

# CONTROLLED CHAOS: A PROPOSAL FOR AN INTERNATIONAL CODE OF CONDUCT IN THE LIVE CONCERT CONTEXT

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## I. INTRODUCTION

From death and destruction<sup>1</sup> to the impeachment and removal of political figures,<sup>2</sup> live music events carry a potential world of hurt. For example, caught in a death trap at the Argentinian nightclub República Cromañón, 194 music fans were killed in a pyrotechnic-induced fire.<sup>3</sup> In Ohio, a “crazed fan” rushed the stage, fatally shooting famed Pantera guitarist Darrell

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1. See, e.g., Kate Sedgwick, *Ten Deadliest Concert Disasters of the Last Fifty Years*, MATADOR NETWORK (Aug. 16, 2010), <https://matadonetwork.com/nights/10-deadliest-concert-disasters-of-the-last-50-years/>.

2. Marcela Valente, *Argentina: Buenos Aires Mayor Ousted Over Tragic Blaze*, INTER PRESS SERV. NEWS AGENCY (Mar. 7, 2006), <http://www.ipsnews.net/2006/03/argentina-buenos-aires-mayor-ousted-over-tragic-blaze/> (detailing the ousting of Buenos Aires Mayor Aníbal Ibarra by lawmakers in connection with a tragic nightclub fire that occurred in 2004).

3. *Id.*

“Dimebag” Abbott.<sup>4</sup> And a stampede at the German techno festival “Love Parade” claimed twenty-one lives—its victims were crushed and suffocated at the over-crowded venue.<sup>5</sup> Be it an intimate venue or a packed arena, there is always an inherent risk of violence or worse when a crowd is assembled into a small space. These and future tragedies are preventable, however, and, given the frequent and severe disasters within the music community, a uniform code of conduct for both artists and event organizers would complement existing law, as well as the interests of the live concert culture and society at large.

Of course, countless shows, concerts and music festivals capture a unique positivity and unity in performers and attendees.<sup>6</sup> A prime example is Bob Marley’s 1978 One Love Peace Concert held in Kingston, Jamaica, in the midst of an ongoing political civil war.<sup>7</sup> At the concert’s peak, and to the amazement of attendees, the reggae legend successfully convinced the two opposing political leaders—Michael Manley of the People’s National Party and Edward Seaga of the Jamaica Labour Party—to join hands on stage.<sup>8</sup> In the context of live music, sources of danger range from simple human

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4. Brian Williams & Corky Siemaszko, *Band Split Sets off Slayer*, DAILY NEWS (New York), Dec. 10, 2004, at 8, reprinted in *Dimebag Darrell is Killed by Pantera Fan in 2004*, N.Y. DAILY NEWS (Dec. 8, 2015, 12:25 PM), <http://www.nydailynews.com/news/crime/darrell-dimebag-abbott-killed-pantera-fan-2004-article-1.572821>.

5. *July 24, 2010: The Day the Music Stopped*, LOCAL (July 23, 2015, 4:42 PM), <https://www.thelocal.de/20150723/the-duisburg-love-parade-disaster-five-years-on>.

6. See, e.g., Robin Denselow, *Bob Marley Presides Over the Peace Concert*, GUARDIAN (June 15, 2011, 7:15 PM), <https://www.theguardian.com/music/2011/jun/16/bob-marley-peace-concert>; Erik Kirschbaum, *Love Parade Created in Berlin in '89 as Peace Rally*, REUTERS (July 24, 2010, 1:09 PM), <https://www.reuters.com/article/us-germany-love-history/love-parade-created-in-berlin-in-89-as-peace-rally-idUSTRE66N21820100724> (explaining what came to be known as one of the world’s largest techno dance parties originally began as “a demonstration for peace, tolerance and understanding through love and music”).

7. Tim Ott, *Bob Marley and the One Love Peace Concert*, BIOGRAPHY (May 11, 2017), <https://www.biography.com/news/bob-marley-one-love-peace-concert>.

8. *Id.*; Denselow, *supra* note 6.

aggression<sup>9</sup> to the structural environment of a venue.<sup>10</sup> The spectrum of potential severe and deadly consequences can occur through random event, but stem mostly from substandard planning and execution of live music events. Musicians and event organizers should meet the dedication of their concertgoers with a calculated and agreed-upon ethos grounded in respect, safety and accountability. Such policies in the context of live music events have proven successful in the United States, at least on a grass-roots level. Small, community-run art and music venues upholding a “do it yourself” approach rely on self-pronounced codes of conduct to sustain environments that promote and preserve safety and bodily integrity.<sup>11</sup> For example, a renowned Los Angeles neighborhood music venue, “Bridgetown D.I.Y.,”<sup>12</sup> maintains policies against bigoted language or actions, distribution or use of drugs or alcohol at the venue, and violence, harassment, or fighting of any kind.<sup>13</sup>

As another example, the “Ché Café Collective,” a volunteer co-operative live music venue on the University of California, San Diego campus prescribes similar tenets, expressly prohibiting drugs, alcohol, graffiti, weapons, and fighting.<sup>14</sup> Interestingly, the co-operative even provides its visitors with instructions on proper “pit etiquette”—referring to a specific type of punk rock or heavy metal music dancing known as “mosh pitting” or

9. See generally STEVEN BLUSH, *AMERICAN HARDCORE* 24 (George Petros ed., 2d ed. 2010) (documenting the birth of “slam dancing” in southern California); see also Thomas Charles Surmanski, *Mosh Pits or Liability Pits: Criminal and Tortious Liability at Concerts*, 1 CAMBRIDGE L. REV. 115, 116-17 (2016) (describing “slam dancing” or “moshing” as a traditional practice at concerts derived from the punk rock community where the crowd—usually near the front of the stage or “the pit”—engages in a collective and therapeutic form of frenzied dancing that is aggressive, yet good humored, and where—although no one is fighting—a certain level of violence is socially accepted; although minor injuries may occur, participants exercise varying codes of conduct or “pit etiquette” to forbid behavior such as sexual harassment or trampling on fallen members).

10. See, e.g., Colin Stutz, *Three Dead in Stampede Following Steve Aoki Concert in Spain*, HOLLYWOOD REP. (Nov. 1, 2012, 2:45 PM), <https://www.hollywoodreporter.com/news/three-dead-stampede-steve-aoki-385438>.

11. See, e.g., *Safer & Sober Space Policies*, BRIDGETOWN D.I.Y., <http://www.bridgetowndiy.org/policies> (last visited Aug. 31, 2018) (exemplifying a working code of conduct upheld by the creators of a neighborhood music venue in Los Angeles); CHÉ CAFÉ COLLECTIVE, <http://thechecafe.blogspot.com/p/about.html> (last visited Aug. 31, 2018); SEVENTH CIRCLE MUSIC COLLECTIVE, <http://7thcirclemusiccollective.org/> (last visited Aug. 31, 2018) (expounding a successful Denver, Colorado art and music venue’s organizational aim of creating a space where its visitors feel respected, accepted, safe, welcome, and comfortable).

12. Sam Ribakoff, *Best All-ages Music Venue: Bridgetown DIY*, LA WEEKLY, <http://www.laweekly.com/best-of/2017/music-and-nightlife/best-all-ages-music-venue-8694966> (last visited Aug. 31, 2018).

13. BRIDGETOWN D.I.Y., *supra* note 11.

14. CHÉ CAFÉ COLLECTIVE, *supra* note 11.



cause of the fire is still unknown.<sup>22</sup> However, the state of the warehouse's interior made it clear that those who were inside were caught in a fire trap.

The report described the interior as a “maze-like labyrinth with makeshift hallways and cubicle-like live-work spaces constructed not of walls” but of musical instruments, wooden furniture and “other scavenged items that blocked possible exits and fueled the blaze.”<sup>23</sup> In addition, the warehouse lacked a sprinkler system, the building was powered by an illegal ad hoc electrical system, and—perhaps most dreadful given the circumstances—the main access to the bottom floor was a makeshift staircase composed of planks and wooden pallets.<sup>24</sup> In June 2017, prosecutors charged both Ghost Ship's creative director and master tenant with thirty-six counts of involuntary manslaughter for knowingly creating the fire trap in a warehouse that was not licensed for either housing or entertainment, and inviting the public inside.<sup>25</sup> The event organizers lack of conscientious planning led to deadly consequences for their dancing victims.

