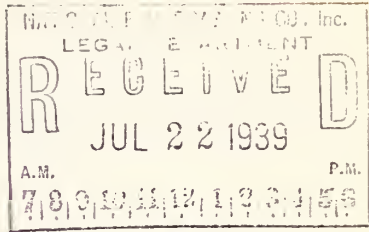


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HEINL RADIO BUSINESS LETTER

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WASHINGTON, D. C.



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TRADE PRACTICE RULES ISSUED FOR RADIO INDUSTRY

Culminating efforts of the Radio Manufacturers' Association for over four years, the Federal Trade Commission this week issued Trade Practice Rules for the Radio Receiving Set Manufacturing Industry to become effective at once.

The rules aim to eliminate and prevent false advertising, deceptive selling methods, and certain other unfair trade practices, the FTC points out in a preliminary statement. They are issued, the Commission added, "in the interest of protecting the purchasing public and maintaining fair competitive conditions in the industry."

The Commission pointed out that total retail sales of radio sets, parts, etc., aggregated \$460,000,000 in 1937 and \$225,000,000 in 1938. At the present time, the statement added, there are approximately 41,000,000 receiving sets in the United States.

Among the RMA officials who assisted in drafting the Trade Practice Rules were Bond Geddes, Executive Vice President, and Commdr. Eugene F. McDonald, Jr., of Chicago, Chairman of a Special Committee on Fair Trade Practices.

Major provisions of the Fair Trade Practice Rules as promulgated by the FTC follow:

"GROUP I"

"The unfair trade practices which are embraced in the Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited, within the purview of the Federal Government, by acts of Congress, as construed in the decisions of the Federal Trade Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation or other organization, of such unlawful practices in or directly affecting interstate commerce.

"RULE 1 - "It is an unfair trade practice for any member of the industry, in the course of or in relation to the marketing or distribution of radio receiving sets, parts or accessories therefor, or other products of the industry, (1) to use, or to cause, promote or further the use of, any marks, brands, labels, depictions, advertisements, trade promotional descriptions or representations of any kind which, directly or by implication, are false, misleading or deceptive to the purchasing or consuming public; or (2) to offer for sale, sell or distribute, or to cause or promote the sale or distribution of, radio receiving sets, parts or accessories therefor, or other products of the industry, under any other conditions or selling practices which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

"Rule 2 -- "All-Wave", "Standard Broadcast", Etc.:

"(a) Except as hereinafter provided, the terms 'All-Wave', 'World-Wave', 'World-Wide Wave', or words, phrases or representations of similar import, shall not be used as descriptive of a radio receiving set advertised, offered for sale, sold or distributed in the American market when such set is not constructed to receive and capable of receiving, with reasonable or adequate consistency, the entire spectrum of radio frequencies in recognized use in the art, namely, all long-wave broadcasts and transmissions; all medium-wave and short-wave broadcasts and transmissions, and all other waves transmitted or broadcast, including both foreign and domestic; excepting, however, that such set so described or represented need not include within its capacity of reception such point-to-point transmissions as are confidential and illegal for general reception and divulgence by members of the public, nor such unchanging signals as emanate from radio beacons or radio lighthouses, when such set is not otherwise falsely or deceptively described or represented, directly or indirectly, as being constructed to receive, or as being capable of receiving, such point-to-point or beacon or lighthouse transmission.

"(b) Nothing herein contained shall prohibit the use of the term 'Limited All-Wave', 'Limited World-Wave', 'Limited World-Wide Wave', or term or words of similar import, as descriptive of a radio receiving set advertised, offered for sale, sold or distributed in the American market when such set is constructed for and capable of consistently receiving at least a continuous spectrum of frequencies from 540 kilocycles to 18,000 kilocycles, provided such term or words are immediately accompanied by words, phrases or terms set forth conspicuously and clearly, unequivocally and truthfully stating the exact wave bands or frequencies which such set is capable of consistently receiver.

