Popular Music Worlds, Popular Music Histories


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This paper draws on research which has been conducted as part of the live music project, on my own longstanding interest in the regulation of popular music and also on my recent experience as a band manager. It differs from the AHRC project in that whereas that that covers all genres of music my focus here is more narrowly on popular music.

I want to tease out some of the policy implications of researching live music and does so by examining three key areas.

1. The necessity of regulation

2. Live music and the black economy

3. The impact of technology on ticketing

I want to argue that live music has direct policy implications for which are not present with recorded music. As such it presents a potentially rich field of research for those of us who are interested cultural policy and regulatory frameworks.

I should note before I begin that the first is that this paper draws upon work done for the project by the rest of the team and particularly interviews conducted by Matt and Emma. So I’d like to acknowledge their contribution while I taking full responsibility for the arguments in the paper.

**Part One: The necessity of regulation**

It is noticeable that live music has received much less academic attention that recorded music as, especially in terms of its industrial structure.

But another noticeable thing is that when live music has received attention it has been in terms of issues concerning its regulation – thus in the early 1980s Michael Clarke wrote a book on centring, free festivals and the problems they were having (Clarke 1982), in 1991 Paul Chevigny documented the way in which local bye laws had virtually banned jazz from parts of New York, my own work on censorship and music in the UK in 1996 featured accounts of how regulation could act as a form of censorship and in 2003 Shane Homan’s first book documented the way in which Sydney’s local music scene was mediated by regulations or the lack thereof.
So there is something of a tradition of academic work on live music concentrating on regulation and thus on policy. In order to illustrate this I now want briefly to address four more areas – flyposting, the 2003 Licensing Act, the importance of locality and Form 696.

The regulatory framework around live music begins even before a gig has started. Here perhaps one of the most contentious issues in recent years has been advertising of gigs by flyposting and/or flyering. As part of our research we’re interviewing promoters and one of the issues which has come up is the attitude of local authorities towards this issue. Sheffield promoter Alan Deadman told us that there:

‘…there’s no poster-boards. I think in many respects that’s got worse… It’s almost like a neo-fascism… where cities think that in order to attract investment, people to relocate there, they have to have a squeaky clean city’ (Deadman 2008)

Similarly Mark Mackie of leading Scottish promoter Regular Music reported that:

‘The police came up here and gave me a warning about some fly posting I’ve been doing,… Edinburgh’s got its head in the sand, right? Glasgow met the problem head on and has official fly posting sites now that are cleaned up and tidied, and the drums – and they’re working a treat’ (Mackie 2008)

Elsewhere it was reported that Newcastle has had ‘a well-earned reputation for vociferously pursuing people flyering from local venues’ (Mean and Times 2005; p.6) and that Liverpool Council has also taken action against flyposting despite the fact that ‘many music venues depended on fly-posting as their main source of advertising, even though it was often in breach of the law’ (Cohen 2007, p.204).

This sort of action can alienate live music promoters and a DEMOS report suggested that compromises such as having designated spaces for flyposting are necessary and that ‘Ideally there should be no restrictions on flyering in the street’ (Mean and Times 2005, p.22).

In terms of licensing live music in England and Wales is described within law as being a form of regulated entertainment which therefore requires a licence (Frontier 2007, p.5).

In fact live music has implications for regulatory authorities which are not present in recorded music. In part this is because the provision of live music generally automatically raises a set of health and safety issues which are not present with recorded music. These
include issues of health and safety, but also, importantly, rules concerning the consumption of alcohol.

So once we get to the gig itself a key area is licensing. Under the 2003 Licensing Act for England and Wales, the provision of live music is applied for at the same time as an alcohol licence. A copy of the licence application goes to the following bodies: the chief of police, the fire authority, the health and safety authority, the local planning authority, the environmental health authority, the body recognised as being responsible for protection of children from harm, and Inspectors of Weights and Measures (trading standards officers) (Callahan et al 2006, p.A3).