In light of a broad array of similarly unfortunate yet avoidable tragedies occurring at music events across the globe, the concert industry must develop an international code of conduct that provides basic rules on fire safety, overcrowding, and protection from violence. This paper will first demonstrate that for want of a collective adherence to standards, the music community has suffered preventable harm. By way of a case study, it will then illustrate how a lack of clear standards has placed both performers and audience members at risk. Finally, this paper will propose a solution to the problem: The creation of an international code of conduct in the live music event context. Adherence to such a code would help preserve the integrity of the worldwide concert culture by achieving an increase in accountability among musicians and promoters for the health and safety of concertgoers and performers alike.

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22. OAKLAND FIRE DEP'T, ORIGIN & CAUSE REPORT 50 (2017) [hereinafter ORIGIN & CAUSE REPORT],

<http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak064503.pdf>; *Panic in Ghost Ship Warehouse Fire*, *supra* note 19 (citing ORIGIN & CAUSE REPORT, *supra*).

23. *Panic in Ghost Ship Warehouse Fire*, *supra* note 19; see ORIGIN & CAUSE REPORT, *supra* note 22, at 13-14.

24. ORIGIN & CAUSE REPORT, *supra* note 22, at 4, 15, 17; *Panic in Ghost Ship Warehouse Fire*, *supra* note 19 (“Aaron Marin, a house guest staying in a studio, was upstairs when he saw flames coming from under the floor near the DJ's booth. People started down the staircase but returned because the ramshackle stairwell of planks and wooden pallets was not safe.”)

25. Peele & Debolt, *supra* note 19; *Panic in Ghost Ship Warehouse Fire*, *supra* note 19.

## II. DISTORTION AND DISHARMONY: THE NEED FOR A SYNCHRONIZED ADAPTATION TO PROTECT THE PUBLIC

Lack of adherence to standards has led to easily avoidable catastrophes. Promotional goals often lead artists and promoters to compromise the safety of the audience in order to make sales. While most jurisdictions impose rules governing safety concerns and negligence standards, not all can be relied upon to adequately regulate common risks. One tragic 1979 incident occurred at a “The Who” concert in Ohio, where eleven would-be attendees died of “suffocation by asphyxiation due to compression.”<sup>26</sup> The cause was a combination of what arena employees dubbed an unreserved “animal seating” policy, inadequate staffing and deficient crowd control procedures.<sup>27</sup>

More recently, an explosion caused by colored powder catching fire at a 2015 techno concert in Taiwan resulted in 508 injuries and fifteen deaths.<sup>28</sup> The event organizer was found guilty of professional negligence for the fatal incident, that could have been prevented “if there had been someone with a basic understanding of science at the scene.”<sup>29</sup> Other catastrophic moments of “rock and roll hell”<sup>30</sup> occurred at the 1969 Altamont Speedway Free Festival in northern California (850 injuries and four deaths),<sup>31</sup> the 2000 Roskilde Festival near Copenhagen, Denmark (nine deaths),<sup>32</sup> and a 2009

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26. Chet Flippo, *Rock & Roll Tragedy: Why Eleven Died in Cincinnati*, ROLLING STONE, Jan. 24, 1980, at 10-24, *microformed on UMI No. 11330* (Nat’l Archive Publ’g Co.).

27. *Id.*

28. Jason Pan, ‘Color Play Asia’ Organizer Found Guilty, TAIPEI TIMES (Apr. 27, 2016), <http://www.taipeitimes.com/News/front/archives/2016/04/27/2003644910>.

29. Jake Chung, *Water Park Inferno: Details of Pre-Blaze Conditions Emerge*, TAIPEI TIMES (June 30, 2015), <http://www.taipeitimes.com/News/front/archives/2015/06/30/2003621906>.

30. David Fricke, *Nine Dead at Pearl Jam Concert*, ROLLING STONE, Aug. 17, 2000, at 27, 32.

31. John Walsh, *Altamont Free Concert (Alameda County, CA) (December 6, 1969)*, in 3 CRIMES OF THE CENTURIES 16, 16-17 (Steven Chermak & Frankie Y. Bailey eds., 2016) (recounting the violent, substance-fueled, and poorly planned large-scale event known by many as the “end of the 1960’s counterculture,” where organizers hired notorious motorcycle bike gang Hells Angels to provide security).

32. Fricke, *supra* note 30 (detailing the tragic asphyxiation of rock band Pearl Jam fans near the front stage barricade, drowned in the “tidal crush” of the 50,000-person crowd); see Chris Barker, *Ten Rock Concerts Which Resulted in Bloodshed*, SOC. SCI. CAREERS (Oct. 19, 2012), <http://www.socialsciencecareers.org/10-rock-concerts-which-resulted-in-bloodshed/> (indicating the true cause of the tragedy is heavily debated); *Danish Police Blame Pearl Jam for Roskilde*, ABC NEWS (July 20, 2000), <http://abcnews.go.com/Entertainment/story?id=116387&page=1> (reporting Danish police found the band “morally responsible” for the disaster, rather than the event organizers).

concert at Club Santika in Bangkok, Thailand (66 deaths).<sup>33</sup> Regrettably, this list is far from complete.

Even without a single note being played, the anticipation of being in the presence of a beloved musician has the power to ignite a near-riot from passionate fans. Such a phenomenon occurred in 1990 at a now-closed Los Angeles record store, Warehouse Records.<sup>34</sup> Nearly 20,000 devout music fans arrived at the intersection of La Cienega Boulevard and 3rd Street, hoping to meet the acclaimed British synth-pop group Depeche Mode, which was holding an in-store autograph session to promote its new album “Violator.”<sup>35</sup> Just two years prior, Depeche Mode had sold out the famous Rose Bowl arena in Pasadena, California, filling the venue with more than 70,000 fans.<sup>36</sup> The band’s record label, alongside local rock radio station KROQ-FM, promoted the in-store signing event, which was originally scheduled to last three hours.<sup>37</sup> The event was ultimately shut down early due to the overwhelming turnout.<sup>38</sup>

When the crowd overpowered the store’s private security force, Los Angeles Police Department riot control officers were summoned to maintain peace and order as thousands of fans grew restless and unruly, pounding on the large glass windows in front of the building.<sup>39</sup> The danger of the crowd against the glass could have resulted in fatalities.<sup>40</sup> Fortunately, none occurred. However, a handful of people were sent to the hospital—including a twelve-year old girl—for injuries sustained during the frightening occasion.<sup>41</sup> Describing the scene outside the store when the group first

33. Jonathan Head, *Disturbing Details in Thai Blaze Inquiry*, BBC NEWS (Apr. 4, 2009, 12:43 AM), <http://news.bbc.co.uk/2/hi/asia-pacific/7981841.stm> (reporting the popular but illegally-operating club, in which stage fireworks set off a deadly fire, lacked sprinklers, fire exits, and emergency lights).

34. *That (In)famous In-Store Album Signing Event for Violator*, HALO (Mar. 20, 2015), <http://halotheviolatorbook.com/infamous-store-album-signing-event-violator/>; *Warehouse Music*, YELP, <https://www.yelp.com/biz/warehouse-music-beverly-hills-2> (last visited Mar. 19, 2018) (indicating the record store location is permanently closed).

35. *The Warehouse In-Store*, DEPECHE MODE ARCHIVES (March 20, 1990), [http://archives.depechemode.com/specials/march\\_20\\_1990.html](http://archives.depechemode.com/specials/march_20_1990.html); *That (In)famous In-Store Album Signing Event for Violator*, *supra* note 34.

36. John H. Lee, *Depeche Mode Fans Become Unruly at Store*, L.A. TIMES, Mar. 21, 1990, at VYB7.

37. *See The Warehouse In-Store*, *supra* note 35; Lee, *supra* note 36.

38. *The Warehouse In-Store*, *supra* note 35.

39. *Archives Special—The Warehouse In-Store*, DEPECHE MODE (Mar. 20th, 1990), VIMEO (Mar. 20, 2014), <https://vimeo.com/89630464>.

