Internet cannot be evaluated as “reselling” behaviors; it is in line with the scope of illegal business dealing and should be punished as a crime of illegal business dealing.

## 2. Overview of Paid Ticket Grabbing Platforms on the Internet

### 2.1 The principle and characteristics of paid ticket grabbing platforms on the Internet

Paid ticket-grabbing service is the product of the big data era. According to relevant persons, “ticket grabbing platforms have the same the basic principle. They monitor the remaining ticket system of 12306 in real time, and crazily initiate the demand of buying tickets.” These online platforms have two characteristics. First is intelligent. Ticket grabbing software opens the booking port to access 12306, and continuously visits the backstage through optical fiber with hundreds of megabytes. These platforms monitor the ticket grabbing process for 24 hours. They query the remaining tickets continuously through the cloud computing. Once the tickets are offered or refunded or re-signed by passengers, the system automatically locks in. At the same time, the software automatically identifies the ticket-buying verification graphics code through the big data platform, so as to quickly turn to the payment page. The second feature is technical queue jumping. Network platforms charge different service fees according to the rate of successful booking.

Consumers can choose train number and different service fees to grab tickets. They can even buy “queue jumping tickets” to improve the probability of successful ticket purchasing.

## **2.2 Analysis of social harmfulness**

First of all, it breaks the virtual queuing order constructed by 12306 website. 12306 actually changes the traditional queuing into online queuing, which saves the time for people who used to buy tickets at the railway station, but the queuing order still exists. Ticket-grabbing software uses technical advantages to connect optical fiber with the speed of 100 Mbp to 12306, monitor and grab tickets for 24 hours, and then sell the grabbed tickets to the high bidder through the way of price increasing. In fact, this mode of operation has changed the original fair queuing order to a disguised bidding order. In addition, its harmfulness lies in the use of technological advantages which “monopolize” ticket sources, resulting in difficult ticket buying. “Technical queue jumping” induces ticket purchasers to pay for service fees. The platforms use technological advantages to “force” ticket purchasers to buy their services, and obtain profiteering in the name of buying agent. Ticket purchasers who choose the normal mode feel anxious and unfair; the right of fair trade is damaged. Moreover, these network platforms have not registered in the industrial or commercial bureau. Their business activities hinder the normal management of the country. Regular railway ticket outlets need the approval of administrative departments; they also need to be assessed by the railway passenger transport department. The paid ticket-grabbing service of the network platform obviously goes against fairness.

## **3. Comments on Different Opinions**

### **3.1 Paid ticket-grabbing platforms are not civil legal acts**

According to the principles of civil law, citizens and legal persons can perform civil legal acts through agents, but identity acts, such as marriage and adoption, cannot be acted by agents. Civil juristic acts refer to legal civil acts. As long as behaviors are legal civil acts other than identity acts, they can be acted by agents. To buy train tickets is a legal act, so it can be acted by agents. That is to say, it is not illegal to buy train tickets on behalf of others. In practice, people often buy tickets at the window with multiple ID cards. For the act of purchasing train tickets on behalf of others and collecting fees, some scholars have advocated that it should be punished as illegal business dealing. In practice, there are cases of criminal detention for suspected ticket reselling, but they are proved as unreasonable in the end. On June 25, 2014, the Supreme People's Court issued Suggestions and Answers on Amending the Interpretation of Issues Relevant to the Trial of Criminal Cases of Reselling Tickets. The document clearly points out that, “if a person asks for additional fees for buying tickets on behalf of others, but the fees do not exceed the handling fees for tickets sold in different places in the railway system, the behavior should not be punished... This act of buying tickets on behalf of others actually belongs to the relationship of civil commission contract; the additional fees are legitimate and reasonable remuneration that the agent collects based on the commission behavior.” The reason why the Supreme Court regards the act of “buying tickets on behalf of others and asking for charging fees, but not exceeding the handling fees of selling tickets in different places in the railway system” as a civil legal act is that “this act of buying tickets on behalf of others does not have the subjective viciousness of disturb the social management order; it does not cause social harm objectively. On the contrary, it provides convenience for passengers who do not know how to purchases tickets online.” Meanwhile, as long as the act happens on the basis of equal consultation between the two parties, even if the additional fee charged by the agent is higher than that charged by the railway system for ticket sales in other places, it also does not disturb the social management order, or have any social harmfulness. So it should not be punished, either.

On the surface, there are similarities between paid ticket grabbing platforms and purchasing train tickets on behalf of others, but there are also essential differences. The network platform uses technological advantages to “monopolize” ticket sources; they seriously disturb the normal order of ticket purchasing and damage the legitimate rights and interests of consumers. The behavior should

not be evaluated positively by the law. Therefore, paid ticket grabbing on the Internet platform is not a civil legal act; it is unreasonable.

### **3.2 Paid ticket-grabbing platforms do not constitute the crime of reselling tickets**

Network platforms monopolize ticket sources by using technical advantages. They disrupt the normal order of ticket purchasing and damage the legitimate rights and interests of consumers. The social harmfulness of this act is comparable to that of the crime of reselling tickets. Some people claim that this act should be convicted as the crime of reselling tickets. The opinion is unreasonable. The stability and hysteric nature of law determine the necessity of legal interpretation, but law cannot be interpreted by analogy at will. This view ignores the basic principle of criminal law, that is, prohibiting arbitrary expansion of interpretation and prohibiting analogical interpretation, which is the essential requirement of the principle of legally prescribed punishment. Article 227, Chapter 2 of the Criminal Law of China stipulates that, “if the circumstances are serious, people who resell tickets shall be sentenced to fixed-term imprisonment for no more than three years, or be under criminal detention or control, and be fined”. The article adopts a concise charge for the crime of reselling tickets; the meaning and mode of the action of reselling tickets are not clearly stated. The relevant judicial interpretations do not have any substantial explanations on the word of “reselling”. The definition of “reselling” in Modern Chinese Dictionary is “reselling goods and making profits from it”. In Ming-kai Zhang's Criminal Law (Fourth Edition), the definition of “reselling” is “buying before selling”. It can be seen that “buy” and “sell” are indispensable behavioral elements of reselling tickets. However, in fact, the online platform ticket grabbing only has a “buying” behavior; it does not have the selling behavior. Therefore, “grabbing tickets” does not conform to the behavior characteristics of “reselling”. Paid online platform ticket grabbing cannot be considered as the crime of reselling tickets.