"(c) Nothing herein contained shall prohibit the use, as descriptive of a radio receiving set, of the term 'all waves' as an integral part of a clause, sentence or statement which truthfully and unequivocally sets forth the bands or radio frequencies such set does not cover, and wherein the words 'all waves' are not given greater prominence or conspicuousness than the other parts of such clause, sentence or statement; provided such set is constructed for and capable of receiving with reasonable or adequate consistency all the waves or bands of frequencies from 540 to 18,000 kilocycles and such other bands or frequencies as are represented to be within its receptive capacity.

"(d) The term 'Standard Broadcast' shall not be used as descriptive of a radio receiving set which is not built for or capable of receiving with reasonable or adequate consistency a continuous spectrum of frequencies from 540 to at least 1600 kilocycles.

"(e) Also, the term 'Standard Broadcast' as descriptive of a radio receiving set shall not be used in such manner as to lead the public to believe (1) that such set is constructed for and capable of receiving with reasonable or adequate consistency a greater number of radio frequency signals than is in fact true of such set; or (2) that the set is capable of so receiving more than the continuous spectrum of frequencies from 540 to 1600 kilocycles.

"(f) In the advertisement or sale of radio receiving sets, disclosure of the exact bands of frequencies which such sets are constructed to receive and capable of receiving with reasonable or adequate consistency is deemed desirable in the interest of

avoiding confusion, misunderstanding or deception of purchasers. Failure or refusal adequately to make such disclosure of frequencies, in connection with the use of the term 'Standard Broadcast' or otherwise, when the capacity and tendency or effect thereof is to mislead or deceive the purchasing or consuming public, is an unfair trade practice.

"(g) Nothing in these rules shall prevent the use, in lieu of 'kilocycles', of other recognized units of measurement, such as 'meters' or 'megacycles', when employed in a truthful and non-deceptive manner.

"Rule 3 - It is an unfair trade practice for any member of the industry to use, or cause to be used, any of the following-described types of advertisements or representations:

"(a) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented will receive distant stations or any or all foreign broadcasts or transmissions easily or satisfactorily or as easily or satisfactorily as local or domestic reception, when such is not the fact.

"(b) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented, or the reception thereof, is not subject to interference or to being interfered with or interrupted by fading, noise, electrical interference, atmospheric conditions, static or any other phenomena or conditions, when such is not the fact.

"(c) Advertisements or representations, with respect to the receiving capacity or performance of a radio receiving set, which make deceptively exaggerated or misleading claims or claims which are not justified and supported by the fact or performance of such radio set in the locality in which it is so advertised, represented and sold.

"(d) Advertisements or representations which directly or by implication lead purchasers to believe that the radio set so advertised or represented is capable of greater or more consistent or satisfactory performance or reception than is in fact true.

"(e) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented will give world-wide continuous reception or other continuous reception, when such is not the fact; or that the radio receiving set will give such reception or other reception with loud speaker volume, when such is not the fact; or that the radio receiving set will give world-wide reception or other reception regularly or dependably, when such is not the fact.

"(f) Advertisements or representations which present claims or representations concerning any radio receiving set in such a way as deceptively to cover or conceal defects or deficiencies inherent in such set, or defects or deficiencies inherent in the contemporaneous state of the art to which the receiving set is subject but which are not generally known to the purchasing public.

"(g) Advertisements or representations, of any radio receiving set, stating, purporting or implying that each station or any station, whether nearby or foreign or domestic, can be brought in, or brought in with sharp, clear or distinct reception or with ease, simplicity or regularity, by any radio receiving set so advertised or represented, when such is not the fact.

"(h) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented will bring in or receive broadcasts from Europe, Africa, South America, Australia or Asia, or from any other designated locality; or that it will bring in such broadcasts, or any of them, consistently or satisfactorily, when such is not the fact.

"(i) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented sifts out noise or is free from noise, or brings in far distant stations sharp or clear, when such is not the fact.