40. *See id.*

41. *Id.*

arrived for the signing event, long-time KROQ morning radio host Kevin Ryder stated, “We thought we were going to die.”<sup>42</sup>

The Depeche Mode event’s primary relevance to this paper lies in both its planning and aftermath. Promoters placed the safety of the group’s fans on the backburner in the name of making front page news.<sup>43</sup> The promoters wanted to make a statement. Knowingly forgoing logistical and safety concerns – learned from similar past experiences – they implemented the in-store signing event in the hope that the press would arrive and cover it.<sup>44</sup> They got more than they bargained for but should not have been surprised. In the days leading up to the event, one of the founding members of the group, Martin Gore, excitedly voiced that “hopefully there will be a bit of mayhem, maybe,” before stating that “everybody is predicting 10,000 [people] for the event. I think we should wait for the event before we start getting into figures.”<sup>45</sup>

After the frenzy, Depeche Mode apologized and, like the owners of Wherehouse Records, claimed they never expected such a large crowd.<sup>46</sup> KROQ promoter Richard Blade shifted the responsibility when questioned about the panic in and around the store: “That [is] not our business, to provide security . . . . Ours is just to basically get the word across that Depeche Mode [would] be there for an appearance.”<sup>47</sup> Councilman Zev Yaroslavsky, who represented the West Los Angeles area at the time, blamed the promoters and the store, characterizing the event as “one of the most incredible poor judgment calls that [he] had ever seen.”<sup>48</sup> In the end, Wherehouse Entertainment, Inc. paid the city about \$18,000 for costs in neutralizing the disturbance.<sup>49</sup> Yaroslavsky then praised Wherehouse for “exhibiting an admirable degree of corporate responsibility,” and hoped the negotiated amount would incentivize other companies to “think a little more responsibly before they leap into ill-advised promotional events.”<sup>50</sup>

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42. *Id.*

43. See KROQ, *Richard Blade Talks About His New Book, Starting a Riot, and More on Kevin & Bean*, YOUTUBE (Nov. 2, 2017), <https://www.youtube.com/watch?v=psvAKChmNss&feature=youtu.be>.

44. *See id.*

45. *Archives Special—The Wherehouse In-Store*, *supra* note 39.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Firm Pays for Unruly Fans*, L.A. TIMES (Aug. 2, 1990), [http://articles.latimes.com/1990-08-02/news/we-1654\\_1\\_los-angeles](http://articles.latimes.com/1990-08-02/news/we-1654_1_los-angeles).

50. *Id.*

The 1990 Depeche Mode event is not an anomaly. In 2013, another music-related event drew a large and unmanageable crowd, this time for a show by the famed rapper “Tyler, the Creator” at 140-person-capacity club, The Airliner, located in the East Los Angeles neighborhood of Lincoln Heights.<sup>51</sup> The concert was booked as a promotion for the rapper’s upcoming Camp Flog Gnaw Carnival held in Downtown, Los Angeles, and was announced online one week beforehand.<sup>52</sup> Not surprisingly, the buzz spread quickly. On the day of the event, many fans arrived at the venue as early as 11:00 am to ensure admission into the club that night.<sup>53</sup> Like the Depeche Mode in-store, this event was inevitably shut-down by Los Angeles Police Department riot police due to safety concerns.<sup>54</sup>

Disgruntled fans were turned away at the door once the small venue quickly reached capacity, leaving the increasingly rowdy crowd outside, gradually pouring into the street.<sup>55</sup> At one point, artist “Tyler, the Creator” stepped outside, stood on top of a car and instructed his excited and adoring fans to remain calm and peaceful, to avoid a total shut-down of the show.<sup>56</sup> His efforts were in vain, however, and he ultimately did not perform. Fortunately, no one was injured or arrested during this close-call.

Because of The Airliner’s limited capacity, promoters typically do not announce big name acts until the day of the show.<sup>57</sup> However, this promotional policy aids in understanding the reason the planned performance was a failure. After the fiasco, the production company’s organizer, Daddy Kev, lamented over their approach, expressing their determination to prepare for future high-profile shows in a more conscientious manner: “Hindsight being twenty/twenty, we [are] never announcing an artist of that stature ahead of time ever again.”<sup>58</sup>

As well-documented tragedies and near misses continually add to the global backlog of music events gone wrong, event organizers, promoters and musicians have good reason to focus their attention on health and safety concerns during the planning and execution of shows and festivals wherever those events are located. There is no need to turn a blind eye to such issues

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51. Chris Martins, *Tyler, the Creator Show Stopped by Riot Police*, SPIN (Oct. 2, 2013), <https://www.spin.com/2013/10/tyler-the-creator-odd-future-show-canceled-los-angeles-police/>.

52. Mannie Holmes, *Tyler, the Creator’s Camp Flog Gnaw Remains a Family Affair*, VARIETY (Oct. 30, 2017, 11:34 AM), <https://variety.com/2017/scene/vpage/tyler-the-creator-camp-flog-gnaw-carnival-2017-1202602279/>; Martins, *supra* note 51.

53. Martins, *supra* note 51.

54. *See id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

in the name of profit, business and publicity. The music and art worlds demand more respect. In an age where large concerts are steadily becoming a common target for seemingly irrepressible acts of inhumanity, it has become even more important to prevent governable harm.<sup>59</sup>

### III. CRESCENDO OF DEMISE: SINGER DAVID RANDALL BLYTHE'S ACQUITTAL IN THE CZECH REPUBLIC DEMONSTRATES THE CURRENT RISKS TO INTERNATIONAL ARTISTS AND CONCERTGOERS

A lack of clear standards places performers as well as audience members in jeopardy. Just as a code of conduct is needed to protect the public, one is also needed to protect musicians. For example, front-man David "Randy" Blythe of the American heavy metal band Lamb of God endured a painful legal battle before being acquitted of manslaughter in the Municipal Court in Prague in 2013.<sup>60</sup> The charge was in connection to a 2010 incident that occurred at one of the band's shows at the former nightclub Abaton in Prague, Czech Republic, during the band's two-year "Wrath Tour."<sup>61</sup> Blythe allegedly threw nineteen-year-old fan Daniel Nosek off the small and crowded stage that night, causing Nosek several injuries that led to his coma and eventual death.<sup>62</sup> Despite the Czech police's failed attempts to obtain

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59. See Lynh Bui et al., *At Least Fifty-Nine Killed in Las Vegas Shooting Rampage, More Than 500 Others Injured*, WASH. POST (Oct. 2, 2017), [https://www.washingtonpost.com/news/morning-mix/wp/2017/10/02/police-shut-down-part-of-las-vegas-strip-due-to-shooting/?utm\\_term=.340f69d541e1](https://www.washingtonpost.com/news/morning-mix/wp/2017/10/02/police-shut-down-part-of-las-vegas-strip-due-to-shooting/?utm_term=.340f69d541e1); Eoghan Macguire et al., *Manchester Arena Suicide Bombing: Twenty-Two Die at Ariana Grande Concert*, NBC NEWS (May 23, 2017, 9:45 AM), <https://www.nbcnews.com/news/world/deaths-injuries-confirmed-after-explosions-heard-u-k-concert-featuring-n763286>; *Orlando Nightclub Shooting: How the Attack Unfolded*, BBC NEWS (June 15, 2016), <https://www.bbc.com/news/world-us-canada-36511778>; *Terrorists Kill 89 at Eagles of Death Metal Concert in Paris*, CONSEQUENCE SOUND (Nov. 13, 2015, 1:52 PM), <https://consequenceofsound.net/2015/11/report-terrorists-take-hostages-at-eagles-of-death-metal-concert-in-paris/>.

60. Lars Brandle, *Czech Court Clears Lamb of God's Randy Blythe for Fan's Death*, BILLBOARD (June 7, 2013), <https://www.billboard.com/articles/news/1566155/czech-court-clears-lamb-of-gods-randy-blythe-for-fans-death>.

61. Jonathan Crane, *U.S. Singer to Face Trial Over Fan Death*, PRAGUE POST (Dec. 13, 2012), <https://web.archive.org/web/20121221014609/http://www.praguepost.com/print.php?url=15052-u-s-singer-to-face-trial-over-fan-death.html>; *Lamb of God Setlist: May 24, 2010*, SETLIST.FM (May 24, 2010), <https://www.setlist.fm/setlist/lamb-of-god/2010/abaton-prague-czech-republic-33d4c825.html> (last updated July 25, 2017, 5:58 PM).

