

OUT OF TUNE IVORY POLICY: UNINTENDED CONSEQUENCES FOR MUSICIANS

NICOLE BLUMENKEHL

New federal restrictions on the importation and exportation of ivory,¹ coupled with imperfect pre-existing regulations,² have resulted in numerous unintended consequences that directly impact musicians' ability to perform in the United States and threaten to undermine international cultural arts exchange.

- Roadmap:
 - This Note will explain how ivory has been used in the music industry and why its continued use is desirable.
 - This Note will explain the current situation of the law as it relates to the importation and exportation of ivory.
 - This Note will describe the negative impact that pre-existing and recent restrictive regulations have had on musicians' ability to perform in the United States and how current regulations serve to undermine international cultural arts exchange.
 - This Note will examine the rationale behind the adoption of recently issued Director's Order 210 (the "Order") and critique the way in which the legislation goes about achieving an otherwise admirable goal. This Note will propose several modifications to the Order that will limit the reach and impact of its unintended consequences.

***** PLEASE NOTE THAT I HAVE NOT YET UNDERGONE BLUEBOOKING MY CITATIONS ACCURATELY. MY CITATIONS WILL BE CORRECTED IN THE NEAR FUTURE.*****

¹ Cite to Director's Order 210.

² Cite to CITES Treaty.

I. The Music Industry and Its Use of Ivory

Professional violinists, in addition to other musicians,³ have been negatively impacted by restrictive legislation on ivory importation and exportation.⁴ Owners of violin bows that contain ivory are almost exclusively professional violinists, which constitute a very small percentage of performing violinists.⁵ An estimated ninety-percent of professional violinists have at least one ivory-tipped bow.⁶ Bow-makers have traditionally used ivory in their finest-quality bows because it effectively clamps bow hairs onto wood and holds them in place, protects the fragile head of the bow, and does not crack with age.⁷ According to Dorothy Kitchen, Founder and Director Emeritus of the Duke University String School, “No one looks for an ivory tip. That is incidental.” Instead, the driving factor for purchasing ivory-containing bows is that the ivory helps ensure that the bow will be long-lasting and of good quality. These considerations are particularly important for professional musicians because, as Kitchen explains, “We don’t change our bows. . . . [O]ld bows are wonderful If a bow breaks and is unreparable, it is thrown away[,]” but bows that last and retain their fine qualities are “ALWAYS rehair[ed]”.⁸ This is because musicians get accustomed to the instruments and bows with which they regularly perform. Familiarity with particular bows prompts musicians to opt to continually rehair an old

³ In addition to bows, ivory has historically been incorporated in the bridge pins, saddle, and nut of some acoustic and electric guitars. John Thomas, *A Guitar Lover’s Guide to the CITES Conservation Treaty*, FRETBOARD JOURNAL, (last visited Nov. 3, 2014), available at <http://www.volokh.com/2012/10/19/a-few-thoughts-on-the-second-circuits-doma-decision/>.

Ivory is also traditionally incorporated in bagpipes. See <http://www.pressherald.com/2014/08/06/teens-ivory-bagpipes-confiscated-at-border/>.

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⁴ See *supra* Section [THE PRESENT STATE OF IVORY LAWS SECTION].

⁵ Interview with Dorothy Kitchen

⁶ *Id.*

⁷ *Id.*; see also NPR article. Ivory has historically been used on both the “tip-plate” and the “frog” of the bow for the reasons provided in accompanying text.

⁸ Interview with Dorothy Kitchen (emphasis in original).

bow rather than purchase a new one. For violinists, a bow is just as important and integral to performance as the violin itself.⁹

- Discuss the impact of current regulations (and the negative effects they have on international cultural arts exchange, which the U.S. has had a policy of encouraging since the 1950s)

II. The Present State of Ivory Laws

A. CITES Treaty

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) is an international agreement aimed at “ensur[ing] that international trade in specimens of wild animals and plants does not threaten their survival.”¹⁰ It was originally drafted and agreed to by eighty countries in Washington, D.C. on March 3, 1973 and became effective on July 1, 1975.¹¹ Currently, there are one hundred and eighty countries—or, as CITES refers to them, “Parties” or “Member States”—to the treaty.¹² CITES contains three Appendices that catalogue the endangered species covered by the agreement.¹³ The African elephant is listed under Appendix I, which concerns “species threatened with extinction.”¹⁴

Article III of CITES provides the default rule for Appendix I species.¹⁵ Under Article III, individuals possessing items that contain ivory, such as certain instruments, must secure a permit

⁹ *Id.*

¹⁰ *What is Cites?* CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA [CITES] (last visited November 3, 2014), <http://www.cites.org/eng/disc/what.php>.