"(j) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented will bring in or receive satisfactorily or consistently foreign stations, police calls, aviation calls, radio transmissions from or to ships at sea, amateur stations or other types of radio transmissions, when such is not the fact, or when only a small part of any such class of radio frequencies transmitted or broadcast is so receivable and such fact, or the fact that others of the same class are not so receivable, is deceptively concealed.

"(k) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented contains a certain number of tubes or is of a certain tube capacity when one or more of such tubes in the set are dummy or fake tubes, or are tubes which perform no useful function, or are tubes which do not perform or were not placed in the set to perform the recognized and customary function of a radio receiving set tube in the detection, amplification and reception of radio signals.

"(l) Advertisements or representations of any radio receiving set, or of any part or accessory therefor whatsoever, in such a manner as deceptively to conceal the true function of such part or in such manner as otherwise to mislead or deceive the purchasing or consuming public in respect to such set or such part or accessory.

"(m) Advertisements or representations stating, purporting or implying that the price of radio receiving sets, parts or accessories therefor so advertised or represented have been reduced or are reduced prices, or have been reduced a certain amount, when in fact such purported or represented price reduction is fictitious, or is otherwise misleading or deceptive.

"(n) Advertisements or representations stating, purporting or implying that radio receiving sets so advertised or represented are of the latest model, when such is not the fact; or advertisements or representations which, directly or indirectly, have the capacity and tendency or effect of leading the purchasing public to believe that the set is of the current year's model or has not been supplanted, superseded or succeeded by a newer or later model; when such is not true in fact; or advertisements or representations which are otherwise deceptive or misleading respecting the model of the set.

"(o) Advertisements or representations of radio receiving sets or prices therefor which deceptively or misleadingly conceal the fact that the advertised price does not cover necessary or advertised accessories or devices which must be purchased with the set at an additional charge; or which falsely or deceptively state or imply that the advertised price covers such accessories or devices, when such is not the fact.

"(p) Advertisements or representations of radio receiving sets which present former prices or so-called list prices which are fictitious.

"(q) Advertisements or representations of purported bona fide trade-in allowances when the price of the new set so offered for sale has been deceptively inflated or marked up to offset the trade-in allowance.

"RULE 4 - Sponsorship: It is an unfair trade practice to use, or cause to be used, advertisements or representations, of radio receiving sets, parts or accessories therefor, or of other products of the industry, which have the capacity and tendency or effect of misleading purchasers or the consuming public into the belief that such radio sets, parts, accessories or products are sponsored or manufactured by, or are otherwise associated with, any person, concern or organization which is or has been prominent or well known in the electrical or radio industry, or by or with any other person, firm, corporation or association, when such is not the fact.

"RULE 5 - (a) Alteration of Brand Name. The defacement or removal of the correct name plate or brand name of a radio receiving set, or the replacement thereof by another name or mark, when done with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public in respect to the origin, manufacture or true name of such set, or in any other material respect, is an unfair trade practice.

"(b) Deceptive Use or Change of Cabinets. The placing of a radio receiving set or chassis in a cabinet designed or made for a set or chassis of a different manufacturer or for a set or chassis of a different size, type or model, when done with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public as to the original, size, capacity, make, manufacture, brand or type of such set or cabinet, or when done to mislead or deceive purchasers in any other respect.

"RULE 6 - The imitation or simulation of the trade-marks, trade names, labels or brands of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public is an unfair trade practice.

"RULE 7 - It is an unfair trade practice for a member of the industry directly or indirectly to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees or representatives of customers or prospective customers, or to agents, employees or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

"RULE 8 - It is an unfair trade practice for any member of the industry, directly or indirectly, to give, pay or contract to pay, to any clerk or salesperson of any customer-dealer handling two or more competitive brands of radio merchandise, 'push money' 'spiffs' or any other bonus, gratuity or payment, as an inducement or encouragement to push or promote the sale of such member's product or products over competing products of other members in the industry.

