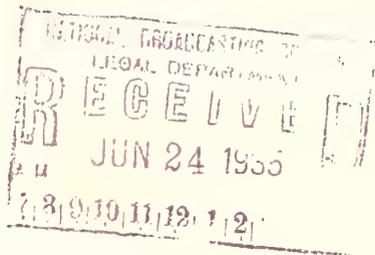


HEINL RADIO BUSINESS LETTER

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No. 836

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HAZARD OF ESTABLISHING FIXED NETWORK COPYRIGHT DAMAGES CITED

Following a recommendation made by the Patent Committee, of which Senator McAdoo, of California, is the Chairman, the new Copyright Bill would pass the responsibility of fixing the minimum amount of infringement damages incurred by a National network to the Court for adjudication.

"The Senate Committee is firmly of the opinion that to eliminate the statutory minimum of \$250 for infringement without proof of damage is to eliminate the chief factor in the use of the law for bargaining, sometimes for coercive purposes, between producers and consumers of copyrighted works", Senator McAdoo reported. "Moreover, since 1909, when the present law was enacted, the methods of using copyrighted works have developed with amazing rapidity. The range of the use of such works has correspondingly increased. A piece of copyrighted music may thus be publicly performed on a phonograph in a bootblack stand or on a broadcasting network covering the continent. For the law to attempt to fix a specified sum as minimum damages, in view of the breadth of this usage, would seem wholly unreasonable.

"Accordingly, entirely apart from the ulterior use of the minimum statutory damages under the present law, it is deemed necessary to make the change which the bill contains. This change does not lessen the value of the section so far as its purpose is concerned. That purpose is to accord a remedy for infringement, not a weapon under which the owners of copyright may stimulate the sale of their works.

"In place of the stated minimum, the bill provides that the courts shall award sufficient statutory damages to prevent infringement and such as may be just, proper, and adequate in view of the circumstances of the particular case. The maximum is fixed at \$20,000, four times the amount specified in the present law. This seems appropriate in view of the vast increases in recent years in the value of copyrightable works."

A remedial provision in the new Copyright Bill, about which there has been important controversy, is that of injunctive relief. Of this, Senator McAdoo's report says:

"Producers of copyrighted works claim that, unless full rights of injunction are accorded them, users of copyrighted works will pay no attention to their rights and will simply remunerate them in damages after having callously used their works in whatever manner was desired. Users of copyright works, on the other hand, claim that unless given a large exemption from the full implications of the law of injunction, they may be put to vast and

and unwarranted losses in cases that would be of small use to copyright owners and might, indeed, enable copyright owners to indulge in practices differing little from blackmail.

"For instance, a publication about to go to press might, under present law, be enjoined because of the appearance of a single small item which infringed some copyright. Or a radio broadcaster might be about to begin a program and have that program seriously interfered with through the deletion of some part in which, quite unknown to the broadcaster, claim of copyright existed. In such cases it is obviously better that the copyright holder should run the risk of some loss, which could in all cases be reimbursed in damages, than that the copyright user should be thus placed in jeopardy in the course of his business. Accordingly, the present bill reduces the injunctive remedy, but quadruples the maximum of statutory damages, and continues the present unlimited amount of damages recoverable when actually proved."

Outlining the need for a revision of the Copyright Act, the McAdoo report said:

"More than a quarter of a century has elapsed since there was any comprehensive alteration in the law of the United States granting and regulating copyright. During this period a veritable revolution has occurred in the means whereby literary and artistic works are communicated to the public. So profitable has it become to be a successful author that, perhaps for the first time in history, authorship has been added to the list of professions which the fortunate may pursue as possible avenues to great material riches. Authors and composers have united into powerful associations and corporations for the purpose of protecting their interests and increasing their worldly wealth.

"The newspaper and magazine with circulation measured in the hundreds of thousands, or even millions, the Nation-wide or world-wide broadcaster, and the motion picture, exhibited throughout the cities and villages of the country and of the world, have developed into vast industries, absolutely dependent, of course, upon high-grade authorship for their raw material and furnishing to authors a magnificent and unprecedentedly remunerative market for their products."

It is not known when the Senate will formally take up the Copyright Bill but the supposition is that it is on the President's "Must" legislation and that the consideration will take place at an early date. Likewise, judging from the speed with which the Senate passed the Copyright Treaty, it seems to be an assured fact that no time will be lost in passing the Copyright Bill.