¹¹ *Id.*

¹² *Id.*

¹³ *How CITES Works*, CITES (last visited November 3, 2014), <http://www.cites.org/eng/disc/how.php>.

¹⁴ *Id.*

¹⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora [hereinafter “CITES”] art. III, March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.

from the country of export, which is only obtainable if “a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species” and the item “was not obtained in contravention of the laws of that State for the protection of fauna and flora.”¹⁶ Individuals possessing such items must also obtain a permit of import from the destination country, which will only be granted upon a sufficient showing that the item is not being imported for “primarily commercial purposes.”¹⁷ Within the meaning of CITES and subsequent ivory ban legislation discussed below,¹⁸ “import” does not just refer to “commercial activity,” but rather also includes “bringing instruments into the country, even just for personal use; even if you’re simply returning from work internationally with that instrument.”¹⁹

Article III is subject to the exceptions found in Article VII, one of which includes a special procedure for “pre-Convention specimens.”²⁰ “Pre-Convention specimens” refers to specimens that were “acquired before the provisions of the present Convention applied to that specimen.”²¹ Article VII waives the Article III permit requirements in cases “[w]here a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen” and “issues a certificate to that effect.”²² Thus, because the African elephant was first listed in CITES on February 26, 1976,²³ an individual seeking to import an instrument containing African elephant

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ **See Section [X—the section for Director’s Order 210] (discussing Director’s Order 210).**

¹⁹ <http://www.npr.org/2014/04/07/300267040/musicians-take-note-your-instrument-may-be-contraband> ←FIX!

²⁰ CITES, art. VII(2), March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.

²¹ *Id.*

²² *Id.*

²³ *USFWS Moves to Ban Commercial Elephant Ivory Trade: Questions & Answers*, U.S. FISH & WILDLIFE SERVICE (last visited July 16, 2014), <http://www.fws.gov/international/travel-and-trade/ivory-ban-questions-and-answers.html>. [hereinafter “Ivory Ban Q & A”]

ivory into the United States need not obtain any documentation from the United States government, but instead should just secure a certificate from the CITES or other relevant authorities of the country of export,²⁴ confirming that the African elephant ivory used in the instrument is a “pre-Convention specimen.”²⁵

1. Round Trips

Until recently, all individuals or groups seeking to make a round trip with an item containing ivory were required to obtain a permit from the U.S. Fish & Wildlife Services (“FWS”), an agency of the U.S. Department of the Interior, via Form 3-200-73 to “re-export” the instrument for every border crossing.²⁶ Per the form’s instructions, permit applicants should “[a]llow at least 60 days for [their] application to be processed,” but should note that “some applications may take longer than 90 days to process.”²⁷

In an attempt to alleviate the burden created by needing to secure a new permit for each border crossing, the Conference of the Parties to CITES at its sixteenth meeting in March 2013 agreed on a resolution to expedite the certification process for “non-commercial cross-border movement of musical instruments for purposes including, but not limited to, personal use, performance, display or competition”²⁸ The resultant resolution, Resolution Conf. 16.8, “recommends” that Parties provide CITES-approved instrument owners with “a musical instrument certificate issued for a musical instrument [that will remain] valid for a maximum

²⁴ Contact information for each Member State’s “Managing Authorities” can be found at <http://www.cites.org/eng/cms/index.php/component/cp.15>.

²⁵ CITES, art. VII(2), March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.

²⁶ *Federal Fish and Wildlife Permit Application Form 3-200-73*, OMB No. 1018-0093, U.S. FISH & WILDLIFE SERVICE (last visited July 1, 2014), *available at* <http://www.fws.gov/forms/3-200-23.pdf>.

²⁷ *Id.* at 8.