"(a) with the capacity and tendency or effect of thereby causing the purchasing or consuming public, when making purchases of such products, to be misled or deceived into the erroneous belief that such clerk or salesperson is free from any such special interest or influence, or is not so subsidized or paid by such member; or

"(b) with the capacity and tendency or effect of thereby hampering and unduly restricting the legitimate, free and full use and enjoyment of such retail trade outlets for the distribution to the public of competing products; or

"(c) with the purpose or effect, directly or indirectly, of otherwise substantially lessening competition or unreasonably restraining trade in the marketing of the products of the industry; or

"(d) with the effect of thereby bringing about the granting of an illegally discriminatory service, payment or price contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936, known as the Robinson-Patman Act."

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DOG CHASES "CAT" IN TELEVISION TEST

Television -- now coming into its own -- has drawn upon every existing science for its development and operation, declared Dr. Orestes H. Caldwell, Editor of Radio Today and former Federal Radio Commissioner, addressing the New York Lions Club luncheon at the Hotel Astor this week.

Even the homely art of sic-ing a dog on a cat has been resorted to by the engineers in trying to locate sheat breaks in the coaxial cable used for radio transmission.

In England, a 12-mile underground "coax" cable had been giving trouble, said Dr. Caldwell. After every other test had been tried, the engineers bethought themselves of pumping the hollow cable full of a gas having a strong "cat odor". Then a trained retriever dog was led along the ground for the length of the buried cable, and at 14 points the dog stopped and began pawing the earth, in search of an invisible cat. At each such spot the engineers found leaks and repairs needed in the cable, although buried three feet below ground. In this way the "dog-and-cat" method, although new to electrical engineering, saved incalculable digging.

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FCC MAY SPLIT ON CENSORSHIP RULE

Although it may be a week or two before the outcome of their deliberations may be known, there is an impression that the Federal Communications Commission will be divided in the matter of restoring the rule or a substitute for it requiring that international broadcasts reflect American culture and international goodwill. Prepared to go all the way in fighting a restoration of this ruling, or anything else smacking of censorship on the part of the Commission, is Commander T. A. M. Craven. Commissioner Case might also be counted upon to register opposition.

The other Commissioners smarting under criticism from Congress, the newspapers, and President Neville Miller of the National Association of Broadcasters, it is believed, may try to rewrite the rule or salvage it at least in part so as to avoid the appearance of reversing themselves or of defeat. Again the rule may be thrown out altogether and a substitute offered; but in any case it is thought there may still be quite a difference of opinion among the Commissioners on it. Apparently Commissioners Thompson, Walker, Brown and Payne stand together as a bloc with Craven and Case likely to take the opposite side.

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RADIO CENSORING WOULD BE A SWEET JOB

What trouble the Federal Communications Commission might let itself in for if it undertook to censor international radio programs was gleaned from the testimony of Frank E. Mason, Vice-President of the National Broadcasting Company, in charge of the NBC International Division. Mr. Mason, a veteran foreign correspondent was later an intelligence and censor officer with General Pershing in the A.E.F.

Asked at the short-wave hearing whether he had ever had any of his newspaper material censored overseas, Mr. Mason replied: "I have been censored and have been the censor." Mr. Mason then told at length of his censorship experiences and while he dealt almost entirely with newspaper work, he gave the Commission a pretty good idea of what they would be up against if they undertook to censor radio programs, especially the news.

Mr. Mason was then questioned with regard to other phases of the Commission's much discussed short-wave rule. Asked if it was his primary purpose to reflect the culture of the United States or to create international good-will, Mr. Mason replied:

"We are trying to do an intelligent job but we don't go out every morning and say, 'We are going to try and promote International good-will'. We have selected men whom we believe

will do an adequate job. When the President of the United States speaks we feel that we ought to carry the words of the President to the four corners if it is consistent with the desires of the White House. We don't inquire whether it is going to promote International good-will or not."

"If you had to measure all of your programs by the application of a standard which provided that you should render a service which would reflect the culture of the United States and contribute to International good-will, understanding and cooperation, would it impose any additional burden upon the effectiveness of your service?" P. J. Hennessy, Jr., NBC counsel inquired.