62. John Hall, *Shocking Moment Heavy Metal Fan was Left with Fatal Injuries After Being Thrown Off Stage*, DAILY MAIL (Sept. 24, 2015, 9:11 AM), <http://www.dailymail.co.uk/news/article-3247261/Shocking-moment-heavy-metal-fan-left-fatal-injuries-thrown-stage-singer-pushed-suing-400-000-Czech-police-arrested-him.html>.

the U.S. Department of Justice's cooperation in the subsequent investigation, the band did not learn of the fan's death until it returned to the capital city for another concert in 2012.<sup>63</sup>

Upon arrival at the airport, a group of heavily armed Czech police officers immediately arrested Blythe.<sup>64</sup> At his bail hearing, he convinced the judge he was not a flight risk and was granted bail at the equivalent of \$200,000.<sup>65</sup> Blythe was eventually released after spending five weeks in Prague's Pankrác Prison and returned to America.<sup>66</sup> Choosing to defy the advice gathered from legal experts who urged him to refrain from ever setting foot in the Czech Republic again, Blythe returned to Prague to face trial.<sup>67</sup> He did so in an effort to own up to the allegations, clear his good name and provide Nosek's family with a proper chance at finding the truth behind what transpired on that fatal night.<sup>68</sup> At the trial's end, the court held that Blythe was "morally responsible"<sup>69</sup> but not criminally liable for Nosek's death. Instead, the court held that most of the blame fell on the "inadequate security measures provided by promoters and security."<sup>70</sup>

Blythe's memoir, retelling his experience in the foreign country's prison, provides an insider's perspective of club Abaton's condition on the night in question. Upon arrival at the venue earlier in the day, Blythe refrained from entering at a crewmember's warning that the club was "a [expletive] dump."<sup>71</sup> Blythe recalls that the amount of space inside the club was clearly insufficient, and the unhappy crew struggled to set up the band's equipment

63. Jan Richter, *US Metal Singer Arrested in Prague on Manslaughter Charges "Awaiting Release" on Bail*, RADIO PRAGUE (July 19, 2012), <https://www.radio.cz/en/section/curraffrs/us-metal-singer-arrested-in-prague-on-manslaughter-charges-awaiting-release-on-bail>.

64. D. RANDALL BLYTHE, *DARK DAYS* 8 (2015).

65. *Id.* at 136-37.

66. *Lamb of God Singer Reveals What He Remembers of Deadly 2010 Czech Show*, ROLLING STONE (July 8, 2015, 3:28 PM), <https://www.rollingstone.com/music/music-news/lamb-of-god-singer-reveals-what-he-remembers-of-deadly-2010-czech-show-62305/>.

67. *Id.*

68. Marc Schneider, *Lamb of God's Randy Blythe Acquitted on Fan Death: 'I am a Free Man'*, BILLBOARD (Mar. 5, 2013), <https://www.billboard.com/articles/news/1550615/lamb-of-gods-randy-blythe-acquitted-in-fan-death-i-am-a-free-man>.

69. See BLYTHE, *supra* note 64, at 464-66 (recounting Blythe's "total exoneration," free from any duty to pay any fines or restitution, and the decedent's family's decision not to pursue the singer after all of the evidence); see also Jan Kudrna, *Responsibility for Acts of the President of the Czech Republic*, 56 ACTA JURIDICA HUNGARICA 39, 40-42 (2015) (describing the concept of "moral responsibility" as a non-legal type of responsibility that may occur "in the event of a breach of required rules of society").

70. Jon Wiederhorn, *Five Years Ago: Lamb of God Vocalist Randy Blythe Arrested in Prague and Accused of Manslaughter*, LOUDWIRE (June 27, 2017), <http://loudwire.com/lamb-of-god-randy-blythe-arrested-prague-manslaughter-anniversary/>.

71. BLYTHE, *supra* note 64, at 88-89.



the band, its guests, and crewmembers.<sup>82</sup> As Blythe, an experienced, professional international touring musician,<sup>83</sup> explained: “A crowded stage is a dangerous stage.”<sup>84</sup> At his manslaughter trial, Blythe recited the reasoning behind Lamb of God’s policy (expressly stated in the band’s promotional contracts) of requiring adequate security and a barricade at its shows.<sup>85</sup> He emphasized the goal was to ensure safety, protection and fairness for the band, crew and attendees, as well as to minimize the band’s liability for an attendee’s lapse in judgment.<sup>86</sup>

Although Blythe and the band recognized that a heavy metal show can be a chaotic event,<sup>87</sup> their genuine concerns for tighter security are inherently juxtaposed with their affection for live performances, their global “music family” (i.e., their fans), and music itself.<sup>88</sup> Music has helped many musicians and fans through tough times.<sup>89</sup> Indeed, songs from Blythe’s punk rock roots helped him maintain a positive mindset while serving time in Prague’s Pankrác Prison.<sup>90</sup> Blythe poetically describes the concert phenomenon as “a massive energy exchange, an amazing, sublime, and holy experience of pure communication.”<sup>91</sup> The apparent sanctity of the celebratory rituals of live music events is worth preserving. Understandably, uninformed critics tend to overlook or deny the adherence to an unspoken code of conduct in some non-mainstream or underground music scenes.<sup>92</sup> Blythe likens the mosh pit experience at his concerts to a game of amateur

82. BLYTHE, *supra* note 64, at 408-09, 438 (reasoning the potential threat of harm resulting from allowing excited fans access to the stage firmly outweighs the generally harmless nature of the band’s shows).

83. *See id.* at 15, 18 (explaining Lamb of God’s eighteen-month average touring cycles have taken the singer around the world multiple times, performing for crowds numbering from 1,500 to over 100,000).

84. *Id.* at 95.

85. *Id.* at 436-38.

86. *See id.*

87. *See id.* at 468 (describing heavy metal concerts as “loud, raucous, and at times confusing affairs”).

88. *See id.* at 28, 133, 251.

89. *See id.* at 133, 337.

90. *Id.* at 337 (recounting the singer’s frequent recitation of Washington D.C. hardcore punk band Bad Brains’ philosophy of always maintaining a positive mental attitude, or P.M.A., as proclaimed in their 1980s song Attitude).

91. *Id.* at 28.

92. *See, e.g.*, Chris Grosso, *The Ian MacKaye DIY Community Interview*, INDIE SPIRITUALIST (May 8, 2012), <http://theindiespiritualist.com/2012/05/08/mackaye/> (detailing hardcore punk pioneer Ian MacKaye’s successful defense of a misunderstood subset of the Washington D.C. Go-Go dance music community that the city council tried to use as a scapegoat for the shooting death of a teenage girl).

football, where people generally do not wish to harm one another.<sup>93</sup> Contrary to what an outsider might deduce from the intensity of its concerts, the band does not wish to be “the soundtrack to injury.”<sup>94</sup>

Ultimately, performers wield immense power to control a crowd of impassioned fans, for better or for worse.<sup>95</sup> To an extent, performers are the ringleaders and shepherds of the potential mob or herd mentality at live music events.<sup>96</sup> Reflecting on the tragedy at the 2010 concert in Prague – where nineteen-year-old fan, Daniel Nosek, lost his life – Blythe acknowledges that he should have stopped the show, and that he is truly morally responsible for the young man’s death.<sup>97</sup> In hindsight, Blythe explains that he wishes he had observed the club’s poor condition before the show and refused to play.<sup>98</sup> Instead, Blythe now lives with the grief of failing to exercise his power as a front-man that night—as “the last link in a disastrous chain of events”—to put a stop to an obviously out-of-control situation, which he had done before.<sup>99</sup> At the trial’s end, Nosek’s mourning mother and uncle privately met with Blythe. They each addressed his position of power at Lamb of God’s international concerts and urged him to be “a spokesperson for safer shows.”<sup>100</sup> He vowed to do so.

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93. BLYTHE, *supra* note 64, at 38 (providing a similar description of the controlled system of a mosh pit as the American “hardcore” punk musician Matthew Barney in this paper’s introduction). *But see* Mark Binelli, *Punk Rock Fight Club*, ROLLING STONE (Aug. 23, 2007, 4:00 AM), <http://www.rollingstone.com/culture/news/punk-rock-fight-club-20070823> (describing the infamously violent hardcore punk gang FSU who take over mosh pits, “police” concerts, and have been accused of intimidating fans, engaging in random beatings, and causing multiple deaths).

94. BLYTHE, *supra* note 64, at 38.

95. *See, e.g.*, John Burks, *Jim Morrison’s Indecency Arrest: Rolling Stone’s Original Coverage*, ROLLING STONE (Dec. 10, 2010, 7:25 PM), <http://www.rollingstone.com/music/news/jim-morrison-s-indecency-arrest-rolling-stone-s-original-coverage-20101210> (providing several witness accounts of rock star Jim Morrison’s actions at a concert where he arguably attempted to start a riot, calling for a revolution and beckoning nearly sixty emotionally-revved attendees onto the stage); *Travis Scott Arrested and Charged for Inciting a Riot at Concert in Ark., Police Say*, CBS NEWS (May 14, 2017, 7:47 PM), <https://www.cbsnews.com/news/travis-scott-arrested-charged-arkansas-concert-inciting-riot/> (reporting rapper and producer Travis Scott encouraged fans to rush the stage and bypass security protocols at his concert); *see also* Fricke, *supra* note 30 (detailing Pearl Jam singer Eddie Vedder’s success in commanding a crowd of about 50,000 fans to collectively step back several feet to free up space near the stage).