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INCREASED DEMAND IN CANADA FOR AUTOMOBILE RADIO SETS

The seasonal decline in the Canadian demand for standard radio sets which occurs at this time of the year is being practically counterbalanced by increasing sales of battery and automobile sets, Assistant Trade Commissioner A. F. Peterson, Ottawa, informs the Commerce Department.

Radio sales data, compiled by the Radio Manufacturers' Association of Canada, shows that total sales of radio receiving sets to dealers during April amounted to 8,877 units, valued at list prices at \$762,112, as compared with 8,966 units and \$791,718 in the preceding month. April sales of automobile sets totaled 2,010 units, a gain of 25 per cent over March. Sales of battery sets in April numbered 1,224 units, compared with 778 the preceding month while April sales of A.C. sets, numbering 5,643 units, were 900 units under the March figure.

A generally lower trend in prices of automobile sets, the report states, is indicated by the fact that in March average list value of sales was \$70.40, whereas in April the average was slightly less than \$62.00. Prices of battery sets appear to have been well maintained.

Projected production May 1 to June 30 as reported by members of the Radio Manufacturers' Association totalled 24,314 sets, the report reveals. Canadian radio manufacturers, it is stated, will concentrate on dual wave and A.C. chassis, but in battery sets more than half of the production will be Standard Band sets.

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WIRED RADIO IN CLEVELAND

Wired radio is now reported to be an actuality in Cleveland. It is reported that a program service is being supplied over electric-light wires in the Lakeside Section of that city.

Three programs are supplied simultaneously, one of light music, one of classical selections, and one of special features. Wired-radio receivers are to be supplied at monthly rentals from \$1.50 to \$7 per set. Certain models have space-radio attachments. Wired-radio attachments can also be added to customers' regular space-radio sets.

The wired radio service is supplied by The Musak Corporation of Ohio, a subsidiary of Wired Radio, Inc., and the North American utility interests. Waddill Catchings, prominent financier and manufacturer, is Chairman of the Musak Board, and T. J. Smith, General Manager. Music for Cleveland wired radio is being supplied from recordings produced by the Associated Music Publishers of New York.

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COMPOSERS' TRIAL ABRUPTLY ADJOURNED UNTIL NOVEMBER

There was a sudden adjournment of the Government anti-Trust suit trial against the American Society of Composers in New York last Wednesday, as the proceedings were just entering their second week, when Federal Judge Henry W. Goddard, before whom the trial was being held, announced its adjournment to the first Monday in November. The reason given was that Judge Goddard had other court assignments after July 1st and since it was apparently impossible to complete the Government presentation by that time, the present seemed an appropriate time to adjourn, it was explained.

While Judge Goddard has previously spoken of his July 1st commitment, the parties to the suit had expected that he might be able to make other arrangements so that the litigation involving the Composers would not be interrupted.

The sudden adjournment evidently came as a surprise to both sides. A leading broadcaster predicted as late as last Saturday that the trial would probably continue for "weeks and weeks". That the Composers thought they were in for a long siege of it was evidenced from the fact that they had taken a suite of offices on the same floor as the courtroom in the Woolworth Building in New York in which they stored their files which had to be repeatedly referred to in connection with the case.

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HOTEL SUES JOLSON FOR RADIO SLANDER

A damage suit for \$100,000 was filed against Al Jolson and the National Broadcasting Company by the Summit Hotel Co. of Uniontown, Pa. It is alleged that Jolson, in an interview with Sam Parks, Jr., International open golf champion, said, referring to the Summit Hotel, "That's a rotten hotel."

Leo L. Heyn, President of the Hotel Corporation, said that he had asked Senators Davis and Guffy, of Pennsylvania, to demand an investigation of the whole practice of commercial broadcasting.

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CHANGES OFFERED FOR RECORDED PROGRAM ANNOUNCING

It seemed to be the general opinion of those who testified at the hearing with regard to the announcement of electrical transcriptions and phonograph records used in broadcasting, held by the Federal Communications Commission last Thursday, that there was need for the Commission to revise its present regulations which are apparently causing the industries considerable inconvenience. The hearing was held at the request of the World Broadcasting System, which seeks to have transcription announcements removed, and was concluded after an all-day session. It is expected that it will be at least a month before the Commission reaches a decision in the matter, and it wouldn't be surprising if, before they were heard from, it might be well along in the Fall.