"Well", Mr. Mason replied, "I have listened very attentively to the use of the word 'standard' in this hearing, but I don't know what you mean by 'standard'", the witness replied. He said that the rule under discussion, in his opinion, has all the elements of surveillance and censorship in it.

"Do you ever make any conscious effort to create International ill-will for the United States?"

"No sir", Mr. Mason replied.

"I understood you to say that certain programs may do so incidentally."

"I have five large volumes of clippings from newspapers in two Continental European countries which are filled with clippings showing ill-will which has been created toward the United States from various actions in the United States. We don't feel that our obligation is any different from any other truthful reporter in reporting the actions of the government of the United States., and we don't question as to what the reactions will be."

"Are you of the opinion that in the long run, the broadcasting of truthful news is followed by international good-will?"

"I don't know that the truth is always so pleasant", Mr. Mason countered.

"Then let's say 'truthful news.'"

"Well, what constitutes 'news'?" the witness came back. "We don't call it censorship if we have to do editing and we select as carefully as possible in order to create a truthful picture in the mind of the auditor."

"But you do make the effort?"

"Very distinctly."

Getting back to culture, William J. Dempsey, General Counsel of the FCC, inquired:

"General speaking, your programs have reflected the culture of the country?"

"We have intended, as we understood culture to reflect it", Mr. Mason answered, "but I would hate to have to define the word 'culture', if that is your next question."

"That isn't my next question, Mr. Mason", Mr. Dempsey concluded, "in fact I haven't any more questions."

Asked what place technical testimony given by Dr. C. B. Jolliffe, in charge of RCA frequencies had in the International Short-Wave hearing, Mr. Hennessy said:

"One of the issues involved here is that if the transmission of programs will meet with the affirmative requirement that they cultivate American good-will abroad. It seems to me to be the essence of this proceeding that we show what countries we reach and in doing so what other parts of the world we serve through the use of frequencies that are assigned to us."

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LEMMON DENIES APPROVING FCC HOT-SHOT

Taking issue with the testimony of Neville Miller, President of the National Association of Broadcasters, that he had approved the final draft of the letter which Mr. Miller wrote to the Federal Communications Commission, which stirred up the animals so, Walter S. Lemmon, President of the World Wide Broadcasting Company, denied this vigorously when he appeared before the Commission.

"Did Mr. Miller show you the drafts of letters similar in purport to the one accusing the Commission of censorship?"

"Yes", Mr. Lemmon answered, "some rough drafts. As I recall it, it was a chance meeting with Mr. Miller while traveling aboard a train one evening."

"What were your comments to Mr. Miller, if any?"

"This was a casual meeting and I can't remember the exact comments, but I think I said I felt that one draft was entirely too hot; but I believe I said that the other rough draft was good, but I think I also added that I gravely doubted the advisability of proceeding in quite this manner. I think I recommended to Mr. Miller a conference with the Commission of some sort."

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"Were you consulted in that final draft as it was submitted to the Commission?"

"No", Mr. Lemmon replied. "I had no idea that Mr. Miller was in any way seeking my approval."

"Did you know that it was intended that this letter should be submitted to the press?"

"No", Mr. Lemmon again said with some emphasis.

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DIRECTIVE ANTENNA MIGHT KILL SEVERAL BIRDS

A new angle was raised when Boyd W. Bullock, Assistant Manager of Broadcasting of the General Electric Company, suggested the possibility of a directive antenna enroute, also placing the program in other countries outside the direct path of the beam.

"Do you agree that there may be some programs that are favorably received in some countries but which may have the opposite effect in other country?" Mr. Bullock was asked.

"Just the fact that we are broadcasting uncensored news might have unsatisfactory effects in some countries", was the reply.

"Do you mean then that the broadcasting of uncensored news might create International ill-will?"

"I can see how it might. Of course one has to describe what he means by 'International good-will'. I can conceive how uncensored news might build good-will with most peoples of most countries.

"Under present conditions the parties in power in some of these countries might not be so happy about us broadcasting uncensored news into their countries; therefore we might not be building good-will with the governments but we might with the peoples. One general conclusion from our mail is that people like to get uncensored programs."