²⁸ CITES, *Frequent Cross-Border Non-Commercial Movements of Musical Instruments*, Res. Conf. 16.8 (2013), *available at* <http://cites.org/sites/default/files/eng/res/16/E-Res-16-08.pdf>. [hereinafter “Resolution Conf. 16.8”]

period of three years to allow multiple imports, exports and re-exports of the instrument”²⁹

Essentially, this certificate would serve as a “type of passport,” enabling customs authorities to track the non-commercial movement of identified musical instruments as they cross international borders.³⁰ This would facilitate musicians’ ability to travel in an efficient and timely manner as well as lessen the chance that customs authorities might mistakenly seize the instruments due to lack of sufficient certification or a mistaken belief that the instruments contain illegal substances.³¹

Despite the good intentions behind Resolution Conf. 16.8, it is unlikely to alleviate the burden on musicians seeking to make round trips. Although the Conference of the Parties to CITES has some authority to bind Member States, such as by amending the list of endangered species in the treaty’s Appendices,³² it can only “*make recommendations* for improving the effectiveness of the present Convention.”³³ Thus, Resolution Conf. 16.8 merely “RECOMMENDS”³⁴ that Parties adopt the aforementioned “passport” initiative and lacks the authority to *require* Member States to implement the proposal. Consequently, Member States have already begun rejecting the resolution and declining its implementation. For example, on

²⁹ *Id.* at 16.8(f).

³⁰ *Id.* at 16.8(g).

³¹ If a musical instrument is mistakenly seized due to customs authorities’ incorrect belief that it contains a CITES specimen, like ivory, the carrier of the instrument will have the burden of proving that the customs officials were wrong. As long as FWS can demonstrate that it had “reasonable grounds” to believe that an instrument contained a CITES substance, the individual carrying that instrument has the burden of proving that the suspected specimen is not present. This may require hiring an expert to testify at a hearing in a federal case and subsequently presenting additional documentation. *See* John Thomas, *A Guitar Lover’s Guide to the CITES Conservation Treaty*, FRETBOARD JOURNAL, (last visited Nov. 3, 2014), *available at* <http://www.volokh.com/2012/10/19/a-few-thoughts-on-the-second-circuits-doma-decision/>.

³² CITES, art. XVI, March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.

³³ *Id.* at art. XI(3)(e) (emphasis added).

³⁴ Resolution Conf. 16.8, 1 (2013), *available at* <http://cites.org/sites/default/files/eng/res/16/E-Res-16-08.pdf> (emphasis in original).

July 12, 2013, Australia issued a “Notice to Importers and Exporters” informing musicians that “Australia will NOT be implementing the system as recommended in Resolution Conf. 16.8” and that “[m]usicians planning to take their instruments into or out of Australia are required to apply for the relevant import and export permits.”³⁵ Given that some Parties have already rejected implementation of the “passport” initiative, it seems likely that traveling musicians will still need to apply for and acquire individual permits for each border crossing. As the League of American Orchestras has noted, “A reliable system has not been built for obtaining CITES passports and navigating complicated enforcement procedures at U.S. ports of entry and departure, and across the globe” and “the costs, uncertainty, and risks” associated with relying on musical instrument passports remains “a barrier to international cultural activity.”³⁶

2. Obtaining a CITES Permit

Prior to the passage of Director’s Order 210 on February 25, 2014, discussed in **Section II.B.** below, musicians could import their ivory-containing instruments into the United States by presenting a valid CITES permit to the FWS personnel at designated ports.³⁷ Although new legislation has imposed additional requirements for importing ivory into the United States, musicians seeking to import their ivory-containing musical instrument must still qualify for a “CITES musical instrument certificate” and all such instruments must still be “accompanied by a

³⁵ Australian Department of the Environment, Notice to Importers and Exporters, WTR2013/2, *Non-Commercial Cross-Border Movements of Musical Instruments* (Nov. 3, 2014), available at <http://www.environment.gov.au/system/files/news/a91dfaca-ad62-48a7-9964-a1e235e08194/files/wtr2013-2-notice-musical-instruments.pdf>.

³⁶ *Ivory Ban Impact on Orchestras*, League of American Orchestras (last updated October 23, 2014), <http://americanorchestras.org/advocacy-government/travel-with-instruments/endangered-species-material/ivory-ban-impact-on-orchestras.html>.