96. *See* Michael Schreiner, *Mob Mentality*, EVOLUTION COUNSELING (May 20, 2013), <https://evolutioncounseling.com/mob-mentality/>.

97. BLYTHE, *supra* note 64, at 471-72.

98. *Id.* at 482.

99. *Id.* at 38, 471-72.

100. *Id.* at 473.

David Randall Blythe's acquittal of manslaughter in the Czech Republic sheds light on the aforementioned cultural and logistical concerns, as well as on the commitment of at least one international touring artist to abide by an ethical code of respect, honor, and accountability for incidents that occur at concerts overseas. His case serves as an exemplar for the requisite mentality that must underlie an effective international code of conduct in the live music industry. Such an ethos can provide the driving force behind a much-needed movement against a passive acceptance of repeated yet avoidable threats to performers' and concertgoers' lives. To quote the soul music legend, Sam Cooke, from a popular Civil Rights Movement anthem, "It's been a long time coming. But I know a change is gonna come."<sup>101</sup>

#### IV. FINE TUNING: DERIVING GUIDANCE FROM EXISTING CODES OF CONDUCT

Recurring international concert disasters—many resulting from organizers' perception of the need to take risks—signal a need to construct and implement a set of principles to guide players in the live music business in a unified commitment to the safest event practices possible. A voluntary approach would work. Such an approach would avoid jurisdictional and constitutional impediments, which is especially helpful in a transnational endeavor.<sup>102</sup> In addition, a voluntary code of conduct may prove most conducive to the needs and interests of the concert culture and the public in general.<sup>103</sup> Finally, the code would still operate within a "legal environment" that includes legislation, regulations, as well as contract and tort law.<sup>104</sup> In

101. SAM COOKE, *A Change is Gonna Come*, on AIN'T THAT GOOD NEWS (RCA Victor 1964); see David Cantwell, *The Unlikely Story of "A Change is Gonna Come,"* NEW YORKER (Mar. 17, 2015), <https://www.newyorker.com/culture/culture-desk/the-unlikely-story-of-a-change-is-gonna-come>.

102. See *id.* Voluntarily adopted codes of conduct may bypass national laws and avoid jurisdictional concerns. *Id.* at 38-39. As a result, voluntary regulatory approaches come with greater flexibility than government-prescribed regulatory schemes. *Id.* On the other hand, "fixed rules, created centrally by governments and backed by inflexible sanctions, are ineffective, expensive and counter-productive." *Id.* at 14 (first citing CHRISTOPHER D. STONE, *WHERE THE LAW ENDS* (1975); then citing EUGENE BARDACH & ROBERT A. KAGAN, *GOING BY THE BOOK* (1982); then citing Robert Baldwin, *Why Rules Don't Work*, 53 MOD. L. REV. 312 (1990); then citing FIONA HAINES, *CORPORATE REGULATION* (1997); and then citing Jill Murray, *Corporate Social Responsibility: An Overview of Principles and Practices* (Int'l Labour Org., Working Paper No. 34, 2004), [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms\\_079107.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_079107.pdf)).

103. See *id.* at 17.

104. See *id.* at 10-12 (explaining that current voluntary codes of conduct are influenced in part by governments' legislation, regulation, and trade agreements).

practice, failure to comply would inevitably modify liability standards and provide performers with clear standards of negligence to point to when they encounter dangerous venues or unethical promoters.

Furthermore, codes of conduct work. The drafters of an international code of conduct in the live concert tour and music festival sector need not start from nothing or invent an innovative solution to the problem. The creators of the code may model their principles after those utilized by corporations in various industries around the world.<sup>105</sup> Juggernauts like Amazon, Apple, and Google,<sup>106</sup> as well as companies in the world's largest retailing industries, like the garment industry,<sup>107</sup> use codes of conduct as vehicles to drive home their respective fundamental philosophies. Here, the drafters will benefit from the ability to learn from the successes and drawbacks of these precedents.

Multinational voluntary codes of conduct and initiatives aimed at promoting socially responsible practices have existed since 1948.<sup>108</sup> Today, Corporate Social Responsibility is a widely recognized management approach whereby companies incorporate social and environmental concerns into their business models.<sup>109</sup> Companies with a Corporate Social Responsibility agenda follow a "Triple-Bottom-Line" approach which focuses on achieving a balance of economic, environmental, and social needs, while simultaneously addressing both their shareholders and

105. See, e.g., *Industry Codes*, AUSTRALIAN COMPETITION & CONSUMER COMMISSION, <https://www.accc.gov.au/business/industry-codes> (last visited Mar. 19, 2018).

106. See *Top Ten Companies' Codes of Ethics and Conduct*, DR. DIANE HAMILTON (Sept. 13, 2011), <http://drdianehamilton.com/top-10-companies-code-of-ethics-and-conduct-2011/>.

107. See HU XIAOYONG, JAPANESE INST. FOR LAB. POL'Y & TRAINING, *CORPORATE CODES OF CONDUCT AND LABOUR-RELATED CORPORATE SOCIAL RESPONSIBILITY 17* (2006), <http://www.jil.go.jp/profile/documents/Hu.pdf> (explaining that large multinational enterprises, especially in the textile, clothing, and footwear industries—including Nike, Reebok, and Gap—have "led the trend toward" voluntary company codes).

108. Phillip H. Rudolph, *The History, Variations, Impact and Future of Self-Regulation*, in *CORPORATE SOCIAL RESPONSIBILITY 421, 422* (Ramon Mullerat ed., 2d ed. 2011) (citing G.A. Res. 217 (III), A, Universal Declaration of Human Rights (Dec. 10, 1948)) (documenting the United Nations' adoption of the Universal Declaration of Human Rights—an outline of human rights standards meant as a response to the atrocities surrounding World War Two).

109. *Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility*, at 4, COM (2001) 366 final (July 18, 2001) ("Corporate social responsibility is essentially a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment."); see RADU MARES, *THE DYNAMICS OF CORPORATE SOCIAL RESPONSIBILITIES 1-3* (2008) (explaining that one definition of CAR encompasses a voluntary "managerial strategy"); *What is CSR?*, UNITED NATIONS INDUS. DEV. ORG., <https://www.unido.org/csr/o72054.html> (last visited Mar. 19, 2018) (similarly defining CSR as "a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders") [hereinafter UNIDO].

stakeholders' expectations.<sup>110</sup> The idea is essentially a business strategy that establishes long-lasting shareholder value by welcoming opportunities and managing risks stemming from economic, environmental and social developments.<sup>111</sup>

The Corporate Social Responsibility approach increased over the last few decades, beginning in the 1990s, in response to various human rights abuses in labor-intensive industries.<sup>112</sup> Increased attention to corporate abuses led to a proliferation of codes of conduct. Many codes focus on promoting socially responsible practices in corporations' international business operations. To minimize corruption, harm and abuse, many codes aim to protect human rights and the health and safety of individuals. The Organisation for Economic Co-operation and Development (OECD)<sup>113</sup> has defined corporate codes of conduct as "commitments voluntarily made by companies, associations or other entities, which put forward standards and principles for the conduct of business activities in the marketplace."<sup>114</sup> Unlike laws that are designed to be binding, such as the Duty of Care Principle,<sup>115</sup> voluntary codes of conduct mostly rely on self-regulation and entail no direct legal commitment.<sup>116</sup> Thus, voluntary codes of conduct are sometimes characterized as "soft law" – a term used to describe non-binding recommendations (as opposed to "hard law") that eventually may establish custom or serve as the basis for the drafting of treaties.<sup>117</sup> In the corporate arena, the underlying force behind such codes of conduct was a "do it yourself" philosophy not unlike that upheld by the small-scale music venues discussed earlier in this paper.<sup>118</sup>

The OECD Guidelines for Multinational Enterprises (1976), the International Labour Organization's Tripartite Declaration (1977), and most prominently, the UN Global Compact (2000), are some of the world's most

110. UNIDO, *supra* note 109.

111. *Corporate Sustainability*, ROBECOSAM, <http://www.sustainability-indices.com/sustainability-assessment/corporate-sustainability.jsp> (last visited Mar. 19, 2018).