Although Mr. Bullock agreed that the rule which the FCC had promulgated which had brought down upon that body so much criticism was a good objective for international broadcasting, he frankly stated that he did not think this objective should be contained in an official rule of the Commission. When asked why, he replied:

"Because if there is such an official rule we must operate under it. In the operation of such a rule, the program content must be examined and an examination of any program content and whatever action may be taken after that examination, that as I see it, constitutes censorship, which the Commission has said that it does not care to indulge in."

Mr. Bullock said in such a rule, those operating the G.E. short-wave station would feel that it would have to take each program and measure that program against each one of the qualifications in the rule.

"You say you 'would have to do that'", Commissioner Paul Walker inquired. "That rule has been in existence for some time. Have you done it?"

"No sir, we have not", Mr. Bullock replied. "We have not changed up to the present time our method of operation since the rule has been in effect."

Asked by Commissioner Craven if he felt qualified to judge what is international good-will and what is not, Mr. Bullock replied, "No, I do not very well."

"Aren't you fearful of the difference of judgment between yourselves and the Commission?" Mr. Craven continued.

"I am not fearful of the difference of opinion; I am just fearful that as a result of it we could be accused of doing something that was wrong when our intention would be to do what was right."

"Well, the fundamental difficulty is the fear of the difference of opinion, isn't it?"

"For fear of not knowing how to comply", Mr. Bullock replied.

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SWITZERLAND SHOWS FIRST TELEVISION

One of the attractions at the Swiss National Exhibition in Zurich is a small television transmitter, specially constructed for the exhibition, and entirely of Swiss origin, according to World Radio. The transmissions, mostly of outdoor scenes, are of good quality. It is the first time television has been demonstrated in Switzerland, and the apparatus is intended primarily to show the achievements of technical engineering, because it is recognized that, for technical - the high mountains present one of the problems - as well as financial reasons, it will be a long time before it is a practical proposition for general use.

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NAB COUNSEL CITES BILL OF RIGHTS AS FCC LIMITATION

The Bill of Rights, as well as the Communications Act, serves as a limitation upon the Federal Communications Commission and in itself would bar the enforcement of the FCC regulation, now suspended, regarding the type of programs that international radio stations may transmit, Swagar Sherley, Special Counsel of the National Association of Broadcasters, declared in the closing arguments at the Commission hearing this week.

"I believe I speak the voice of the sober thinking people of America", he said, "when I say that they do not believe that democracy can be preserved by the Government's denying, even for a good purpose, the very essence of democracy: freedom of expression.

"The vice that underlies this regulation is the old, old vice of believing that any limited number of people given a temporary grant of power are capable of or should be permitted to determine what it is well for the American people to think and say.

"The folly of such a regulation is shown most glaringly when we consider what effect it will have upon the age-old attitude of our government regarding its accountability to other nations for the views and expressions of its nationals.

"Always when protest has been made by another nation because of expressions voiced in their individual capacity by officials of this government, the State Department on behalf of the government has replied that under our system of government it is the right of its citizens freely to speak and print their views regarding all matters, governmental or otherwise, and that there is no power within the government to control the utterances of its nationals.

"When recently the German government saw fit to protest against remarks that had been made by the Secretary of the Interior, this was the answer given by our government. Similarly, when exception was taken to remarks made by the Mayor of New York, the answer was one that while expressing regret that any citizen should have given utterance to criticisms of the ruler of a friendly nation, yet it was not the province of our government and it was without power to undertake a censure of the person complained of, or to prevent a repetition of the incident.

"If, however, the Federal Government is to undertake to stand sponsor for international broadcasts, in that it makes a positive requirement that such broadcasts shall reflect the culture of America and shall be such as to promote international good will and cooperation, then I submit that the Federal Government stands committed to see to it that the broadcasts are so circumscribed and robbed of all vitality as to prevent the giving of offense; and if by chance the judgment of your Honors, as the

governmental agency underwriting the harmlessness of programs broadcast on international waves, should prove faulty, the Federal Government must accept the responsibility for the broadcasts and take disciplinary action to punish the offense and to prevent its recurrence.