Arthur Church, of Station KMBC, of Kansas City, Chairman of the Commercial Division of the National Association of Broadcasters, said that the Association favored the removal of present restrictions.

Philip Hennessy appeared as counsel for the National Broadcasting Company, and Duke Patrick for the Columbia Broadcasting System. The case marked the first appearance of the newly organized Local Broadcasters, Inc., a group of 100-watt stations, which were represented by George O. Sutton, counsel, who sought to have restrictions lightened on phonograph records as well as electrical transcriptions.

Mr. Sutton made a proposal to the Commission which seemed to be favorably received which was, briefly, that it was to be a "recorded program" and not have it interrupted every few minutes, as it now is, with "This is a phonograph record", or "This is a player-piano record".

Also Mr. Sutton suggested that in the case of a musical performance or a speech which could not be concluded on the dot, that it be allowed to run on a little longer without interruption. He argued that symphony orchestras, or even political speakers, like Huey Long, were allowed to run over their time without an interruption and he thought the same privilege should be accorded to all classes of broadcasting.

Mr. Sutton's suggestion, in part, was as follows:

"Each licensee shall make a clear and concise announcement at the beginning of every program as to the use therein of any mechanical reproduction, phonograph record, electrical transcription or other recording, unless the use thereof is merely incidental as for identification or background."

Mr. Sutton did not define the exact form of the announcement but added this proviso:

"The announcement hereby required shall be repeated every 15 minutes until the conclusion of the program unless such repetition would interrupt a single consecutive recorded speech or single consecutive recorded program and in such cases the announcement shall be made as soon as possible thereafter and in no event later than the next station identification announcement time."

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CANADIAN RADIO COMMISSION O.K. UNTIL 1936

The life of the Canadian Radio Commission in a bill about to be introduced at Ottawa has the assurance of being extended to March 1936, and perhaps considerably longer if further legislative action is taken.

Anticipating the continuance of the Commission, a budget of \$1,500,000 has been approved for the Commission and elaborate plans are being made to erect new stations by way of further building up the Canadian coast-to-coast network, which is claimed to be the largest in the world.

Declaring that propaganda is evidently being used to overthrow the present system, Premier Bennett declared that it will be strengthened by the Government, and not weakened.

"The truth is that the effort to destroy this public utility is very well known", the Premier intimated. "A country as poor as we cannot spend at once the money that is required to make this facility as perfect as it should be. The more I see of it, the more determined I am that this facility should not be yielded to any private enterprise. That is my firm conviction and I say that very strongly. The life or death of our adventure in the field of public ownership depends largely on our willingness to nurse this infant until it can become strong enough to fend for itself."

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SOL INTRODUCES COPYRIGHT BILL IN HOUSE

A Copyright Bill identical to that which Senator Duffy introduced in the Senate, has been introduced in the House by Representative Sol Bloom, of New York. The Bill has been referred to the Patents Committee of which Representative Sirovich, of New York, is Chairman. No decision has been reached or date set with regard to hearings.

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16 STATIONS WHICH BROADCAST "MARMOLA" PROGRAM SAVED

Sixteen broadcasting stations cited to appear before the Broadcast Division on October 3, 1935, and prove they are operating in the public interest were removed last Wednesday from the hearing docket and granted licenses for the regular period, except WBAP whose facilities are being requested.

These stations were in the group of twenty-one reported to have carried a program entitled "Marmola", an alleged fat-reducing preparation, condemned by the Federal Trade Commission, the Post Office Department, and the Supreme Court.

Upon further consideration and review of the technical and service records of these stations, the Commission decided to remove them from the hearing docket and grant regular renewal licenses. Evidence was also submitted to the Commission showing that these stations carried the program in question for very short periods, discontinued it after receiving complaints or when informed the Commission had received complaints, and no other comparable programs were carried.

