

BROADCASTERS'



NEWS BULLETIN

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COPYRIGHT SETTLEMENT NEAR

Settlement of the copyright controversy loomed as a possibility to-day as the American Society of Composers, Authors and Publishers and the National Association of Broadcasters agreed to an early meeting, confident that a satisfactory solution can now be found.

The agreement to meet again followed informal conferences which began after it had been announced that an impasse in negotiations had been reached and that the increased rates originally proposed last April would become effective in September through negotiation with individual stations.

After weeks of negotiation between the committees of the NAB and the Society, the two groups reached a tentative agreement on July 12. The NAB Committee submitted this agreement to the NAB Board on July 21. The Board rejected the proposal and fashioned a counter-proposal which the Society rejected. Immediately after this latter action the Society informed the NAB Committee that it would be useless to continue negotiations. Since that time new conferences have laid the basis for reopening discussions.

The history of the negotiations between the NAB and the Society since the announcement of the five per cent plan on April 11 up to the present time is presented herewith. At the outset of negotiations it had been agreed that both groups would refrain from public announcements until either an agreement had been reached or negotiations wound up.

August 1, 1932

PERCENTAGE PROPOSAL SUBMITTED

The American Society of Composers, Authors and Publishers, in a letter dated April 11, 1932, advised the National Association of Broadcasters that commencing on June 1, 1932 the following rates for use of the Society's copyrighted musical compositions in broadcast programs would become effective:

SUSTAINING LICENSE: At approximately present rates, with such readjustments either upward or downward as will equalize the fee paid by stations operating under similar or equal conditions, taking into consideration power input, rate card, radio population and other pertinent factors, as and when any such existing inequalities are discovered. The sustaining license fee, upon an annual basis, to be payable in equal monthly installments, on or before the 10th of each month to cover the preceding month.

COMMERCIAL LICENSE: At 5% of the amounts charged for use of the facilities of the station in respect of all commercially sponsored non-network programs. In the case of network programs, the fee of 5% is payable by the key station, based upon the gross amount charged for use of broadcasting facilities. Two or more stations simultaneously broadcasting the same program to be considered as a network.

Accountings to be rendered on or before the 10th of each month covering operation of the previous calendar month, on forms provided by the Society. Such accountings to be under oath, signed by a responsible officer of the operating company, and subject to audit during customary business hours.

Under this plan the Society proposed to collect from broadcasting stations a total of from \$4,000,000 to \$5,000,000 annually instead of \$966,000 which stations are now paying. This would mean increases ranging from 300 to 400 per cent for the industry as a whole.

NAB BOARD MEETING

A week after the receipt of this proposal a special meeting of the Board of Directors of the NAB was called in New York. It was the unanimous opinion of the Board that the proposal of the Society would have a ruinous effect upon the broadcasting industry, including the forcing of many stations to cease operation. In an answer to the Society's letter, approved by the Board, it was stated that many stations are already suffering considerable hardship from having to pay the present fees and that the basis proposed by the Society was unsound and entirely unjustified. At the same time the Board pointed out that the proposal was unjust in that it subjected to percentage payments, programs in which either music was not used at all or in which music over which the Society had no control was used. The Board did state that stations were willing to pay an equitable remuneration to the owners of copyright music commensurate with the nature of the broadcasting business.

Under a motion adopted by the Board a committee consisting of Paul W. Morency, chairman; A. L. Ashby, Edward Klauber, J. G. Cummings, and Harry Shaw was appointed to deliver the letter to the Society and to lay before it actual facts as to present conditions in the broadcasting industry.

At the same time the Board made elaborate plans to protect the interests of broadcasters in the event a break in negotiations should occur. A Plenary Committee consisting of A. L. McCosker, chairman; Frank M. Russell and Harry C. Butcher was named to direct all activities other than negotiations.

This committee immediately retained the services of Oswald F. Schuette who was given broad authority to direct legislative activities and gather information on the general music situation. This Bulletin will not review the work of Mr. Schuette inasmuch as all broadcasters already have been informed of the splendid

progress made in the matter of copyright legislation. It is enough to say that the Sirovich copyright bill, with the Chindblom amendment to protect broadcasters, remains at the head of the House calendar and will be among the first measures to be considered in the next session of Congress.

MORATORIUM SECURED

The negotiating committee secured from the Society a postponement of the effective date of the percentage proposal from June 1 to September 1 with the understanding that the committee should begin immediately to confer with a committee of the Society to work out a satisfactory basis for payment of new and increased rates. The Boards of the NAB and the Society approved of this arrangement.