112. MARES, *supra* note 109, at 1.

113. *About the OECD*, ORG. FOR ECON. CO-OPERATION & DEV., <https://www.oecd.org/about/> (last visited Mar. 19, 2018).

114. ORG. FOR ECON. CO-OPERATION & DEV., *CORPORATE RESPONSIBILITY* 48 (2001).

115. SURYA DEVA, *REGULATING CORPORATE HUMAN RIGHTS VIOLATIONS* 65 (2012).

116. *See* SIMON BAUGHEN, *HUMAN RIGHTS AND CORPORATE WRONGS* 212 (2015).

117. *Id.* at 248; *see also* David Weissbrodt & Muria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, 97 *AM. J. INT'L L.* 901, 914-15 (2003) (defining the concept of "soft law" in the context of analyzing the international "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights," or "UN Norms"—a "non-voluntary" intergovernmental code that has yet to realize any binding effect).

118. BAUGHEN, *supra* note 116, at 212.

significant voluntary initiatives.<sup>119</sup> With over 12,000 corporate participants and stakeholders from over 145 countries, the UN Global Compact is the largest existing voluntary corporate responsibility initiative.<sup>120</sup> Today, the UN Global Compact lays out ten principles, or core values, concerning internationally proclaimed human rights, labor standards, and environmental practices.<sup>121</sup> Although adherence to these principles is strictly voluntary, companies must disclose their compliance and progress in annual corporate reports to their stakeholders and to the UN Global Compact website.<sup>122</sup> If a participant repeatedly fails to comply with this mandatory disclosure, it will eventually be expelled and its name will be published.<sup>123</sup> Rather than policing or enforcing behavior, the UN Global Compact utilizes public accountability, transparency and companies own self-interests to proactively pursue practices that correspond with its core values.<sup>124</sup>

The OECD, headquartered in Paris, France, provides an outlet where governments can cooperate and exchange experiences and develop solutions to common economic, social and environmental issues.<sup>125</sup> Like the UN Global Compact, it is a government-driven instrument that outlines core principles and human rights that entities are expected to protect.<sup>126</sup> As part of its operations, the organization draws on facts and experience to promote and recommend policies aimed at improving the economic and social well-being of citizens around the world.<sup>127</sup> The OECD's work is driven by an interdependent network of the OECD Council which is charged with oversight, strategic direction and ultimate decision-making; around 250 committees, working groups, and expert groups to act as representatives of

119. ORG. FOR ECON. CO-OPERATION & DEV., *THE UN GLOBAL COMPACT AND THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES COMPLEMENTARITIES AND DISTINCTIVE CONTRIBUTIONS 2* (2005) [hereinafter *GLOBAL COMPACT PRINCIPLES AND OECD GUIDELINES*], <https://www.oecd.org/corporate/mne/34873731.pdf>; DEVA, *supra* note 115, at 7-8.

120. BAUGHEN, *supra* note 116, at 212-13.

121. *Id.*; *GLOBAL COMPACT PRINCIPLES AND OECD GUIDELINES*, *supra* note 119, at 5 (providing the ten principles, e.g., Principle 1: "Businesses should support and respect the protection of internationally proclaimed human rights"; and Principle 2: "Make sure they are not complicit in human rights abuses").

122. *Communication on Progress, UN Global Compact Policy on Communicating Process*, at 2, [https://www.unglobalcompact.org/docs/communication\\_on\\_progress/COP\\_Policy.pdf](https://www.unglobalcompact.org/docs/communication_on_progress/COP_Policy.pdf) (last updated Mar. 1, 2013); see *About the UN Global Compact*, UN GLOBAL COMPACT, <https://www.unglobalcompact.org/about/faq> (last visited Mar. 19, 2018).

123. *Communication on Progress*, *supra* note 122, at 3.

124. Rudolph, *The History, Variations, Impact and Future of Self-Regulation*, *supra* note 108, at 369; *About the UN Global Compact*, *supra* note 122.

125. *About the OECD*, *supra* note 113.

126. MARES, *supra* note 109, at 169.

127. *About the OECD*, *supra* note 113.

each member country at OECD committee meetings that concern discussion and implementation; and the Secretariat, charged with analysis and proposals.<sup>128</sup> There are currently thirty-six contributing members.<sup>129</sup>

Apart from codes coming from international organizations formed by governments, there are codes established by particular industries. For example, fair trade coffee, as part of a voluntary movement in which products are certified by third party organizations as being produced under “fair” conditions, has benefitted certain areas in which coffee is farmed.<sup>130</sup> The fair trade model, under which products must meet a series of criteria in order to be certified – e.g., guaranteed minimum prices to producers, fair wages to laborers, environmentally sustainable production practices, public accountability, and safe, non-exploitative working conditions – originated in Mexico.<sup>131</sup> The movement began with coffee, which remains the world’s largest fair-traded commodity.<sup>132</sup> International entities such as Starbucks and McDonald’s carry fair trade coffee.<sup>133</sup> Mexico is the world’s largest producer of coffee and is the location of the most producers of fair trade coffee.<sup>134</sup>

Fair trade coffee has led to social, economic, and environmental benefits to participants in the villages of Yagavila and Teotlasco in Oaxaca, Mexico.<sup>135</sup> In those small villages, fair trade products’ higher prices increase household income and decrease household debt.<sup>136</sup> In addition, fair trade partially protects coffee farmers from commodity crises.<sup>137</sup> Moreover, higher product prices associated with fair trade may help to generate favorable economic effects within the communities.<sup>138</sup> Although fair trade

128. *Who Does What*, OECD, <https://www.oecd.org/about/whodoeswhat/> (last visited Mar. 19, 2018).

129. *Members and Partners*, OECD, <https://www.oecd.org/about/membersandpartners/#d.en.194378> (last visited Mar. 19, 2018) (including the United States, the United Kingdom, Czech Republic, Germany, Denmark, Japan, and Australia).

130. DANIEL JAFFEE, *BREWING JUSTICE* 1-3, 8, 28 (updated ed., 2014).

131. *Id.* at 1-4.

132. *Id.* at 2; Eric Goldschein, *Eleven Incredible Facts About the Global Coffee Industry*, *BUS. INSIDER* (Nov. 14, 2011, 10:20 AM), <http://www.businessinsider.com/facts-about-the-coffee-industry-2011-11>.

133. Goldschein, *supra* note 132.

134. JAFFEE, *supra* note 130, at 4; *History of Coffee in Mexico*, EQUAL EXCHANGE, <http://equalexchange.coop/history-of-coffee-in-mexico> (last visited Mar. 19, 2018).

135. JAFFEE, *supra* note 130, at 4, 7-8.

136. *Id.* at 6-8.

137. *Id.* at 6.

138. *Id.* at 8.

is not a cure-all to the problems the movement aims to combat, similar positive results have been found in other coffee-producing regions.<sup>139</sup>

Voluntary codes and initiatives have had great success over the years. In some circumstances, these soft laws have “hard” indirect effects. One example comes from the apparel industry in the 1990s.<sup>140</sup> The multinational corporation Nike was exposed for its poor working conditions and abusive labor practices in south Asian production factories and sweatshops.<sup>141</sup> Similar reports in the media led to a national controversy surrounding inhumane business practices utilized by clothing and other textile corporations.<sup>142</sup> As a response to an international backlash and outcry from consumers, critics and protesters, Nike began to implement voluntary codes of conduct in its overseas affairs.<sup>143</sup>

Over the next decade, the transnational apparel corporation raised the minimum wage at its Asian factories, adopted Occupational Health and Safety Administration (OSHA) clean air standards, conducted hundreds of factory audits and published a report recognizing its past violations.<sup>144</sup> To ensure adherence to adequate standards, Nike created the Fair Labor Association, an independent and nongovernmental organization which monitors and enforces the corporation’s practices abroad.<sup>145</sup>

Pressure deriving from company’s own self-proclaimed voluntary code of conduct can lead to improved circumstances in the areas in which such company operates. For example, in *Laderer v. Dole Food Co.*, Dole was sued by a California consumer for allegedly misrepresenting its company policies in its Guatemalan banana plantations.<sup>146</sup> At the time, Dole’s production in the country contaminated local water supplies, destroyed wetlands, caused flooding, destroyed local communities’ crops and caused illnesses in

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139. *See id.*; *The Difference that Fairtrade Makes*, FAIRTRADE FOUND., <https://www.fairtrade.org.uk/What-is-Fairtrade/The-impact-of-our-work/The-difference-that-Fairtrade-makes> (last visited Mar. 19, 2018).