In addition the application must be advertised on the proposed premises and in a local newspaper in order to bring it to the attention of ‘interested parties’ who are able to make representations to the licensing authority. These parties include: People living in the vicinity of the premises, Bodies representing people living in the vicinity of the premises (e.g. residents’ groups and parish councils), People involved in a business in the vicinity of the premises, Bodies representing persons involved in these businesses (e.g. trade associations) (ibid).

As I understand the law, it is possible for such parties to make representations against the provision of live music, but not in favour of it. But my point is not to bemoan bureaucratic ‘red-tape’ as I recognise the necessity for most of this. The point is that the provision of live music automatically involves a high degree of regulation and the 2003 Act has been a key area of policy.

The Act came into force in November 2005 and many problems concerned smallscale gigs. Under the previous regime up to two musicians could play in pubs without the venue needing a live music licence, under the so called ‘two in a bar’ rule. But under the new legislation all music events needed a licence with the only exception of up to twelve Temporary Events per annum. Many musicians and smallscale promoters were concerned that the new requirement of a licence for all gigs combined with the potential cost of the application, would lead to a decline in the amount of venues putting on live music.

In response the Government set up a Live Music Forum in 2004 to monitor the impact of the Act. This it did as well as producing a number of documents and reports (MORI 2004, Hanson et al 2007, Callahan et al 2006, LMF 2007). The Forum’s final report found that contrary to government claims in advance of the legislation that it would result in a boom in live music, the overall impact was broadly neutral. It called for a loosening of the legislation and was backed in this by a Culture, Media and Select Committee (2009) Report.[1]
Overall the 2003 Act has been an example of government policy in one area – alcohol – having a perhaps disproportionate effect in another - live music.[2] This is symptomatic of a broader phenomena whereby the most important policies for music are not about music but about creating the sorts of places where musicians want to live (Frith et al 2009, p.83).

The Act has also shows that importance of local interpretation by Licensing Authorities. Thus Sheffield promoter Mark Hobson told us that:

‘I think there’s ... a policy in Sheffield that’s not written down. That has been devised by the police, licensing, and Child Protection ... to interpret the ... licensing reform in a way that they feel is appropriate, which is control, as opposed to opening it up. They want to restrict rather than open up, and they’re viewing it in that way’

(Hobson 2008).

Perhaps the most notorious recent example of local intervention is the Metropolitan Police’s Form 696. This is a ‘risk assessment’ form which has been approved by all of London’s councils.

It used by the Metropolitan police in instances where trouble is expected at a gig or club. It asks for all performers names, address, date of birth and phone number. At one point it included details of any particular ethnic group which might be expected to attend, although this was later dropped. But it still includes details of which style of music is being performed. It has to be with the police 14 days before an event and venues are also required to fill out form 696A which provides an ‘event debrief’.

According to Music Week (6 July 2009, www.musicweek.com/story.asp?storycode=103810) it covers over 100 venues all of which face the risk of a £20,000 fine if they fail to comply (Music Week 23 March 2009, www.musicweek.com/story.asp?storycode=1037282). It has been reported that eight shows have been cancelled by promoters following discussions with the police (Youngs 2009).

The form was criticised by the UK Parliament’s Culture, Media and Sport Select Committee which called for it to be scrapped, as has UK Music and the Musicians’ Union. As of July 2009 the form was under review (Ashton 2009), but its very existence again shows the importance of local regulation.

To summarise, I’ve suggested that local regulation of the ways gigs are advertised and of the licensing process are two key areas for policy, but I now want to suggest
that as part of the Night Time Economy live music is inherently somewhat shady.

**Part Two: The black economy**

Here we see something of a paradox, because this section will show that while it is heavily regulated, live music is also simultaneously one the least regulated parts of the music industries. In part this is because it is generally part of the night time economy, aspects of which are notoriously hard to regulate. For example, Shane Homan’s (2003) account of Sydney has more than its share of dubious goings on.