The sixteen stations removed from the hearing docket on this issue were: WGAR, Cleveland, Ohio; WHEC, Rochester, N.Y.; WIOD-WMBF, Miami, Fla.; WIRE, Indianapolis, Ind.; WKBW, Buffalo, N. Y.; WBAP, Fort Worth, Texas; WBAL, Baltimore, Md.; WGR, Buffalo, N. Y.; WHO, Des Moines, Ia.; WIND, Gary, Ind.; WJAS, Pittsburgh, Pa.; WJJD, Chicago, Ill.; WJR, Detroit, Mich.; WOW, Omaha, Nebr.; WOWO, Fort Wayne, Ind., and KMOX, St. Louis, Mo.

The five stations left on the hearing docket are: WSMB, New Orleans, La.; WTMJ, Milwaukee, Wis.; KFRC, San Francisco, Cal.; KMBC, Kansas City, Mo.; and KNX, Los Angeles, Cal.

These stations not only carried the "Marmola" program but have been cited for violating various Rules and Regulations of the Commission. Some of them also carried other medical programs condemned by the Federal Trade Commission.

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BEN BERNIE STIRS DRY CONGRESSMAN'S IRE

As a result of one of Ben Bernie's "Alma Malter" broadcasts, Representative Culkin, of New York, has gone on the warpath not only denouncing Bernie, demanding that Commissioner Prall shall do something about it, but has introduced a bill in the House to prohibit the advertising of alcoholic beverages by radio. A similar bill has been introduced at each of the past sessions of the Senate by Senator Capper, of Kansas, but have not been pressed.

Declaring that the "shameless abuse of radio broadcasting" was contributing to the breakdown of the morale of the American people, Representative Culkin said:

"When the eighteenth amendment was repealed we were assured that the bar was gone and that the liquor interests had learned their lesson. Despite these promises the bar is back and thousands of people are being killed on the highways through the operation of cars by drunken drivers. In addition to that there comes over the radio nightly a glorification of booze. This goes into the homes of our people, where children and youths are indoctrinated with the fictitious merits of 'John Barleycorn.' I have introduced a bill today (June 18) which will prohibit the sending of this destructive antisocial advertising into the homes of America. I invite the sympathetic support of the Members of the House.

"At this time I particularly wish to call the attention of the House to the fact that this group of advertisers, who are trying to make the youth of America 'alcohol conscious', have no respect for American tradition, however sacred. A national broadcast on last Tuesday night used Lincoln's Gettysburg address as a medium for this nefarious practice.

I have filed a protest with the Chairman of the Communications Commission, Hon. Anning S. Prall, and am appending it and his answer hereto."

"June 6, 1935.

"Hon. Anning S. Prall,
Chairman, Federal Communications Commission,
Washington, D. C.

"My Dear Commissioner:

"On Tuesday night of this week I had the misfortune to be listening in on a Nation-wide broadcast which came from Hollywood and was made by one Ben Bernie.

"He was indoctrinating the youth of the country on the fictitious merits of alcohol and used as his vehicle a paraphrase of Lincoln's Gettysburg address. There is no spoken word in the English tongue more beautiful in thought and expression than this same brief but matchless oration. I have seen it stated that it is the first classic of the English tongue. This musical mountebank paraphrased the Gettysburg address into an appeal to the country to drink a certain brand of beer. He mutilated the address to this end and subjected it to his misplaced and vulgar comedy.

"I realize that you have no power of censorship over these stations, but you do have the right to refuse to issue a license.

Cannot this power be exercised in some way so that this shameless performance will not be repeated?

"With regards, I am,

"Very sincerely yours,

(Signed) Francis D. Culkin,

Member Congress, Thirty-second District
New York"

Federal Communications Commission
June 12, 1935.

"Hon. Francis D. Culkin,
House of Representatives, Washington, D. C.

"My Dear Congressman Culkin:

"The receipt is acknowledged of your letter of June 6, 1935, making reference to a broadcast over a Hollywood station by Ben Bernie.

"With regard thereto, you are advised that although the Commission may not take any action directly or indirectly to censor programs broadcast by radio stations, the Commission has the power to take into consideration the past activities of stations when acting upon their applications for renewal of license.

"This matter is being given appropriate attention by the law department of the Commission. In order to aid it in this work, the Commission will appreciate your advice as to the station or stations which, to your knowledge, have carried the program in question.

"Sincerely yours,

(Signed) Anning S. Prall, Chairman"

The bill which Representative Culkin introduced in the House (H.R. 8404) has been referred to the House Committee on Interstate Commerce and has as its objective prohibiting the transportation in interstate commerce of advertisements of intoxicating liquors. One section of the bill referring to broadcasting, is as follows:

"It shall be unlawful to broadcast by means of any radio station for which a license is required by any law of the United States, or for any person operating any such station to permit the broadcasting of any advertisement of intoxicating liquor or the solicitation of an order for intoxicating liquor."