NEGOTIATIONS ARE STARTED

In the early negotiation conferences the Society maintained that it must derive a sum of from \$3,000,000 to \$4,000,000 from the broadcasting industry for the use of its works and that in demanding increases of 300 to 400 percent at this time it had taken into consideration present conditions in the broadcasting industry and the possible effect upon legislation. The Society would not fight, it was stated, a proposal to dissolve the organization. Music publishers and composers were confronted with the necessity of obtaining adequate compensation or none at all.

SMALL STATIONS FAVORED

Almost from the beginning of negotiations it was agreed between the two committees that some 250 or 300 small stations were unable to pay any increases in music fees at this time and that, therefore, they should be eliminated from discussions of increased revenue to the Society.

INDUSTRY CANVASSED

The NAB then canvassed the industry to get an expression of opinion from individual broadcasters. The industry was almost unanimously opposed to accepting

the Society's percentage proposal and expressed opposition to any increase in license fee payments at this time.

FURTHER POSTPONEMENT ASKED

The NAB committee then requested that the effective date of the Society's percentage proposal be further postponed until May 1, 1933 and that licenses be renewed at existing rates. This was flatly rejected by the Society.

NAB COMMITTEE REPORTS

A regular meeting of the NAB Board was scheduled for Chicago on May 23 and members of the committee negotiating with the Society made a full and complete report of its deliberations. The only progress which the committee was able to report at that time was a possibility that an agreement might be arrived at under which the Society would postpone the effective date of increases until January 1, 1933 on condition that thereafter the broadcasters pay at the rate of 3% of gross for 1933, 4% for 1934, and 5% thereafter. The percentage payments, of course, to be in addition to a sustaining license fee which would be adjusted downward in some cases to 50% of the present license fees. Total license fees would amount to about \$2,750,000 for 1933 under this plan, or an increase of nearly 300 percent over present payments. The Board was unanimously opposed to this proposal and expressed its objection to any plan under which the Society would be permitted to participate in the gross revenue of stations on a percentage basis.

At the time of the Chicago Board meeting much legislative work had been accomplished and it appeared hopeful that some action could be secured on the Sirovich bill and the Chindblom amendment. Under the leadership of Mr. Schuette, tremendous support for the broadcasters' amendment had been built up in Congress and passage of the bill was virtually assured in the House. The serious illness of Chairman Sirovich delayed consideration of his bill and finally it became necessary to postpone action until next December. Broadcasters were kept posted of these legislative developments in other Bulletins and the situation, therefore, will not

be reviewed here. To hold the legislative advantage gained during the last three and one-half months, broadcasters will have to continue to present an efficiently organized front.

NAB COMMITTEE PROPOSES

With negotiations virtually at a deadlock the NAB committee at the June 2 meeting with the Society for the purpose of facilitating negotiations, proposed that existing fees be continued until May 1, 1933; from May 1, 1933 to May 1, 1934 an increase of 25% over present payment, namely, from \$1,000,000 to \$1,250,000; from May 1, 1934 an increase of 50% over the present payment, namely, from \$1,000,000 to \$1,500,000. This was proposed by the committee with the distinct understanding that ratification of the NAB Board would have to be secured.

NAB COMMITTEE PROPOSAL REJECTED

The Board of the Society flatly rejected the proposal made by the NAB committee at the June 2 meeting and outlined above. The committee was told that the Society's Board had agreed that the minimum that would be acceptable would be 3% on gross for 1933, 4% for 1934, and 5% for 1935 and 5% thereafter, coupled, of course, with sustaining licenses.

Increases of 25% or 50% over existing payments would not be considered, the NAB committee was told.

ALTERNATE PROPOSALS OFFERED

Later the NAB committee was informed that in addition to the three-four-and-five percent proposal the Society's Board might accept a "per piece" proposition under which each broadcaster would pay only for the music actually used, the publishers to make available their catalogs setting forth the charges for rendition of each number listed. Another alternate was offered under which the broadcasters would pay a sustaining license fee and the Society would make separate license deals with all commercial advertisers.

