

# Why Can't They Leave Us Alone?

**A**t the risk of shattering a few illusions, it should be noted that the music products industry that we all revere is a pint-sized business. The industry's combined revenues represent about .00047% of the \$14 trillion U.S. economy, or about 3.5 days of sales at Wal-Mart. If the industry's ten largest suppliers merged tomorrow, the combined business still wouldn't crack the *Fortune* 500 list, and a single middling-sized grocery store does more sales than all but a handful of music products firms. This diminutive stature has not been without its benefits: We have been able to fly under the radar and escape the notice of the nation's regulatory agencies. As of late this happy state of affairs seems to have ended. The industry hasn't gotten bigger relative to the economy, but over the past five years, it has attracted more regulatory oversight than in the previous 65 years.

Here's a brief review of how state and federal governments have been intervening.

**2007:** The Federal Trade Commission launches an investigation of alleged collusive pricing among the industry's top manufacturers. Sleuths at the FTC asserted that NAMM and Guitar Center summoned the top management of Fender, Yamaha, Gibson, Peavey, JBL, Roland, Korg, and a dozen other manufacturers to a secret meeting where they ordered them to raise prices. After two years of sifting through thousands of records, the FTC couldn't find any evidence to support this allegation, so they dropped the charges. But, as a parting gift, they ordered NAMM to pay to have an antitrust lawyer onsite at all future trade shows, to make sure everyone's playing by the rules. (He's the guy in the gray suit either dozing through one of the education sessions or wandering aimlessly down the aisles.) Industry cost to comply: **\$12 million.**

Even though the FTC concluded that the industry didn't do anything wrong, the investigation encouraged more than 40 law firms to file class action suits on behalf of millions of supposedly aggrieved guitar buyers. A judgment is pending, but legal bills have been in the seven figures.

**2009:** The California Environmental Safety Agency declares guitar strings a potential carcinogen. Apparently, the trace elements of lead that can be found in the bronze wrap alloy could be harmful, even though with tens of millions of string sets in use, there has never been a shred of evidence linking strings with ill health. The agency backs down, rather than face embarrassment, when dozens of rock stars threaten to protest. Industry cost to challenge the regulatory finding: **\$500,000.**

**2009:** A year after the Lacey Act wildlife protection act is expanded to include plant material, i.e. wood, armed Federal Agents raid the Gibson plant in Nashville, seizing over a million dollars in raw wood and unfinished guitars. In 2011 they stage an encore and seize another million worth of wood in a raid of Gibson's Memphis plant. As reported in last month's issue, Gibson settled with the Department of Justice for \$350,000, but it's anything but clear that there was wrongdoing in the case. A proposed amendment to the Lacey Act, which eases some of the compliance burdens and penalties, is

currently stalled in Congress. Cost to the industry: **\$3.0 million** from Gibson, and untold amounts from NAMM and other companies.

**2011:** The Federal Communications Commission launches investigations on at least 12 industry manufacturers. At issue is whether certain digital music, recording, and pro sound devices emit radio waves that might disrupt other electronic devices. However, in several cases, like that of PreSonus, where there was no evidence of errant radio waves, the agency levied fines for incorrect labels on shipping packages. Cost to the industry: Several hundred thousand and counting.



The various regulatory agencies typically respond to critics by saying that, absent their oversight, society would descend into lawless chaos. Maybe, though, a more circumspect approach to rule making would help the economy without leading to anarchy. We have no proof, but we seriously doubt whether any of the actions listed above were triggered by an outcry from the general public. Unless,

that is, we missed the pitchfork-wielding mobs in the street protesting high-priced guitars, digital pianos that disrupted their television reception, or cancer-causing guitar strings. A quick review of consumer blog posts indicates that many people don't like their cable company or health insurance provider, and they're none too fond of airlines either. Music products consumers, by contrast, are a very contented group.

Which brings us to the other problem with these actions. Unlike in the criminal or civil justice system, where the accused are "innocent until proven guilty" and have the right to face their accusers, regulatory enforcement is conducted behind an opaque curtain. The accused have to prove their innocence, and it's never revealed whether a case is brought because of aggrieved consumers or perhaps just because some Federal employee has a grudge. What we'd like to see is a more reasoned approach from these agencies—focusing enforcement where there is strong evidence of harm.

Furthermore, if transparency is good in credit card bills, food labels, and mobile phone contracts, it should be good in regulatory proceedings too. Why shouldn't the FTC, FCC, et al. disclose the cause of their investigations and the sources of their information?

*Mens rea*, Latin for "guilty mind," is central to our common law justice system. It provides that in most cases, you have to knowingly commit a crime to be held guilty. In the cases above, there was no "knowing criminality," yet heavy penalties were levied. If there is an upside to the current economic challenges, it's that hopefully they will prompt a thoughtful review of the regulatory process. Our little industry would certainly appreciate it.

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