

MUSIC LAW UPDATES

Noise Annoys

by Ben Challis, FRSA, LLB, MA(Law), MA Barrister-at-law
Music Industry Lawyer and Senior Lecturer in Law, Buckinghamshire Chilterns University College
High Wycombe, Buckinghamshire, England, UK
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Taking for its title a classic punk track by The Buzzcocks, this article summarises a variety of cases around the world where noise nuisance has been ruled upon in law. The implications of such rulings are of crucial importance to artists, promoters, venues owners and managers.

IN the days when I still had some hair to spike up, I really used to enjoy going to loud (very loud) rock concerts. I remember coming home from a Ramones concert in the UK in the late seventies totally deaf – and I was still partially deaf at school the next day.

As far as I know, my hearing did recover, but noise is a now major issue in the live music industry. Today promoters, venues and artists need to be aware of their legal responsibilities to a number of different people: to the audience, to their workers, and – as importantly – to neighbours who can suffer from noise nuisance. “Noise annoys”, but it can also damage hearing. Failure to comply with the law in respect of noise levels can result in fines, and, in extreme cases, claims for massive damages for personal injury and closure of venues. Yet noise can also be a lot of fun!

Most countries now have noise regulations which set out, at a local or national level, restrictions to prevent noise escaping from venues and annoying neighbours whose lives can be ruined by excessive noise. In a typical case of its type, noise from a UK public house, which made a shelf in a nearby home “clearly vibrate”, resulted in a £5,000 fine for the pub licensee.

Mid Suffolk District Council area environmental health officers had visited a home in Debenham at around 21.00 after receiving a complaint about the level of noise from the Cherry Tree pub, where music was being played. There had been previous complaints about noise from the pub, and a noise abatement order had been issued in October 2003. The local authority had repeatedly written to the licensee warning her that a notice was in place. The Environmental Health Officer, Eric Foxtton, told the court that, in his opinion, “*the level of noise was a nuisance and it was taking away from that family the ability to enjoy their property.*” Magistrates decided there had been a breach of a noise abatement notice, and fined licensee Zoe Hearn £5,000, and ordered her to pay prosecution costs of £3,548 after hearing evidence from Mr Foxtton, and householder, John Bridges. Mr Foxtton told the court that he set up noise monitoring equipment in Mr Bridges’ garden during an event at the pub in August 2002. Over two five-minute periods, he found the noise reached up to 81 decibels and measured around 60 decibels as a continuous sound pressure level. This roughly equated to the noise of passing traffic when standing by the roadside, he said. Noise came from bands and discos, and the court heard that doors and windows were left open – exacerbating noise problems.

In a similar decision, an appeal court in Toronto upheld a conviction against the Docks Entertainment Complex for violating noise bylaws, after two events in the club’s parking lot in July and August 2001. The first event was the heavy metal OzzFest, and the second was Area One – an assembly of electronica and hip hop. The nightclub was fined \$6,000 and is prohibited from excessive noise at one part of its complex. The Docks has not since held any music events on that parking lot

In the United States, a decision by a state appeals court has confirmed that the New Jersey township of Millstone was entitled to enforce its own anti-noise ordinance, which merely defined infringing noise as “loud,” “unnecessary,” and “unusual”. The court held that noise did not have to be defined by decibel levels, and that playing a musical instrument so that it is “clearly audible” 100 feet away is a violation.

At a 2003 trial, the Municipal Court heard from Roger Weltner, one of three witnesses, who testified that he lived 81 feet from the Clarksburg Inn, and endured ongoing disturbances because of loud music. Weltner said he called police three times to complain on the night of 1st February, 2003. Judge Debra Gelson fined the venue \$1,250 with \$60 in court costs for summonses issued to the restaurant by the State Police. Millstone's anti-noise ordinance states it is "*unlawful for a person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise.*" The decision was upheld on an initial appeal to the Law Division of Monmouth County Superior Court. The State Appeals Court confirmed this. Although the court noted that 46 New Jersey municipalities regulate noise based on decibel levels, there is no requirement that towns establish such criteria.

In Australia, public houses in Victoria have been ordered by the Victorian Civil and Administrative Tribunal to keep background music in bars soft enough for customers sitting 60 centimetres apart to have normal conversations. Yet one does wonder how this will be enforced!

So venues and event organisers are becoming more closely regulated, and can be fined (and in extreme cases venues closed down) for breaches of noise controls. This sometimes manifests itself in somewhat unfair situations, where homes are built by developers in close proximity to venues and clubs, creating an immediate conflict between incoming residents and well established venues. In the UK, the owners of the Bulls Head faced a £175,000 soundproofing bill after new neighbours complained to the local authority about noise from live jazz. The authority, Richmond Council, had changed the status of the area from light industrial to residential, when a block of flats was built next door and one neighbour lodged a complaint – leading to the council to enforce a noise abatement order. If the venue owner had not soundproofed, then live music would have ceased after a 45 year history of live music making.

