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31st January 2007

Simon Richardson
Licensing Guidance Review Team
Tourism Division
6th Floor
Department for Culture Media and Sport
2 - 4 Cockspur Street
London
SW1Y 5DA

Dear Mr Richardson

Licensing Consultation

With regard to the Consultation on the Guidance issued under Section 182 of the Licensing Act 2003, the document in general is unnecessarily tortuous and almost impossible to comprehend.

We are delighted that carol singers and buskers will now not have to help the police with their enquiries (Section 3:21).

In terms of incidental music I am enclosing a copy of research that we have undertaken: a research exercise to define incidental music. There are clear definitions of what constitutes incidental music and the guidelines should reflect this rather than leaving it to the courts to decide. This is an abrogation of duty on the part of the DCMS.

Finally it behoves me to mention that the Licensing Act 2003 discriminates against live music in favour of broadcast recorded sound.

Yours sincerely



Chris Hodgkins
DIRECTOR

Jazz Services and the Association of British Jazz Musicians

SURVEY ON INCIDENTAL MUSIC

In February 2006, Jazz Services, in conjunction with the Association of British Jazz Musicians, conducted a research exercise to try and define the term 'incidental music'.

In common sense terms, 'incidental music' refers to musicians, typically in a restaurant or bar, providing background music to the main activity of eating, drinking, or socialising.

Under the new system, incidental music does not need a licence. In practice, however, many are unsure about the exact distinction between music which is incidental and music which constitutes a performance in its own right. Suggested factors include volume of music, whether the music is amplified or non-amplified, location of musicians within a venue, whether or not tickets are issued, and whether or not the music is advertised, but there is no strict definition. Currently, the Department of Culture, Media and Sport guidelines indicate that "it will ultimately be for the courts to decide whether music is "incidental" in the individual circumstances of any case." The fear is that, unwilling to provide test cases for the courts, venue managers could decide that providing incidental music is too large a risk. While there is no concrete evidence of this the fact remains that the notion of 'incidental music' remains untested in the courts. Therefore it remains a crucial area for exploitation. This is an area in which Jazz Services could be involved in actively helping a licensee or restaurant bringing a 'test case' to the courts – provided funding can be vouchsafed or the legal work is pro bono.

652 promoters were mailed and 64 questionnaires were returned: a response rate of 10%.

*Please note that some replies had more than one definition or description and some had no comment or reply at all.

1. How would you define "incidental music"?

	%
Not the main purpose for visiting an establishment	36
Background music (no definition)	13
No admission fee	10
Does not demand attention	7
No advertising	5
Recorded music rather than live	5
On the same level as recorded music	5
Non-amplified	3
The band has no more than 2 or 3 musicians	3
Secondary activity	2
Performance not in a specifically music venue	2
Not a performance	2
Not on a regular basis	2
Casual and unplanned	1
Performance with no dedicated audience	1
Music written for a play	1
Margin of error	2
Total %	100

2. Under your definition of incidental music, would you or your venue managers employ jazz musicians on that basis?

	%
Yes	34
No	54
Not sure	5
Now	3
In the future	
No	1
Yes	3
Total %	100

3. Please provide a brief description of your direct or indirect experiences of the new licensing regime.

	%
Positive	20
Negative	31
Indifferent	41
Unclear	8
Total %	100