

The Federal Marching Band Of Music Regulators

For more than a century, the music industry escaped the gaze of government agencies thanks to its small scale—\$6.8 billion now in the U.S.—and its wholesome, non-controversial products. Few things seem less deserving of federal regulation than a fifth grader with an oboe. On the rare occasions in history when prominent officials took notice, *The Music Trades* ran celebratory headlines: “President Taft At Baldwin Piano Plant Opening,” or “Clinton Says Playing Music Made Me President.”

Over the past seven years, however, the tenor of the government’s interest in the music business has changed. Our magazine now regularly carries accounts of punitive fines, armed raids, and threats of jail time.

In 2007 the Federal Trade Commission launched a broad and far-fetched price-fixing investigation against instrument and equipment manufacturers. Far-fetched because it is difficult to imagine how makers of such disparate products—micro-phones, guitars, drums, and key-boards—could fix prices. It took two years for the FTC to realize that it had no case, but only after threatening fines, conducting depositions, and commandeering terabytes of corporate records.

No wrongdoing was uncovered, but in a consent decree with NAMM, the FTC mandated that a lengthy legal document be read at all industry gatherings, essentially exhorting attendees not to collude. The association was also compelled to hire a compliance officer tasked with monitoring 90,000-plus NAMM Show attendees each year for any “anticompetitive” behavior. The estimated costs of this investigation to the industry: \$15 million.

The exoneration didn’t end the ordeal. More than 30 trial lawyers seized on the consent decree as a tacit admission of guilt and filed class-action suits seeking hundreds of millions in damages—from NAMM and such companies as Guitar Center, Fender, and Yamaha—on behalf of consumers who were allegedly overcharged. Most suits have been dismissed, but some remain unresolved. Cost to the industry: more than \$5 million.

In March 2013 the FTC turned its sights on the Music Teachers National Association, a 139-year old organization composed primarily of women who give piano lessons in their homes. The group’s code of ethics, which discouraged members from poaching one another’s students, was deemed a restraint of trade. The association got off without a fine but had to abandon its code of ethics, train members about “anticompetitive practices,” draft a 20-year compliance plan, and file annual updates with the FTC.

In 2009 armed FBI agents burst into the Gibson Guitar plant in Nashville, seizing pallets of ebony and rosewood. Two years later, agents staged an encore at the Gibson plant in Memphis. Employees were threatened and production was disrupted, but no charges were filed. After three years in limbo, Gibson settled with the Justice Department, paying a \$300,000 fine and forfeiting \$261,000 of ebony. (The rosewood, a farmed species that has been exported in volume for decades, was returned.)

The justification for the raids was a far from clear-cut violation of a 2008 amendment to the Lacey Act, a vaguely worded statute requiring extensive documentation on all imported wood. Gibson’s legal costs for what was at worst a paperwork violation: \$2.4 million. Management settled only because the cost of continuing to fight was too high.

Last year Gold Tone Banjo was fined \$110,000 by the Fish and Wildlife Service over a few bits of oyster shell. Gold Tone failed to properly fill out “e-Doc” customs declarations for the material, which was to be used for fingerboard inlays. These aren’t endangered species, but farmed oysters like those on menus everywhere. Federal officials initially asked for a \$370,000 fine and a six-month jail term for the owners, backing off only after weeks of negotiation.

Then there’s the Federal Communications Commission, which evaluates electronic devices to ensure that they don’t emit radio waves that interfere with broadcast signals, wireless communication, or other electronic

devices. Recently, the FCC has used this authority to extract fines for technicalities: \$50,000 for displaying a pre-production prototype of an audio effects processor on a website before it was FCC approved; \$25,000 for placing the FCC labeling on the wrong side of the package of a digital mixer; and an inexplicable \$425,000 fine for a guitar effects pedal that included a chip—the same kind found in virtually every smartphone—that it claimed was not compliant. The fines are a matter of public record, though, on advice of counsel, manufacturers decline to publicly discuss details. They know public criticism of the FCC could result in retribution when future products are submitted for approval.

Proposition 65, a California statute covering potential carcinogens, has forced the industry to defend the legality of guitar strings because a nickel alloy that has been used for decades contains trace elements of lead. Bans on ivory cause hassles for musicians traveling to the U.S. because 50-year-old violins and guitars contain a few grams of the stuff. For instance, customs officials in New York last year detained seven bows from the string section of the Budapest Symphony Orchestra, levying a \$525 fine for lack of paperwork.

The fines and legal fees associated with these investigations have topped \$35 million, a pittance in Washington, D.C., but a significant sum for a small, low-margin industry. In addition, they divert time from management and have depressed industry spirits, as many wonder what’s next. It isn’t coincidental that this increased attention from the feds has been accompanied by a period of stagnant industry growth. If the sprawling federal bureaucracy has sapped the vitality of the little music industry, is it having a similar effect on the rest of the economy?

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