

Jail Time For Bits Of Oyster Shell And Some Lost Paperwork?

A successful entrepreneur, making good faith efforts to operate lawfully, runs afoul of a poorly drafted, mind-numbingly complex statute, and for a minor technical lapse gets treated like a criminal and is slapped with a huge fine. This story line has begun appearing in our columns with depressing frequency. The most recent iteration involves a few banjos, tiny bits of common oyster shell, some missing paperwork, and a \$110,000 fine.

For close to two decades, Wayne Rogers, founder and president of GoldTone, has been importing and exporting banjos and other fretted instruments around the world without incident. Last year, however, the Fish & Wildlife Service threatened him with possible jail time and potential million dollar fines. His crime? Failing to file \$93 “eDec” declarations for the tiny shell fingerboard dots on his banjos, and failing to route shipments through Fish & Wildlife-designated ports. The oyster shell in question is not even remotely “endangered;” it comes from the same farmed oysters that can be found on menus worldwide. As to the shipping requirements, they are buried in the back of a 65-page form that makes an IRS manual look like light beach reading. Rogers managed to negotiate the fines down to a mere \$110,000 and get the jail threats dropped, but the process took a toll on his business and cost him over \$37,000 in fees. He would have kept on fighting, only his lawyer advised him that settling would be cheaper.

Across town in our nation’s capital, the Federal Communications Commission is similarly harassing a wide swath of musical electronics companies. The FCC has a justifiable mandate to ensure that electronic devices do not emit radio waves that interfere with broadcast signals, wireless communication, or other electronic devices. In the early 1960s, they cracked down on the Steinway piano factory because newly installed high-frequency gluing machines were disrupting ground-to-air communications at nearby LaGuardia Airport. More recently, however, the FCC has been using its licensing and review authority to extract hefty fines from industry manufacturers over what can only be considered irrelevant technicalities: \$50,000 for putting pictures of a pre-production prototype on a website before the device was FCC approved; \$25,000 for placing the FCC labeling on the wrong side of the package; and an inexplicable \$425,000 fine claiming that a generic chip found in virtually every smart phone was not compliant. Although each of these cases deserves more detailed coverage, the manufacturers in question have pleaded with us to maintain their anonymity. They fear that any public criticism of the FCC would result in retribution down the road when they submit future products for approval. And like Wayne Rogers, each of these manufacturers concluded that, regardless of the merits of their case, pay-

ing up to settle is ultimately cheaper than fighting for vindication.

Ironically, as these administrative agencies pummeled our industry, NAMM members were receiving a warm reception from the President, the First Lady, and members of Congress during a recent lobbying mission to Capitol Hill to drum up support for music education. Senators and Representatives across the political spectrum gave music, music making, and the NAMM members a hearty, and we believe sincere, endorsement for positive contributions to society. It would be nice if somehow their kind words would temper the actions of the bureaucrats charged with enforcing the growing body of

Federal regulations. But, we suspect because the music industry is small and lacks the lobbying clout of a Fortune 500 entity, it brings out the bully in some civil servants.

Ever since the 2008 financial crisis, economic growth has consistently fallen short of expectations, and in the most recent quarter, the economy actually contracted by 1%. The spirited debate among



professional economists over the cause of this lackluster performance highlights the fact that there is no simple answer. However, we would suggest that one overlooked factor contributing to the stagnation is the regulatory burdens placed on productive enterprises like those detailed above. Rules in a complex society are necessary, but what we’re seeing here is the equivalent of jail time for jaywalking. This regulatory overreach has a serious cost in terms of wasted time and money, and heartache, but the offsetting social benefits are hard to discern. If the music industry is at all representative of the rest of the commercial landscape, we suspect vast sums that could go towards hiring, investments in productive capacity, and employee compensation are being diverted into the pockets of Washington lawyers and compliance specialists. To paraphrase the cult classic *This Is Spinal Tap*, “What day did God create all these regulators, and couldn’t he have rested on that day?”

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