### **3.3 Paid ticket-grabbing platforms do not constitute the crime of illegal business dealing**

The crime of illegal business dealing means, a natural person or unit intentionally engages in illegal business activities in violation of state regulations, disrupts the market order and causes serious harmfulness. There are four main types of illegal business dealing. The first is unauthorized operation of franchised and monopolized goods, or other products that are restricted. The second type includes the trading of import and export licenses, as well as certificates of origin for import and export, and the unauthorized operation of business licenses or approval documents stipulated by laws and administrative regulations. The third category includes illegal operation of securities, futures or insurance business without the approval of relevant competent departments, and illegal operation of fund payment and business settlement. The fourth category includes other illegal dealings that seriously disturb the market order. Obviously, paid ticket grabbing on the online platform does not meet the requirements of items 2 and 3, so we mainly analyze the content of items 1 and 4.

According to state regulations, train tickets belong to the goods exclusively owned by the state. So, do paid ticket grabbing platforms sell train tickets? The answer is no. The behavior pattern of paid ticket grabbing on the online platform is the same as act of ordinary train ticket purchasing agents. That is to say, they all provide ticket purchasing “service” for consumers, although consumers are not willing to accept this kind of service through online platforms. In this sense, network platforms do not sell the goods of “train tickets”; they only provide the service of “buying train tickets on behalf of others”, which is not prohibited by laws or administrative regulations. Therefore, the behavior of paid ticket grabbing through online platforms does not meet the requirements of item 1.

The fourth category of illegal business operation crime, “other illegal business operations which seriously disturb the market order”. It is an open regulation, so the crime of illegal business dealing becomes an almost all-inclusive “pocket of crime”. The item is controversial in both theoretical and practical circles. For this reason, “other illegal business activities that seriously disturb the market order” are generally defined by relevant departments through promulgating clear regulations or judicial interpretation. However, there is a precondition for “other illegal business operations that

seriously disrupt the market order”, that is, “violate state regulations”. The “state regulations” here must be “laws, administrative regulations, or resolutions and orders issued by the State Council”. As mentioned earlier, paid ticket-grabbing through the online platform seriously disturbs the market order objectively, but essentially, it only provides a service of “buying train tickets on behalf of others”, which does not violate state regulations. Therefore, paid ticket-grabbing on the online platform does not have precondition of being included in item 4.

#### **4. Legal Regulations on Railway Ticket Selling Platforms on the Internet**

After denying the above three points of view, we need to consider how to regulate the paid ticket grabbing through online platforms. Some people advocate that relevant departments should introduce legislation or judicial interpretation to define the act as a crime. The author holds that this view remains to be discussed. Admittedly, social harmfulness is the essential feature of crime and the basic criterion for distinguishing crime from non-crime acts. However, to criminalize an illegal behavior should not only consider the social harmfulness of the act, but also consider the necessity of imposing criminal punishment on the act from the perspective of the necessity of criminal law. The necessity of law is the compulsion of the criminal law. It means that the regulation of an illegal act can only be used when all other means are unable to achieve the effect. Although paid ticket grabbing through online platforms disturbs the normal market order, the regulation of this behavior does not necessarily need the criminal law. There are few network companies with technological advantages and are capable of developing ticket grabbing software. Relevant departments can take administrative measures to control the situation through prohibiting the ticket grabbing service. However, in existing laws such as the Public Security Administration Punishment Act and Regulations on the Administration of Industrial and Commercial Registration, there is no clear basis of punishing paid ticket grabbing through online platforms. The treatment of this act does not have legal basis in practice. Therefore, relevant departments should do something. On one hand, they need to clarify the nature of the act, issue normative documents, make clear that it is illegal for network platforms to grab tickets and charge fees, prohibit online platforms to provide ticket grabbing services, and provide corresponding sanctions. On the other hand, the administrative organs should be given the power of investigation and disposal; the network platform should be forbidden to provide ticket-grabbing services. They should be urged to clean up online ticket grabbing and ticket brushing software in time, and deal with IP addresses with high frequency of visits and speedy ticket grabbing functions, so as to control paid ticket grabbing on the Internet at the source from the perspective of administrative laws. Relevant departments also need to improve the procedure of linking administrative law enforcement with criminal justice. Railway departments should also strengthen the upgrading and maintenance of 12306 ticketing system to prevent illegal personnel from using system loopholes to disrupt the order of railway ticketing.

#### **5. Conclusion**

The paid ticket grabbing on the online platform disrupts the normal order of ticket purchasing. It is harmful to the society, but it is not a civil legal act. The behavior of ticket grabbing does not conform to the essential characteristics of the crime of reselling tickets, and should not be recognized as the crime of reselling tickets. The act of ticket grabbing is to provide “ticket purchasing service”. It is not an illegal dealing act which violates national regulations, so it is not a crime of illegal business dealing. According to the principle of necessity of criminal law, it is not appropriate to define the act of paid ticket grabbing as a crime in current legislation and judicial interpretation; administrative means should be the main method to regulate the act.

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