140. Caroline Thompson, *Ethical Consumerism as a Human Rights Enforcement Mechanism: The Coffee Cultivation Model*, 24 *TRANSNAT’L L. & CONTEMP. PROBS.* 161, 189-90 (2014).

141. *Id.*

142. *See id.*

143. *See id.* at 190; JAFFEE, *supra* note 130, at 214.

144. *See* Thompson, *supra* note 140 (citing Max Nisen, *How Nike Solved Its Sweatshop Problem*, *BUS. INSIDER* (May 9, 2013, 10:00 PM), <http://www.businessinsider.com/how-nike-solved-its-sweatshop-problem-2013-5>).

145. *See id.*; *but see* JAFFEE, *supra* note 130, at 214 (stating many of the companies in the apparel industry which reacted to the global consumer outrage of the 1990s have since failed to fulfill their promises or provide meaningful protection to their workers).

146. Complaint, *Laderer v. Dole Food Co.*, No. CV12-09715 CAS (AGR), 2012 WL 5815734 (C.D. Cal. Nov. 13, 2012).

children.<sup>147</sup> The claimant asserted that he would not have bought Dole's products if he had known that the company's practices had such harmful effects.<sup>148</sup> Citing Dole's own company materials, which proclaimed an "unwavering commitment" to "environmental responsibility and social accountability," the plaintiff alleged that Dole had violated California consumer fraud laws, and that Dole had committed common law fraud by concealment and unjust enrichment.<sup>149</sup> When confronted with its own self-imposed tenets of humane business practices, Dole settled the lawsuit in 2013 and agreed to aid in delivering a water filter project in the pertinent local Guatemalan communities.<sup>150</sup> Although Dole did not concede liability,<sup>151</sup> the pressures of complying with its code of conduct led to a positive change in its operations.

Undoubtedly, the effectiveness of voluntary codes and initiatives within the global Corporate Social Responsibility movement is not immune from criticism. The codes have been critiqued as mere corporate facades, "window-dressing," lip service, and essentially phony attempts to put a human face atop business-oriented and sometimes inhumane agendas.<sup>152</sup> Voluntary codes of corporate conduct are further criticized for giving corporations too much discretion resulting in overly-selective codes, lacking external independent assessment, and for being too vague to effectuate actual change.<sup>153</sup>

At the same time, some argue that voluntary codes threaten the free market and global economy. Prominent scholars like Milton Friedman, for example, argue that the sole responsibility of a business is to maximize shareholder profits, rather than to concern itself with issues of respect and human rights. According to Friedman:

In such [a free] market economy, there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, [i.e.], engages in open and free competition, without deception or fraud.<sup>154</sup>

Although the area of corporate voluntarism and regulation from an international governance perspective is fairly new and not yet fully

147. *Id.* at 14, 21.

148. *Id.* at 4, 21-23.

149. *Id.* at 3-5, 13-14, 17-22.

150. BAUGHEN, *supra* note 116, at 250.

151. *Id.*

152. *See* MARES, *supra* note 109, at 274, 305.

153. *See id.* at 190; DEVA *supra* note 115, at 77.

154. MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 133 (40th anniversary ed., 2002).

developed,<sup>155</sup> this rapidly evolving shift in business approach is capable of generating a positive global impact. One prime illustration of this potential is the “B Corp Movement.”<sup>156</sup> The “B Corp Movement” is a group of nearly 2,000 certified “B Corporations” in fifty countries and 130 industries that are raising the standard for corporate social and environmental performance, legal accountability and public transparency.<sup>157</sup> The corporations in this community have met such standards as verified by the independent nonprofit “B Lab” to create prosperity for both shareholders and society at large.<sup>158</sup> Upwards of 40,000 additional companies and millions of others (e.g., entrepreneurs and investors) have publicly demonstrated a desire to use business as a force for good through the B Corp Movement.<sup>159</sup> In addition, current international codes like the OECD Guidelines can influence changes because they lay out basic health and safety principles.<sup>160</sup> Moreover, a growing increase in independent monitoring practices, such as auditing, within corporations serves to further legitimize the Corporate Social Responsibility approach.<sup>161</sup> In order to compel companies around the world to exhibit increased levels of due care,<sup>162</sup> and to deal with the various perceived shortcomings of Corporate Social Responsibility, the corporate scheme must be updated to a collaborative approach (as opposed to a “go-it-alone” or “do-it-yourself” strategy) with cooperating stakeholders.<sup>163</sup>

Businesses create and adopt voluntary codes and initiatives to set forth and preserve a credible image with their stakeholders, adding pressure on other companies to do the same. Some codes are now further strengthened

155. See 2 BINDA PREET SAHNI, *TRANSNATIONAL CORPORATE LIABILITY* 47 (2006); MARES, *supra* note 109, at 274.

156. See Bart Houlahan et al., *Impact Governance and Management: Fulfilling the Promise of Capitalism to Achieve a Shared and Durable Prosperity*, BROOKINGS 3 (July 1, 2016), <https://www.brookings.edu/research/impact-governance-and-management-fulfilling-the-promise-of-capitalism-to-achieve-a-shared-and-durable-prosperity/>.

157. *Id.*

158. *Id.*

159. *Id.*

160. SAHNI, *supra* note 155.

161. See, e.g., XIAOYONG, *supra* note 107, at 28 (reporting many stakeholders believe independent monitoring is more credible than other types of monitoring, and Nike has relied on it to provide an “objective snapshot” of the working conditions in its supply chain); CORPORATE RESPONSIBILITY, *supra* note 114, at 80-81 (explaining although there is a general lack of extensive standardization of accounting in most areas of corporate responsibility, some noteworthy initiatives have developed in certain areas by governments, firms, and non-governmental organizations – e.g., Global Reporting Initiative, the ISO 140000 series of environmental standards, SA 8000, and ECS 2000).

162. See MARES, *supra* note 109, at 274.

163. See *id.*

with mandatory corporate report disclosures like that of the aforementioned UN Global Compact.<sup>164</sup> This process creates incremental social pressures for other companies to comply.<sup>165</sup> The hope is that this new level of transparency, dialogue, and advocacy will gradually drive out companies that evade accountability for harmful practices,<sup>166</sup> since a growing number of individuals desire to support companies acting as positive influences on social and environmental progress, but doubt companies' self-proclamations.<sup>167</sup>

The initiatives may help to promote responsible practices before governments eventually require them.<sup>168</sup> Despite the skepticism surrounding Corporate Social Responsibility schemes,<sup>169</sup> there currently exists common ground, at least, in the idea that corporations should be socially responsible.<sup>170</sup> For example, this culture shift is seen in the United States where, at least partially in response to market trends, over 200,000 businesses and 325,000 business executives promulgate a mission to use their business as a force for creating a more sustainable society.<sup>171</sup> Thus, Friedman's maxim that "the social responsibility of business is to increase profits"<sup>172</sup> is outdated, and regulation of socially irresponsible behavior does not extinguish free markets.<sup>173</sup>

In the live music realm, a mixed approach that accounts for both profit-maximization theory and a desire for liability expansion can be effective. One view is that legal systems should strive to create efficient and effective liability regimes and combine them with voluntary soft law initiatives.<sup>174</sup> Rather than using voluntary initiatives alone, this approach would also increase international enterprises' accountability.<sup>175</sup> Within the current

164. *See id.*

165. *See id.*

166. John G. Ruggie, *The Theory and Practice of Learning Networks: Corporate Social Responsibility and the Global Compact*, 5 J. CORP. CITIZENSHIP 27, 32 (2002).

167. Houlahan et al., *supra* note 156, at 8.

168. *See* MUZZAFFER EROGLU, MULTINATIONAL ENTERPRISES AND TORT LIABILITIES 227 (2008).

169. *See, e.g.*, Houlahan et al., *supra* note 156, at 7 (quoting Delaware Supreme Court Chief Justice Leo Strine on advocates for Corporate Social Responsibility: "[L]ecturing others to do the right thing without acknowledging the actual rules that apply to their behavior, and the actual power dynamics to which they are subject, is not a responsible path to social progress.>").

170. EROGLU, *supra* note 168, at 228.

171. Houlahan et al., *supra* note 156 (citing *Overview*, AM. SUSTAINABLE BUS. COUNCIL, <http://asbcouncil.org/about-us>).

172. *Id.* at 1.

173. *See* DEVA, *supra* note 115, at 10, 123.