PER PIECE PROPOSAL CONSIDERED

The NAB committee carrying on negotiations met with the Plenary Committee on June 6 and made known the most recent developments in negotiations. It was agreed the only one of the three proposals before the group that held any possibilities was the "per piece" plan. It was felt that under this plan broadcasters would pay only for what they play and that owners of copyrights could be paid in proportion to the use which broadcasters made of their music. This would inject competition into the public performance phase of the copyright business and would provide necessary stability for both the broadcasters and the copyright owners.

It was the consensus of the joint meeting that the negotiating committee should state to the Society that the "per piece" proposal presented definite possibilities and that further information as to catalogs, charges, etc., was desired by the broadcasters.

PER PIECE PLAN WITHDRAWN

When the NAB committee met with the Society's committee on July 12 it was informed that the "per piece" plan could not be considered at this time because of the difficulties which would be encountered in putting it into operation. The Society's committee said that it would be impossible to institute such a method on September 1 because of the short time remaining and therefore was unwilling to discuss that plan further at this time.

PERCENTAGE PLAN ELIMINATED

At the July 12 meeting it appeared that progress had been made in convincing the Society that the percentage method would be totally unacceptable to the broadcasters and that some other basis would have to be found if negotiations were to be continued. After a lengthy session the NAB and Society committees agreed to submit a proposal to their respective Boards under which the broadcasters would pay a total of \$1,250,000 for music controlled by the Society during the period beginning

September 1, 1932 and extending until December 31, 1933 and that no later than September 1, 1933 negotiations should be opened toward establishing rates commencing January 1, 1934 and that there should be a complete legislative truce until November 1, 1933.

NAB BOARD REJECTS PROPOSAL

A special meeting of the NAB Board was called on July 21 at which the NAB committee reported the above agreement between the two committees. It was the unanimous opinion of the NAB Board that the industry could not acquiesce in any increase of rates at this time but that starting January 1, 1933 and for two years thereafter the Board would consent to payments on the part of the industry to the Society of a total sum of \$1,250,000 per year (allowance being made for failure of any stations to take a license) with an adjustment of fees favorable to smaller stations with Committees of the NAB and the ASCAP cooperating in revising the rates charged to each station provided that the ASCAP and the NAB shall immediately devote themselves to work out a mutually agreeable and permanent method of licenses and of paying fees, which method shall become effective and shall supersede all other fees as soon as the new and permanent method shall have been agreed upon. The NAB, of course, did not agree to the legislative truce.

SOCIETY REJECTS NAB PROPOSAL

The Society almost immediately rejected the offer of the NAB Board. In announcing the rejection the Society informed the NAB committee that it had become apparent that no purpose can be served by further conferences.

"It is our feeling now that the respective committees have," says the Society's letter of July 26, "without success, done their utmost to accomplish a mutually satisfactory adjustment of differences, and in view of the fact that your committee must of necessity depend upon the individual sanction of a great many broadcasters who are not members of the National Association of Broadcasters as well

as those who are members, of any plan or formula which your committee might approve, whereas our committee is vested with authority to definitely commit the members of this Society, it is apparent that no purpose can be served by further conferences.

"In these circumstances we desire now to advise you of our intention to proceed within the next few days to the making of the license of the Society available to broadcasters individually upon such terms as may be mutually agreed upon in each individual case."

IMPASSE IS REACHED

The rejection of the NAB Board's proposal by the Society virtually brought negotiations, which had been under way since April 18, to an end. The Society had announced to the press that it planned to go back to the percentage method of levying fees using, preferably, the three-four-and-five per cent plan, which would mean increases of roughly 300 percent in rates for next year.

At the time of the apparent impasse the proposals of the two organizations were as follows:

1. The Society has agreed to accept a sum of \$1,250,000 commencing as of September 1, 1932 and continuing until December 31, 1933; negotiations to be opened not later than September 1, 1933 toward establishing rates for the year commencing January 1, 1934. That a legislative truce was to exist until November 1, 1933.
2. The NAB had agreed that the industry pay a sum of \$1,250,000 a year for a two-year period starting January 1, 1933, with present rates prevailing until that time, with adjustments in favor of smaller stations, provided that the NAB and ASCAP immediately devote themselves to work out a mutually agreeable and permanent method of licenses which should become effective as soon as worked out. No legislative truce was acceptable.

NEGOTIATIONS REOPENED

Following receipt of the above letter a number of informal conferences were held which opened the way for further negotiations. The NAB committee has addressed a letter to the Society to open the way for new conferences.

At the time this Bulletin goes to press no definite understanding has been reached but it is hoped that a further favorable announcement can be made before the end of the week.