³⁷ See **Section [X]** below (discussing port restrictions).

valid CITES musical instrument certificate or an equivalent CITES document that meets all of the requirements of CITES Resolution Conf. 16.8.”³⁸

Musicians can obtain a CITES permit for entry into or from the United States by demonstrating to the Division of Management Authority (“DMA”), a division of FWS,³⁹ that the worked African elephant ivory he or she seeks to import will: (1) be used for “non-commercial” purposes and (2) “was legally acquired and removed from the wild prior to February 26, 1976.”⁴⁰ According to the FWS’s website, an item has been “legally acquired” if it “was manufactured from ivory that was taken from the wild prior to 1976,” the year when African elephants were first listed by CITES.⁴¹ “This does not mean that the current owner must have purchased or acquired [the instrument] prior to 1976, but that the [instrument] was manufactured from ivory that was taken from the wild prior to 1976.”⁴² The website further explains, by way of example, that “an instrument manufactured in 1985 using ivory acquired by the manufacturer in 1975 would also be considered a pre-Convention specimen” and thus qualify as “legally acquired” under the CITES treaty. Satisfying these two requirements, however, is no longer sufficient to enter or leave the United States with instruments containing ivory in light of legislation passed on February 25, 2014.⁴³

3. Presenting the CITES Certificate

³⁸ *Director’s Order no. 210*, § 2(b)(4), U.S. FISH & WILDLIFE SERVICE (May 15, 2014), available at <http://www.fws.gov/policy/do210.html>.

³⁹ *About Us*, Division of Management Authority (last visited Nov. 4, 2014), <http://www.fws.gov/international/about-us/division-of-management-authority.html>.

⁴⁰ *Ivory Ban Q&A*, (last visited Nov. 3, 2014) <http://www.fws.gov/international/travel-and-trade/ivory-ban-questions-and-answers.html>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See Director’s Order no. 210* § 2(b)(4), U.S. FISH & WILDLIFE SERVICE (May 15, 2014), available at <http://www.fws.gov/policy/do210.html> (adding the additional requirement of demonstrating that the instrument “[h]as not subsequently been transferred from one person to another person for financial gain or profit since February 25, 2014”); *infra* **Section [X]**.

Items containing African elephant ivory may only enter or leave the United States through one of eighteen designated ports where FWS personnel are stationed.⁴⁴ For example, musicians travelling to New York City must fly into either John F. Kennedy International Airport or Newark Liberty International Airport.⁴⁵ This port restriction creates an additional burden for musicians travelling to the United States.

4. *Non-CITES Countries*

The CITES website contains a list of Contracting Parties to the treaty.⁴⁶ According to the website, “When a specimen of a CITES-listed species is transferred between a country that is a Party to CITES and a country that is not, the country that is a Party may accept documentation equivalent to the permits and certificates described above.”⁴⁷ However, no guidance is provided on what documentation would sufficiently qualify as “equivalent.”⁴⁸

B. *Director’s Order 210*

CITES allows Parties to adopt “stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I.”⁴⁹ Consequently, in response to alleged concerns about the decreasing populations of savannah and forest elephants and the impact that the global ivory trade may have on their continued existence, FWS issued Director’s Order 210.⁵⁰ This administrative Order instructs FWS personnel to

⁴⁴ *Designated Ports*, U.S. FISH & WILDLIFE SERVICE (Apr. 30, 2014), available at <http://www.fws.gov/le/designated-ports.html>.

⁴⁵ *Id.*

⁴⁶ *List of Contracting Parties*, CITES (last visited Nov. 4, 2014), available at <http://www.cites.org/eng/disc/parties/alphabet.php>.

⁴⁷ *How CITES Works*, CITES (last visited Nov. 4, 2014), available at <http://www.cites.org/eng/disc/how.php>.

⁴⁸ *See id.*

⁴⁹ CITES, art. XIV, March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.

⁵⁰ <http://www.npr.org/2014/04/07/300267040/musicians-take-note-your-instrument-may-be-contraband> ←FIX!

“strictly enforce existing restrictions on commercial trade of elephant ivory and on the import, export, and sale of items” that contain specimens from species protected under the Endangered Species Act’s “antique exception.”⁵¹ It also imposes a significant and broadly impactful new restriction on ivory imports into the United States by requiring proof that “[w]orked African elephant ivory imported as part of a musical instrument . . . [h]as not subsequently been transferred from one person to another person for financial gain or profit since February 25, 2014”⁵²

1. Scope

This new restriction on date of sale, discussed in more detail below,⁵³ does not appear in the text of the internationally agreed-upon CITES treaty,⁵⁴ but rather is the result of administrative action from FWS, a U.S. agency. Thus, this restriction only affects imports into the United States.

