The National Association of Broadcasters

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NOTICE TO DELINQUENTS!

Formal notice is bereby given to all NAB members who have not paid dues for the Fourth Quarter of 1934 (or wbo were in arrears prior to October 1) that unless all dues due and payable are paid on or before November 27, 1934, they will be dropped from the membership rolls of the Association and tbeir membersbip forfeited in accordance with By-Law 11 which reads as follows:

"The membership of any broadcasting station, individual, firm, corporation, the dues for which have not been paid within a period of three months shall thereupon be automatically forfeited, provided fourteen days' notice thereof be given in writing to such delinquent broadcasting station, individual, firm or corporation and such forfeiture shall operate as a forfeiture of all rights and claims on the part of such member to any portion of the assets of the Association."

Members in arrears in dues may not resign until the total amount due is paid.

The purpose of this notice is that the NAB will shortly publish a new membership directory which will include only members in good standing as of the date of publication.

It is being urged that a list of members dropped for non-payment of dues be published in NAB REPORTS, and that the NAB insignia be removed from the rate listing in Radio Advertising (Standard Rate and Data).

PLEASE CHECK YOUR RECORDS!

Every member of the NAB whose dues were not paid up to date on November 1 has received an invoice from tbe Association. You are urged to cbeck your records to see whetber or not this invoice has been paid. We do not want to drop from the rolls any member because of misunderstanding or mere neglect. But at the same time the rule laid down in By-Law 11 must be applied without discrimination. Please make a check-up and if you have overlooked payment, send in your check before November 27, 1934.

NAB FACES HEAVY PROGRAM

The NAB faces the heaviest program of its history. The resolutions adopted at the membership meeting, the general hearings before the Federal Communications Commission, the copyright litigation, and the coming to Washington next January of a new Congress create new demands upon the Association. In tbe meantime the growth in membership to nearly 400 members has increased enormously the routine duties at the headquarters office.

The NAB must go forward or backward. It cannot stand still. To go forward demands that each and every member do his part.

The new dues system adopted at Cincinnati is working splendidly. It remains now to trim our sails and go forward with full speed ahead.

REORGANIZATION OF OFFICE WORK

The creation of new services to members called for under resolutions adopted by the membership at the Cincinnati meeting will require a reorganization of office work at NAB headquarters.

Reorganization plans are now being worked out and the engineering and commercial activities are being divided between J. C. McNary and Dr. Herman S. Hettinger. The latter has obtained a leave of absence from his teaching duties at the University of Pennsylvania to assist in developing an agency recognition and credit service and the creation of a central bureau for the coordination of listener and coverage surveys. He will also have complete charge of the statistical and research services and will devote a part of his time this winter to the preparation of a manual on retail radio advertising. Mr. McNary, who recently returned from the International Technical Consulting Conference at Lisbon, Portugal, will complete the NAB Operators' Handbook and other projects initiated by the Engineering Committee.

Mr. McNary has been appointed Technical Director of the Association and Dr. Hettinger has been appointed as Research Director. Their work will be coordinated with the policies laid down by the Engineering and Commercial Committees of the Association.

CLEAR CHANNEL CONFERENCE HELD

On invitation of the Broadcast Division of the Federal Communications Commission, 40 representatives of clear channel licensees met in the Commission's offices Friday, November 9, to discuss plans for a survey of broadcasting service in the United States.

The Commission, acting on a petition of KFI and several other clear channel licensees, proposed in its statement of October 30 that a complete survey of service rendered by clear channel, regional and local stations be made during the coming winter months and extending into the next spring season.

The tentative plan as suggested by the Engineering Division of the Commission involves four lines of endeavor, as follows: (1) Continuous field intensity recordings of clear channel stations, tbe records to be made at distances varying from 1000 to 3000 miles; (2) An analysis of duplicated clear channels (sucb as 790 kilocycles occupied by WGY and KGO), with complete determination of radiation characteristics of the individual stations as well as determination of the field intensities and service rendered in the areas between stations; (3) Field intensity measurements made in rural districts throughout the United States with correlation with listener habits as determined by personal investigation, and (4) Listener habit survey of rural audiences to be conducted by mail, by the Commission.

It is planned that individual stations may participate in the survey, although all data will be co-ordinated and compiled by the Commission staff. It is understood tbat the survey is not definitely limited to clear channel measurements, but may include measurements, in some cases, of service rendered by regional and local stations.