Of course this has a long history. Back in the UK, referring top those who ran London music clubs in the 1960s, former Pink Floyd manager Pete Jenner noted that the clubs ‘were often controlled by very dubious people with broken noses’ closely connected to criminals such as the Krays. He said that:

> ‘I’m sure they were dealing drugs, they were very dodgy people, you didn’t fuck with them. And a lot of these pub rooms were run by very dodgy people, and lots of them became respectable’.

He also spoke of a number of eminent figures who were ‘really dodgy’rden) He described a ‘barrow boy tradition’ and believed that ‘I’m sure a lot of the promoters in the

1950s were what were called ‘spivs’ in the 1940s, and selling black market gear’.

Another immediately striking thing about live music as an industry is how much cash if floating about, especially at the local level. We have been repeatedly informed off the record that promoters routinely operate swindles such as charging an act of putting up 1,000 posters but only putting up 500 and pocketing the cash. Or think about how you determine how many tickets have been sold – a key task for any decent tour manager. Add to this the anarchy of the merchandise table – who knows who is selling what and how much is being sold and then consider the army of ‘Hangers on’ – touts, but also illicit/unofficial t-shirt/poster etc sellers. Consider all this and more and it becomes clear to me that live music is incredibly regulated and un-regulated at one and the same time.

Because of the prevalence of cash Jenner told us that despite some professionalisation in recent years live music was ‘still dodgy’.

> ‘Absolutely. Absolutely it’s still dodgy. Any business which involves lots of cash is dodgy. How do you become successful in this business? Basically, if you can get away with not paying as much as you really ought to be paying, and underestimate
checks would leave most musicians earning well below the minimum wage.

There is also the question of what age people can go to gigs and recently deliberate attempts have been made to promote over 14’s shows. But again local licensing authorities have discretion and we heard complaints in Sheffield about the Council making it hard to put on over 14’s shows and the police trying to con venues into selling alcohol to under 18’s (Wilson 2008).

We’ve also heard strong allegations of anti-competitive practice in our own city of Glasgow and it is noticeable that no new big promoters have emerged in recent years. A sense of collusion in stifling new promoters has been asserted. This is enhanced by the fact that ownership patterns in the live music industry are incredibly complex with companies owning bits of each other or forming joint ventures to buy into competitors in ways which appear to be designed to circumvent legislation on monopolies.

To summarise this section, I’ve suggested that historically that the promotion of live music was allied to certain forms of ‘dodgy’ behaviour. Overall live music is still characterised by a great deal of informality and illicit practice. This will be continued when I move to my final area.
Part Three: The impact of technology on ticketing

Ticketing has been transformed by the internet. The availability of tickets 24/7 has transformed that market at a time when live music itself has become an increasingly important part of the political economy of the music industries. Here I want to concentrate on one issue which has received a lot of attention - secondary ticketing.

Put simply, secondary ticketing is a form of activity whereby a person or organisation buys tickets for an event and then sells them on to a third party. This can range from someone buying tickets and then finding they can't go up to organisations which make their income from selling on tickets in a myriad of ways. In the former instance one impact of the internet and ebay is that we have ‘bedroom touts’ – something which can be very lucrative (Robinson 2008b).

But what should government policy be in such areas? Much depends here on how you view the ticket itself – is it a piece of property or an entitlement?

The implication of the ticket being a piece of property is that the purchaser can sell it on as they could, for example, a book or can of beans. With certain exceptions – most notably around football and, separately (if relatedly) the Olympic games – this is the legal situation in the UK. The ‘right’ to sell tickets on has been most vociferously put forward by the secondary ticket agents who generally argue for a free market.

A contrary case was initially put forward by the Concert Promoters Association, other primary agents and the major sporting bodies. The argued that tickets are an entitlement granted under certain conditions – one of which is that the ticket is not sold on. Unfortunately it appears that this has not been tested under UK law and it may be the case the ID schemes for tickets are illegal.