174. EROGLU, *supra* note 168, at 234.

175. *Id.*

context of international concerts and music festivals, a focus on a voluntary code, rather than binding regulation, would be a positive step in the right direction to achieve a progressive movement toward change. Corporate Social Responsibility's vagueness is better suited to the international live music realm – an industry that consists of a multi-faceted network of enterprises that lack a clear definition as an organized undertaking as an organization but that involve a multitude of contractual relationships between independent entities.<sup>176</sup> Corporate Social Responsibility's wide scope may prove to be conducive to achieving international regulation of live concerts.<sup>177</sup>

Although most problems arising from unsafe practices in the international live music sector are dealt with in existing negligence law,<sup>178</sup> the broader network of the industry, as opposed its varying actors, needs a widespread Corporate Social Responsibility initiative to help formulate a more cohesive response to common life-threatening issues. Fans and audience members are stakeholders in the vast web that is the live music industry, which includes (among many others) promoters, booking agents, venue managers, band managers, various crewmembers and, of course, the talent.<sup>179</sup> Promoters know what works best in their particular venue and market,<sup>180</sup> and there is a general lack of a collective sense of responsibility for problems in overcrowding, fire safety and violence at concerts among musicians. A voluntary code of conduct would help to bridge the gap among bands and artists as organizations in the industry and provide them with rigorous universal minimum standards that everyone in the industry is aware of without the need to obtain legal advice.

Like the OECD's collaborative process mentioned earlier in this paper, monitoring of such a code can be accomplished internationally with administrative and policy-making bodies.<sup>181</sup> Representative committees from each nation can cooperate with an intergovernmental voluntary initiative like the OECD to increase the goal of increased safety and accountability at concert tours, festivals, and live events at smaller

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176. *Id.* at 234-35.

177. *See id.* at 235.

178. Tracy H. Pearl, *Crowd Crush: How the Law Leaves American Crowds Unprotected*, 104 KY. L.J. 1, 1 (2015).

179. *See* RAY D. WADDELL ET AL., THIS BUSINESS OF CONCERT PROMOTION AND TOURING 236-47 (2007).

180. *Id.* at 201.

181. *See* SAHNI, *supra* note 155, at 39 (citing A.A. Fatouros, *On the Implementation of International Codes of Conduct: An Analysis of Future Experience*, 30 AM. U.L. REV. 941, 961 (1981)).

establishments. Existing entities such as the “Purple Guide” in the United Kingdom and “Live Performance Australia” in Australia have demonstrated a desire and purpose to promote safer concert practices.<sup>182</sup> Such proponents only need an effective outlet to help spark the global conversation—to respond to the “why,” “what,” and ultimately “how” challenges inherent in a push for increased social responsibility in the international live concert context.<sup>183</sup> It should be noted that codes of conduct are a means to an end,<sup>184</sup> but they are a necessary step to gradually achieving transnational social and ethical goals and objectives.<sup>185</sup> A voluntary code in this context would be an essential component in this movement.

A model of a voluntary code in the concert context already exists through Australia’s “Your Choice” movement as a great example of widespread collective acceptance of responsibility and accountability for safety at concerts and festivals.<sup>186</sup> Operating under a credo of shared responsibility, Your Choice is a campaign within Australia’s music industry that proactively engages in counteracting behavioral issues and lack of personal accountability at the country’s live music venues and event spaces.<sup>187</sup> Hundreds of musicians, promoters, festivals, live concert venues, and other industry companies publicly support the movement’s primary goal of creating a positive cultural change in the music community.<sup>188</sup> Supporters work with an eye toward preventing unsafe and harmful behaviors, like

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182. See, e.g., CROWD SAFETY, <http://www.crowdsafety.org/about-us/> (last visited Mar. 19, 2018); CROWD SAFETY TRAINING, <http://www.crowdsafetytraining.com/> (last visited Mar. 19, 2018); ERESPONSE CROWD SAFETY, <https://www.linkedin.com/company/eresponse-crowd-safety/> (last visited Mar. 19, 2018); LIVE PERFORMANCE AUSTRALIA, [http://www.liveperformance.com.au/about\\_lpa](http://www.liveperformance.com.au/about_lpa) (last visited Mar. 19, 2018); THE PURPLE GUIDE TO HEALTH, SAFETY AND WELFARE AT MUSIC AND OTHER EVENTS, <https://www.thepurpleguide.co.uk/> (last visited Mar. 19, 2018); VENUES TODAY, <http://www.venuestoday.com/events/detail/international-crowd-management-conference-icmc> (last visited Mar. 19, 2018); WORKING WITH CROWDS, <http://www.workingwithcrowds.com/about-us/> (last visited Mar. 19, 2018).

183. See DEVA, *supra* note 115, at 1.

184. Rudolph, *The History, Variations, Impact and Future of Self-Regulation*, *supra* note 108, at 383-84.

185. *Id.* at 384.

186. *Music Lovers, Help Us Create a Culture of Positive Change*, YOUR CHOICE, <https://your-choice.net.au> (last visited Mar. 19, 2018).

187. *It’s Your Choice*, YOUR CHOICE, <https://your-choice.net.au/about/> (last visited Mar. 19, 2018).

188. Josh Butler, *The Campaign to Stop Sexual Assault and Violence at Concerts and Festivals*, HUFFINGTON POST (Australia) (July 14, 2017, 2:00 PM), [http://www.huffingtonpost.com.au/2017/07/13/the-campaign-to-stop-sexual-assault-and-violence-at-concerts-and\\_a\\_23029217/](http://www.huffingtonpost.com.au/2017/07/13/the-campaign-to-stop-sexual-assault-and-violence-at-concerts-and_a_23029217/); *Music Lovers, Help Us Create a Culture of Positive Change*, *supra* note 186.

sexual assault and violence, rather than merely reacting to such threats to the overall concert experience.<sup>189</sup> The movement clearly sets out its beliefs and currently provides a set of thirteen “House Rules,” including “Throw a party, not a projectile” and “Be a do-er, not a me too-er[.] [I]f someone [is] doing something dodge, call them out, [and] report it.”<sup>190</sup> Rather than seeking restrictive legislative solutions, the industry representatives “continue to work with the public, emergency services, community groups and government agencies to develop informed and preventative strategies.”<sup>191</sup> Proponents of the Your Choice movement have the right idea. The live music and touring sectors around the world need clear standards to “let the good [and safe] times roll.”<sup>192</sup>

## V. CONCLUSION

Concerts and music festivals around the world continue to draw massive crowds of fans with no signs of slowing down.<sup>193</sup> Because the health and safety of global music-lovers are at risk, as well as the integrity of the industry, it is time to formulate an international code of conduct in the live concert tour and music festival realm. Despite well-documented limitations, a voluntary code rather than binding regulation would prove to fit the context of the worldwide music community. Such a code would ultimately aid in bringing an increased sense of control in a seemingly chaotic international community. To borrow a line from the late-great John Lennon of the prolific Beatles (tragically murdered by an obsessed and resentful fan): “You may say I’m a dreamer. But I’m not the only one.”<sup>194</sup>

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189. Butler, *supra* note 188; *Music Lovers, Help Us Create a Culture of Positive Change*, *supra* note 186.

190. *Music Lovers, Help Us Create a Culture of Positive Change*, *supra* note 186.

191. *Id.*

192. THE CARS, *Good Times Roll*, on THE CARS (Elektra 46014 1979).

193. See, e.g., August Brown, *Electric Daisy Carnival Celebrates 20th Anniversary in Las Vegas with 400,000 Revelers: ‘The Stakes Have Never Been So High,’* L.A. TIMES (June 17, 2016, 3:00 AM), <http://beta.latimes.com/entertainment/music/la-et-ms-edc-edm-20160613-snap-story.html>; Bruno Boelpaep, *Belgium’s Tomorrowland Music Festival Makes Global Impact*, BBC NEWS (July 28, 2014), <http://www.bbc.com/news/world-europe-28525703>; Hugh McIntyre, *Coachella Just Became the First Annual Music Festival to Hit \$100 Million in Grosses*, FORBES (Oct. 18, 2017, 4:39 PM), <https://www.forbes.com/sites/hughmcintyre/2017/10/18/coachella-just-became-the-first-annual-music-festival-to-hit-100-million-in-grosses/#180120224d7c>.

194. JOHN LENNON, *Imagine*, on IMAGINE (Apple 1971); see Danielle Sloane, *Inside the Mind of John Lennon’s Killer*, CNN (Dec. 8, 2015, 11:39 AM), <http://www.cnn.com/2015/12/08/us/mark-david-chapman-lennon-interviews/index.html>.