2. New Restriction: Demonstrating that the Instrument Has Not Been Transferred for “Financial Gain or Profit Since February 25, 2014”

Director’s Order 210 exceeds the requirements of CITES by banning the import of instruments containing African elephant ivory that have been “transferred from one person to another person for financial gain or profit since February 25, 2014.”⁵⁵ Thus, simply presenting a valid CITES permit to U.S. port authorities and demonstrating that the ivory was legally acquired

⁵¹ See *infra* **Section [ANTIQUES EXCEPTION]** (discussing this exception).

⁵² *Director’s Order no. 210* § 2(b)(4), U.S. FISH & WILDLIFE SERVICE (May 15, 2014), available at <http://www.fws.gov/policy/do210.html>.

⁵³ **Section [X] (Demonstrating that the Instrument Has Not Been Transferred for “Financial Gain or Profit Since February 25, 2014”)**

⁵⁴ See CITES, March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.

⁵⁵ *Director’s Order no. 210* § 2(b)(4), U.S. FISH & WILDLIFE SERVICE (May 15, 2014), available at <http://www.fws.gov/policy/do210.html>.

alone is no longer sufficient for ivory importation or exportation in the United States;⁵⁶ individuals carrying musical instruments that contain ivory must now also present evidence that the instrument itself—not the ivory contained within the instrument—was purchased prior to February 25, 2014.⁵⁷ For example, an unmodified ninety-year old Steinway piano containing African elephant ivory keys can only cross borders if the individual carrying it can provide sufficient documentation demonstrating that it was purchased prior to February 25, 2014 and will be used for non-commercial purposes.⁵⁸ Thus, despite the fact that the ivory composing the keys predates CITES’s 1976 requirement, that same piano would be prevented from entering the United States if it was purchased it after February 25, 2014 or if the musician accompanying it is unable to provide sufficient proof of purchase prior to that date.

a. Sufficient Proof

Although FWS lists some examples of documentation that could sufficiently prove date of purchase in Form 3-200-88,⁵⁹ such as a “bill of sale, appraiser’s statement, USDA or foreign phytosanitary certificate,”⁶⁰ the agency has provided little guidance on what kind and quantity of documentation is needed to satisfy this new requirement. As the League of American Orchestras

⁵⁶ *Questions and Answers about Director’s Order 210*, FISH & WILDLIFE SERVICE, (last visited Nov. 4, 2014), available at <http://www.fws.gov/international/pdf/directors-order-210-questions-and-answers.pdf>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ This form is used by U.S. residents to apply for a three-year “passport-like certificate for musical instruments.” See *Federal Fish and Wildlife Permit Application Form 3-200-88*, OMB No. 1018-0093, U.S. FISH & WILDLIFE SERVICE (last visited Nov. 4, 2014), available at <http://www.fws.gov/forms/3-200-88.pdf>.

⁶⁰ *Id.*

has already noted, “[i]t is unclear at this time what documentation will be sufficient to prove that an instrument was purchased prior to February 25, 2014.”⁶¹

b. “Antiques Exception” Under the Endangered Species Act

The import, export, and interstate sale of species protected by the Endangered Species Act (“ESA”)⁶² is prohibited unless the items containing these specimens qualify as “antique.”⁶³ Under the ESA, to qualify as an antique, the item must be shown to be at least 100 years old; composed “in whole or in part of any endangered species or threatened species” listed in the ESA; “not . . . repaired or modified with any part of any such species on or after [December 27, 1973,] the date of the enactment of this Act”; and that it was or will be imported through one of thirteen designated endangered species “antique ports.”⁶⁴ This last requirement is particularly difficult for musicians to meet if their instruments were acquired before 1982, which many are, because these ports “did not have legal authority until 1982, making it nearly impossible to prove that an item, perhaps created or acquired centuries before, is a legitimate ivory antique.”⁶⁵ Additionally, there is a very low probability that the owner of an antique instrument will have certification of the instrument’s age and, given that makers of these instruments are likely long gone or difficult to reach, obtaining such certification now is extremely difficult and unlikely.⁶⁶

⁶¹ *Ivory Ban Impact on Orchestras*, League of American Orchestras (last updated October 23, 2014), <http://americanorchestras.org/advocacy-government/travel-with-instruments/endangered-species-material/ivory-ban-impact-on-orchestras.html>.