Here I want to make the point that while issues of illegal downloading have attracted most attention, in essence the record companies’ response was to try to exert and extend existing copyright law. But in the case of live music the government was being asked not to re-assert to intellectual property rights, but to arbitrate about the nature of property itself.

At first the CPA launched a campaign to have secondary ticketing or touting outlawed. It enlisted the support of John Robertson MP, Chair of All-Party Music Group, who called for a ban on touting which he described as ‘simply extortion at the expense of both fans and the entertainment industries’ (Guardian 15 January 2008, p.33).
However the government was saved from a difficult decision in March 2008 when the CPA dropped its opposition to the secondary market and said that it now supported effective regulation rather than a ban on touting (Robinson 2008a).

In fact the writing had been on the wall a little earlier because of the actions of one key primary ticket seller – Ticketmaster. This company told the Culture, Media and Sport Select Committee in June 2007 that: ‘We would like to see the legislation which is there for football and for the Olympics being extended… into other sports and music events’ [3]

Having made this noble stand against the secondary market, in January 2008 Ticketmaster bought the secondary ticket agency GetMeIn.com. Its excuse was that of bringing legitimacy and security to the secondary market (letter from Chris Edmonds, MD of Ticketmaster to Guardian 5 June 2008).[3]

In effect Ticketmaster’s acquisition of GetMeIn blurred any distinction between primary and secondary agents. This view was vindicated in March when it was revealed that the promoter AEG had sold Michael Jackson tickets with a face value of £50 and £75 to the secondary ticket agency Viagogo to sell on as £500 ‘premium’ tickets.

Between 500 and 1,000 tickets each night of the 45 scheduled shows were said to be being sold in this way with AEG collecting 80% of the income (Foster et al 2009).

The CPA has now introduced its own exchange site – officialboxoffice.com and its chair, Rob Ballantine, now accepts that ‘touting is inevitably here to stay’ (Anon 2009).

Meanwhile in order to discern what to do here in February 2009 the Government published a consultation document (DCMS 2009) with the consultation ending on 15 May and the results currently awaited. The Government has sought to establish best practice, rather than outlawing. Its preferred option is the establishment of a Code of Principles, the extension of ticket exchange services and – in an allusion to what was mainly a problem for sports – a market based approach to events of national significance.

To a certain extent the climbdown by the CPA has let the government off the hook, but the question still remains as to what government policy should be on the secondary market for concert tickets - should the emphasis be on property rights or cultural value?

What should policy be here?

More broadly via new technology the issue of concert
tickets led to a situation where the government was asked to choose between different conceptions of property. The fact that ultimately it was able to get away with not choosing may owe more to an economic downturn and the ever opportunistic behaviour of promoters, than it does to profound philosophical or even economic thinking. Nevertheless while the downloading of recorded music may have got more headlines, it is the political economy of live music which offered more profound challenges to property law.

Conclusion

What I hope to have done in this paper is to outline what a rich area live music is for research in policy. I’ve noted three key areas – regulation, the allied question of the black market and finally the way in which changing technology has created new questions about a key part of the live music industry – that of ticketing. Live music remains under-researched within Popular Music Studies and more broadly. I suggest that this needs to change and hope to have least provided some food for thought for why it should.

Endnotes

1. It should also be noted that the Wiltshire police used section 160 of the 2003 Act which deals with potential disorder as a reason to ban Babyshambles from appearing at the Moonfest festival (Culture, Media and Sport Committee 2009: Ev. 151).

2. For guidance on the empirical effects of the Act see Kemp et al (2009 10-5-13.).

3. Note that the links between primary and secondary market has always been close as Pete Jenner told us of an eminent promoter from the 1960s who used his brother to tout tickets, something which he claimed promoters have always been doing.

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