

“The Law Is An Ass!”

A guitar tech refrets a 1968 Martin Guitar with Brazilian rosewood back and sides and then offers it for sale. A guitar manufacturer buys ebony from a reputable broker in good faith, but somewhere between the tree cutting and the delivery, someone who had custody of the wood failed to file a form. A mom and pop retailer has 30 guitars on the store wall, but can't precisely document the genus and species of woods used in each instrument, let alone where the woods came from. What do these seemingly innocuous scenarios have in common? They are all illegal under Federal Law and could be punishable with immediate confiscation of the instrument in question, not to mention hefty fines and jail time. It's a sad state of affairs when poorly drafted legislation criminalizes large swaths of an industry that delivers a proven societal benefit, but that's where we are in 2011. Welcome to the new and improved Lacey Act.

First passed in 1900 under the McKinley administration, the Lacey Act was originally drafted to regulate traffic in animal wildlife, and for over a century served its purpose without controversy. Then in 2008 the Oregonian congressional delegation, led by Democratic Senator Ron Wyden, expanded its reach to cover “any wild member of the plant kingdom.” The rationale for the legislation was economic. Wyden's amendment read, “Ending deforestation through incentives in [the] United States would boost U.S. agricultural revenue by an estimated \$190 [billion] to \$270 billion between 2012 and 2030.” Wyden later said of the bill, it “will go a long way towards not only leveling the playing field for American manufacturers, but to protecting jobs.” This proposed jobs booster was buried in a massive agricultural subsidy bill and passed without debate or public commentary. What Senator Wyden overlooked was that the law of unintended consequences remains very much in force, and that his efforts to prop up timber jobs in the Pacific Northwest would take a heavy toll on other segments of the economy.

In the name of protecting logging jobs, the amended Lacey Act requires buyers and sellers of instruments to be able to document the type of woods used in a product and verify that they were harvested in accordance with all international laws and treaties. This means that, under Lacey, any and all instruments need to comply with the Convention on International Trade in Endangered Species (CITES). The CITES treaty, which bans trade in more than 1,000 endangered plant and animal species, including ivory, Brazilian rosewood, and certain types of ebony, formerly applied only to international shipments. Now it applies to interstate commerce as well. Thus, under the amended Lacey Act, when Vince Gill tours the country this summer with his vintage Martin guitar, each time his bus crosses a state line, he's broken the law. So are the numerous online retailers offering vintage guitars with Brazilian rosewood, ebony, or ivory appointments. CITES, and by definition Lacey, applies to new and old instruments alike, and have no “di minimus” requirement, so an instrument crafted entirely out of endangered woods, or one with a

single ivory fret dot, are both in violation and subject to confiscation.

For makers and sellers of new and vintage instruments, complying with these burdensome regulations will inevitably add administrative costs. However, the costs pale next to the crippling uncertainty introduced into the marketplace. Scientific experts often have difficulty identifying the genus and species of a piece of raw wood, let alone where it came from. The challenge increases exponentially once the wood has gone through a manufacturing process and been painted. If scientists are unable to make a definitive determination, is it fair to demand that instrument makers and sellers do so? And, what to do about vintage instruments containing ivory, ebony, and rosewood? Is it now illegal to sell them, own them, or ship them?



The inherent vagaries in the law, along with the potent enforcement capabilities of the state, are a recipe for trouble. The Animal Plant Health Inspection Service (APHIS) has said that it lacks the resources to mount an aggressive inspection effort. However, in the past year, this hasn't stopped them from raiding the Gibson factory in Nashville for allegedly having illegal woods in inventory, or from convicting and fining Pascal Vieillard of A440 Pianos for the crime of importing seven century-old Bosendorfer pianos with ivory keys.

Millions of new and used instruments are shipped and sold on an annual basis, and in the absence of proper documentation, “crimes are being committed.” Most of these “crimes” will escape the notice of enforcement agencies. But the risk remains that instruments could be confiscated, and business people could be hit with fines of up to \$10,000 per instrument for “knowingly possessing” a non compliant instrument. In effect, the amendment makes those in the music industry like drug dealers, always looking over their shoulders to avoid the long reach of the law.

In Charles Dickens' novel *Oliver Twist*, when Mr. Bumble is told that the law requires that his wife obey him, he indignantly responds, “Then the law is an ass!” We can't think of a better epithet to describe the amended Lacey Act. Being good stewards of the land is an objective shared by everyone, especially the musical instrument industry that has a vested interest in an ongoing supply of wood. However, criminalizing an industry won't achieve environmental goals; it will only sow fear and uncertainty and stunt economic activity. NAMM has mounted an effort to amend the Lacey Act and remove some of the more onerous provisions. However, politicians say that nothing moves the legislative process more effectively than a well crafted personal letter. If there ever was a time to write or call your Congressman, this is it. They have passed a law that brands you as a criminal. You have to stand up and tell them otherwise.

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