Among the stations which offered cooperation in the form of field intensity measuring or recording apparatus, trucks, personnel, etc., were WSM, WSB, WLW, WGN, WSPD, KYW, KFI, WJR, WWL, WFLA, KNX, WHAM, WCAU, WFAA, WSB, WGY, WLS, WOAI, Yankee Network and Jansky & Bailey.

Another meeting of the group is scheduled for Friday, November 23, at the Commission's offices in Washington.

CCIR DELEGATES RETURN

During the past week nearly all the United States delegates and company representatives to the third meeting of the CCIR at Lisbon returned. Dr. J. H. Dellinger, chairman of the delegation, and most of his staff landed in New York from tbe SS Manhattan last Thursday, while J. C. McNary, NAB representative, and several others landed at the same time from the SS Saturnia.

The United States delegation was successful in many of its efforts to prevent tbe adoption of opinions by the conference wbich might not have been in complete agreement with our present practices. Our delegation had very little of a constructive nature to gain at the conference, but was vitally interested in a number of proposals which were considered by the various interests affected, as objectionable. No opinions were adopted on the subject of broadcasting which could be considered not in accord with present U. S. practices, although some of the original proposals were somewhat at variance with our position.

Among the subjects discussed, resulting in formal opinions, were single side band transmission for broadcasting, directive antennas, anti-fading antennas, frequency separation between broadcasting

channels, short-wave broadcasting channels, wave propagation curves for all frequencies including broadcasting frequencies, receiver stability and selectivity characteristics, synchronized broadcasting, and standard frequency transmission. A number of other subjects were considered and resulted in additional formal opinions thereon.

The United States representation was characterized by almost complete agreement among the several delegates and company representatives on nearly all subjects. An exception was that of single side band transmission for broadcasting, which received the unexpected support of the AT&T Co., although vigorously, and successively, opposed by the NAB.

EDUCATIONAL HEARINGS CONTINUE

General hearings on the proposal that Congress shall by statute allocate a fixed percentage of broadcast facilities to non-profit groups were resumed this week and will be continued on Monday. The hearings have been in progress since October 1, with an interruption during the period which the Commission heard testimony on applications involving the 640 kc. channel.

Briefs will be due about 15 days after the hearings are closed and copies of the NAB brief will be sent to all NAB members.

CINCINNATI MINUTES BEING PRINTED

Proceedings of the Twelfth Annual membership meeting of the NAB held at Cincinnati, Ohio, last September are now being printed. One copy will be sent to each active member of the NAB. Additional copies will cost $4.00 each.

NEW IDAHO STATION RECOMMENDED

H. E. Studebaker applied to the Federal Communications Commission for permission to erect a new broadcasting station at Lewiston, Idaho, to use 1420 kilocycles, unlimited time and 100 watts power. George H. Hill(e) in Report No. I-12, recommends that the application be granted.

The Examiner found that the applicant is qualified to construct and operate the proposed station, that there is adequate talent available, that Lewiston and its vicinity are now inadequately supplied with radio facilities, and that "no objectionable interference would be caused from the operation of the proposed station to the service areas of any radio stations now licensed."

KWKH APPEAL DENIED BY COURT

The United States Court of Appeals for the District of Columbia has handed down decisions denying two appeals filed by T. G. Roberts involving decisions made by the Federal Communications Commission in the case of Station KWKH, Shreveport, La., and WWL, of Loyola University, on the ground that he was not the proper party to bring the appeals.

Roberts filed his appeals from a decision of the Commission of July 6, this year, sustaining the motion by the International Broadcasting Corporation to dismiss protests filed by Roberts to the granting of applications of the International Broadcasting Corporation for modification to change the frequency of KWKH.

The Court, on motion of the Commission, dismissed Roberts' appeal, on the ground that he was not the proper person to bring the appeal.

SECURITIES ACT REGISTRATION

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

Sigua Manganese Corporation, New York City. (2-1117, Form A1)
Acker, Merrill & Condit Company, New York City. (2-1161, Form A-1)
Tahoe Treasure Consolidated Mines. (2-1162, Form A-1)
Pathfinder Gold Producers, Inc. (2-1164, Form A-1)
Shafter Mining Company. (2-1165, Form A-1)
Delta Oil Company, Inc. (2-1166, Form A-1)
Wee Investors Royalty Company. (2-1167, Form A-1)
Chemical Service, Inc. (2-1168, Form A-1)
Whealton Company, Inc. (2-1169, Form C-1)
Whealton Company, Inc. (2-1170, Form C-1)
Whealton Company, Inc. (2-1171, Form C-1)
Whealton Company, Inc. (2-1172, Form C-1)