HUEY PLANS COUNTRY-WIDE SOUND TRUCK TRIP

Senator Huey P. Long, Louisiana's Kingfish and the Roosevelt Administration's constant critic, will make a barnstorming tour of the country this Summer, preaching his share-the-wealth gospel, his secretary, Earle J. Christenberry, said.

Moreover the Kingfish will take along his two famous sound trucks to facilitate his speechmaking. Christenberry said that the schedule had not been completed but that Senator Long would open his tour in New England and gradually work his way around the country.

His first speech is scheduled for July 13 at Stamford, Conn. All the meetings will be held under the auspices of the Long share-the-wealth societies which he has organized throughout the country. Most of the share-the-wealth members will get their first opportunity during this tour to see and hear the Kingfish in person.

Kingfish Long and his sound trucks are famous in the swamplands of Louisiana and Arkansas, as well as the mountainous sections of the latter States. In those districts his meetings attract huge crowds to find amusement, if not always political inspiration, in the Kingfish's words and antics. Whether conservative New England will react in the same way remains to be seen.

Senator Long's sound trucks first became nationally famous in 1932 when he stumped Arkansas and concededly carried the State over strong opposition for Mrs. Hattie Caraway for the Democratic senatorial nomination. He works the trucks in relays. As he speaks from one truck in a small town, the other proceeds to another town and on arrival immediately begins playing popular tunes to attract an audience.

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HITCH IN FCC INTERLOCKING DIRECTORATE OPINION

It was said at the Communications Commission today (Friday) that there would be at least another week's delay in giving out the basis for the opinion reached by the FCC in coming to the conclusion that officers or directors could not serve on more than one common carrier. The detailed opinion was supposed to have been given out Monday, June 17, but has been held up since then.

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BUSINESS SO GOOD PHILCO HAD TO GET BIGGER SHIP

"The hum of Philco's factories in the mass production of high quality, popularly priced home and automobile radio receivers, proves that realization is sometimes even greater than anticipation."

So say officials of the Philco Radio & Television Corporation, Philadelphia, in stating that their factory-distributor, eight-day Caribbean Cruise - May 18th to 26th, 1935 - to Kingston, Jamaica, B.W.I., "was a great success from every standpoint."

So eager and so many were the distributors who wanted to see the new 1936 line, that it was necessary to charter an even larger ship than had been already engaged. So enthusiastic was the reception given the current models, priced from \$20 to \$600, that Philco is employing over 8,000 skilled workers full time at the highest wages paid in the radio industry.

To again increase the lead over the 103 radio manufacturers, which it claims to have held during the past five years, Philco has added a dealer and consumer financing plan to its record breaking advertising and merchandising campaigns.

It is expected that Philco's sales during the coming twelve months will be higher than ever before.

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DECISIONS OF FCC BROADCAST DIVISION

Applications Granted - WNAX, The House of Gurney, Inc., modification of C.P. for approval of transmitter site and make changes in equipment; WREN, Jenny Wren Co., Tonganoxie, Kans., consent to voluntary assignment of C.P. to Wren Broadcasting Co., Lawrence, Kans.; KGHL, Northwestern Auto Supply Co., Inc., Billings, Mont., special experimental authorization to operate on 780 kc., 1 KW night, 2½ KW day, unlimited time for a period of 90 days; KMBC, Midland Broadcasting Co., Kansas City, Mo., mod. of license to determine operating power by direct measurement of antenna; KGKO, Wichita Falls Broadcasting Co., Wichita Falls, Tex., regular license for 1240 kc., 1 KW unlimited time; KTAT, KTAT Broadcast Co., Inc., Fort Worth, Texas, regular license for 570 kc., 500 w. night, 1 KW day, unlimited time; WJW, WJW, Inc., Akron, Ohio, license to cover C.P. to operate on 1210kc. 100 watts, unlimited time (C.P. authorized new equipment); WHBY, WHBY, Inc., Green Bay, Wis., license to cover C.P. to operate on 1200 kc., 100 w. night, 250 w. day, unlimited time;

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