⁶² 16 U.S.C. §§1531–1544.

⁶³ § 1539(h).

⁶⁴ *Id.*

⁶⁵ www.law.com/sites/amyfaltman/2014/05/12/art-law-part-1-from-eagles-to-ivory-the-art-of-lost-value/?slreturn=20141004205752. ← **FIX CITATION!**

⁶⁶ *Id.*

Items containing African elephant ivory that meet all of these requirements will still not qualify for the “antique exception” if they are being imported for commercial purposes.⁶⁷ So, even if the hypothetical Steinway piano from the above example were over 100 years old, it could not be sold to a U.S. resident for his or her personal use if it were being shipped from another country. Thus, although there is a small chance that performing musicians might be able to obtain the requisite documentation to qualify for an antique exemption, this Order will still “prohibit millions from selling their ivory and obtaining a return on their investment.”⁶⁸

3. Rationale

According to FWS, Director’s Order 210 was issued because new requirements were necessary “to protect populations of elephants and other endangered or threatened species that are subject to illegal trade.”⁶⁹ Craig Hoover, chief of the Wildlife Trade and Conservation branch at the FWS, claimed that the positive impact that the law could have on elephant populations outweighs the law’s “impact on many different industries.”⁷⁰ Other FWS officials have echoed Hoover’s sentiment, opining, “[D]rastic measures are needed to help curb the slaughter of African elephants.”⁷¹ Essentially, by making it illegal to cross borders with ivory sold post-February 2014, FWS hopes to devalue ivory-containing inventory, crushing the market for ivory

⁶⁷ *Questions and Answers about Director’s Order 210*, FISH & WILDLIFE SERVICE, (last visited Nov. 4, 2014), available at <http://www.fws.gov/international/pdf/directors-order-210-questions-and-answers.pdf>.

⁶⁸ www.law.com/sites/amyfaltman/2014/05/12/art-law-part-1-from-eagles-to-ivory-the-art-of-lost-value/?sreturn=20141004205752. ← **FIX CITATION!**

⁶⁹ *Questions and Answers about Director’s Order 210*, FISH & WILDLIFE SERVICE, (last visited Nov. 4, 2014), available at <http://www.fws.gov/international/pdf/directors-order-210-questions-and-answers.pdf>.

⁷⁰ http://www.nytimes.com/2014/03/21/arts/design/new-limits-on-ivory-sales-set-off-wide-concerns.html?_r=0 ← **FIX!!!**

⁷¹ *Id.*

altogether. This, the agency hopes, will serve to significantly disincentivize elephant poaching for the purpose of supplying ivory to the existing market.

II. The Market for Musical Instruments Containing Ivory

- An examination of musical instruments sales suggests that the music industry has not and will not contribute to high ivory demands in any significant way.
- Almost all instruments containing ivory use ivory from pre-1976
- Ivory-containing bows are re-haired
- Dorothy Kitchen's bow is 150 years old; she says, "There is no market among players for [bows containing ivory]" & that players like to purchase older bows of fine quality that they can rehair as opposed to new bows
- The only musicians who use instruments with ivory are top-level professionals, which is a very small market
- Most musicians seeking to purchase instruments that contain ivory are not buying new bows, but rather old or refurbished bows

III. Addressing Unintended Consequences of Ivory Restrictions

- *A. Focus on Director's Order 210* (The CITES treaty leaves a lot to be desired, but having so many countries sign onto one treaty is hard so the status quo is fine for now. It's this additional regulation—Director's Order 210—that needs to be addressed immediately.)
- Easier to fix Director's Order 210 because all that is required is administrative action; it does not require Congress to act

IV. Why It Matters: Benefits of International Cultural Arts Expansion in the U.S.

V. Proposal

- De minimus exception
- Immunity exception (like museums have with inanimate objects for visual arts)
 - o Seems silly that the same ivory-containing violin bow can be legally displayed by the Met, but can't come into the country for musical performance (mention that the Met does have a musical instruments display and there are instruments that contain ivory and other endangered specimens in it)
- Regulating at the manufacturing level instead of regulating each, individual trade
- Possible statutory interpretation solution?
 - o Reinterpreting "import" and "export," under these restrictive laws, as being for commercial purposes
- "We need to crush the ivory market because the value of elephants is greater than the inconvenience this causes to musicians"