On the same issue, the State of Victoria in Australia takes a different approach, and whilst condoning residential developments in town centres and areas previously designated as industrial, it invokes an "*agent of change*" policy. Here, the developer of new residential homes close to a venue would have to ensure there is soundproofing at local music venues (and pay for its installation), to protect new residents from noise from the established venue – as the developer is the agent of change: surely a fairer solution.

Just as importantly for promoters, artists and venues, is the liability in law for personal injury and damage caused by excessive noise. *Noise Hangover*, a research paper published in the UK by the Royal National Institute for the Deaf (RNID), reveals the potentially harmful effects of clubbing. Based on findings of a covert survey of 15 nightclubs in major UK cities, the survey measured noise levels on the dance floor, at the bar, and in "chillout" areas. Some areas had noise levels equivalent to an aircraft taking off (110dB or more), and it was concluded that clubbers could suffer damaging cumulative effects from such noise exposure. The RNID is urging club owners to provide chillout areas where noise levels do not exceed 80dB.

Recently, leading German concert promoter, Marek Lieberberg Konzertagentur (MLK), was ordered to pay 4,000 Euros to a woman who claimed her hearing was damaged at a Bon Jovi concert, back in 2000. The company also has to pay medical expenses, and loss of future income costs, which have not as yet been quantified. The Court said that MLK had failed to take sufficient precautions to limit the volume of the outdoor concert. The injured woman said she was standing 2.5 metres from a speaker, and now suffered from tinnitus.

This last case contrasts to an earlier US ruling (in 2003) which held that a promoter was not be liable for the alleged damaged hearing of a plaintiff lawyer, who should have realised that loud music was played at rock concerts! Manhattan Supreme Court Judge, Matrin Schoenfeld, threw out a lawsuit from 56-year-old lawyer, Jeffrey Powell, who claimed that John Fogerty's music damaged his hearing. Judge Schoenfeld rejected the claim, stating, "*if you don't like loud music, don't go to rock concerts*", and he added that "*Nobody is forced to attend rock 'n' roll concerts*".

Similarly, back in the UK, the Law Lords have attempted to put a brake on the developing compensation culture, and pass some responsibility for personal actions back the individual. But the somewhat unusual US case should not be taken as a "get out of jail free" card. That decision was specific to the facts of the case. The German decision is perhaps the one that promoters and venues

should now focus upon, and should also be aware that the damages awarded (so far) are at the low end of the scale with respect to personal injury claims.

Indeed, venue owners, promoters, artists, and others involved in the promotion and production of live music events, must today become fully aware of their responsibilities, obligations and liabilities to people who work for them. In the UK at the moment, these responsibilities are outlined in the Health and Safety at Work Act 1974, which provides for the health, safety and security of people at work, and, in particular, puts a responsibility on employers to ensure (as far as is reasonably practicable), that plant and systems of work are safe and without risk to health.

In a recent report, the UK's Royal National Institute for the Deaf and Trades Union Council have said that over 500,000 bar and club workers in the UK are at risk from loud music, played at their places of work. The report, *Noise Overload*, argues that not enough is being done to protect bar, club and pub workers from music played above legal levels. The report highlights the lack of noise-free rest areas, and the lack of protective ear-wear for staff.

New European laws protecting staff will be implemented in the UK from February 2006. The regulations will lead to a lowering of the decibel exposure limit in workplaces, from 85 to 80 decibels (although again, how this will be enforced in live music venues is not yet entirely clear). The ILMC Safety Focus Group and Buckinghamshire Chilterns University College *Safety-Rocks* website (www.safety-rocks.org), launched in 2005, is a valuable tool in assessing hazards in the live event workplace.

So even with much improved industry practice, the spectre of increasing local, national and supra-national regulation is ever present. Venue owners, venue managers, promoters and artists need to be aware of their legal responsibilities: while some "noise annoys", it also entertains, and thus balancing safety against enjoyment now needs to be addressed carefully. Clearly, getting it wrong could cost you a lot of money!

REFERENCES

http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_042/l_04220030215en00380044.pdf

Law Updates April 2005

Law Updates February 2005

Law Updates June 2003

www.ilmc.com (News, April 2005)

www.dontlosethemusic.com

Risks Arising From Physical Agents (Noise) Directive 2003/10/EC

Tomlinson v Congleton Borough Council and Others (2004) *Times Law Reports*