"In summary and in conclusion, may I say that it is my position that the Bill of Rights is an express limitation upon every power conferred upon our Federal Government by the Constitution of the United States.

"That Congress, recognizing the limitation in the First Amendment upon freedom of speech, has most emphatically and explicitly declared that this Commission should exercise no form of censorship.

"That all of the powers conferred upon the Commission regarding classification and other matters are by the express terms of Section 326 of the Radio Act made subject to that clause.

"That Rule 42.03(a) is censorship and censorship none the less because of the benevolent intent of the Commission in adopting it.

"We lose sight entirely of the fundamental issue here involved if we accept a disclaimer as to an intent to disagreeably or restrictively enforce a regulation as warranting its enactment.

"We were told during the hearing that the industry should have no concern over the regulation adopted or some substitute for it, because its enforcement would be by reasonable men and without an intent to interpret it oppressively. This is the old, old plea for power sought to be justified by a disclaimer of intent to abuse the power. But I submit as a matter of law that a regulation adopted speaks in its own language and once adopted it becomes the duty and not the option of those charged with enforcement to see to its enforcement.

"It should be a sufficient answer in the realm of practical matters that if the regulation is not to be interpreted as censorship in any way and is not to be enforced, there is no need for it.

"We spent a good deal of time in question and answer as to the form of the regulation. The very fact that after weeks of consideration the regulation took its present form of clear censorship (though that was not the intent of the Commission), indicates the futility of undertaking by a regulation that deals with character of program to express an objective, no matter how worthy, that does not of necessity entail censorship.

"I do not believe that the wit of man is sufficient to enable anyone to lay down a regulation that deals with the subject of program broadcasting in the international field that will not prove upon analysis subject to the same or equally serious criticism as to its restrictive character. Certainly at first blush a

broadcasting that shall promote international good will and co-operation would seem to be one about the purpose of which there would seem to be no dispute. But if this hearing has shown anything, it has shown the futility of such an expression.

"I have spoken in vain unless I have made plain that this whole issue arises from the Commission having, however unintentionally, failed to appreciate the limitations upon its action that arises out of the very philosophy of our government.

"Believe me - and I say it with very deep respect - it is not the function of the Commission to act as guardian of the radio industry. It was not intended by the law of its being that it should be a guardian. Its powers are very great. They tax the wisdom of the wisest men, but they do not embrace this field.

"The Commission has made its mistakes, but when we consider the complexity of the problems that have confronted it in its many fields of activity, I am very loath to criticize; and it should be said that it has had the wisdom and the courage to correct many of these mistakes. I truly believe that it will have the wisdom and courage to correct this fundamental mistake and that it will do so not by undertaking the impossible task of re-phrasing an intent as to the character of international broadcasts, but will content itself solely with the classification as to area to be served under licenses given for international broadcasting.

"Time will justify such a course and the evidence in this case, aside from the question of power which the Commission does not have, demonstrates the lack of wisdom of undertaking to define, generally or generously, the program duties of those who have been licensed in this field."

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ASCAP ISSUES "COPYRIGHT LAW SYMPOSIUM"

The American Society of Authors, Composers, and Publishers this week issued copies of "Copyright Law Symposium", being a reprint of five essays adjudged by a Committee of the American Bar Association as the best among forty prize-winning papers prepared by graduating students of law schools participating in the 1938 Nathan Burkan Memorial Competition.

The Nathan Burkan Memorial Competition was inaugurated in 1938 in memory of the General Counsel, who died in 1936. The purpose of the competition, according to the foreword, "is to encourage careful and impartial study of copyright law, analysis of the need and justification for, the public benefit from, and the wise public policy of enacting such a law."

All law schools were invited to participate in the contest. Forty did so in 1938 and 76 have entered the 1939 competition. An award of \$100 is paid to the student in each class who prepares the best essay.

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