ASCAP FILES ANSWER TO U. S. SUIT

The American Society of Composers, Authors and Publishers, et al., on October 31 filed in the District Court of the United States for the Southern District of New York their answer to the anti-trust suit filed by the U. S. Government on August 30, 1934 (see NAB Reports, Vol. 2, No. 43). The answer in complete text follows:

Defendants American Society of Composers, Authors and Publishers (hereinafter referred to as the "Society"), and the defendants Gene Buck (sued herein as Eugene Howard Buck) and Louis Bernstein, officers and directors of said Society, and E. Claude Mills, General Manager of the Society, and the following named defendants, to wit:

A. B. C. Standard Music Pub. Co.
Belwin, Inc.
Irving Berlin, Inc.
Bibo-Lang, Inc.
Century Music Publishing Co.
L. B. Curtis
Joe Davis, Inc.
DeSylva, Brown & Henderson, Inc.
Donaldson, Douglas & Gumble, Inc.
J. Fischer & Bro.
Galaxy Music Corp.
Hatch Music Co.
R. L. Huntzinger, Inc.
Walter Jacobs, Inc.
Kay & Kay Music Pub. Corp.
Kornheiser-Schuster, Inc.
Leo Feist, Inc.
Olman Music Corp.
Photoplay Music Co.
Santly Bros., Inc.
Schroeder & Gunther, Inc.
Southern Music Pub. Co.
Robert Crawford
Walter G. Douglas
George Fischer
Lester Santly
Miller Music, Inc.
Mills Music, Inc.
Jack Mills
Shapiro, Bernstein & Co.
Louis Bernstein
Will Von Tilzer
Broadway Music Corp.
Otto Harbach
Emil Ascher, Inc.
Sherman, Clay & Co.
Alfred Music Co.
C. C. Birchard & Co.
Boston Music Co.
Ted Browne Music Co.
Harold Flammer, Inc.
Forster Music Publisher, Inc.
Milton Weil Music Co.
White-Smith Music Pub. Co.
Willis Music Co.
Clarence Williams Music Pub. Co.
B. F. Wood Music Co.
Saul Bornstein
Edgar Leslie
Paull-Pioneer Music Co.
Melrose Bros. Music Co., Inc.
Walter Donaldson
Harry Warren
Handy Bros. Music Co.
F. B. Haviland Pub. Co.
Kendis Music Corp.
Manus Music Co.
Joe Morris Music Co.
Will Rossiter
G. Schirmer, Inc.
Edgar Leslie, Inc.
Edward B. Marks Music Corp.
G. Ricordi & Co., Inc., of N. Y.
Max Winkler
McKinley Music Co.
Harry Von Tilzer Music Publishing Co.
Carl Fischer, Inc.
Jenkins Music Co.
Lorenz Publishing Co.
Rubank, Inc.
Villa Moret, Inc.
Jerome Keit
Walter Fischer
Oley Speaks
Sigmund Romberg
George W. Meyer
Skidmore Music Co., Inc.
Irving Caesar
Harry Engel
Denton & Haskins Music Publishing Co., Inc.
Gustave Schirmer
Sonneman Music Co., Inc.

who are members of said Society, reserving to themselves all rights of exception to the petition, answering thereto by Nathan Burkan, their attorney, deny that they have created a monopoly or attempted to create a monopoly, or have restrained or attempted to restrain trade or commerce, or have in any way violated the Anti-Trust Laws, and further deny that the alleged agreements complained of, or any of the alleged acts thereunder, were unlawful:

I. Deny each and every allegation contained in paragraph "3," and aver that the defendant Music Dealers Service, Inc., has no office at 619 West 54th Street, Borough of Manhattan, New York City, nor at any other place.

II. Deny each and every allegation contained in paragraph "5," except that they admit that the persons named and described therein, other than the defendant E. F. Bitner, are holding the specific offices and positions either in the Association or in the Society mentioned and described in such paragraph, but aver that none of the persons named and described in such paragraph is a director, officer, agent or servant of the Service Corporation, and has not been such since prior to the commencement of this suit.

III. Deny each and every allegation contained in paragraph "6."

IV. Deny each and every allegation contained in paragraph "7," and aver that the Society has not created a monopoly and has not attempted to create a monopoly, and has not attempted to restrain and has not restrained trade or commerce, nor has it in any way

violated the Anti-Trust Laws; that neither the alleged agreements nor any of the acts complained of were unlawful; and aver, on the contrary, that the Federal Trade Commission, the Department of Justice and various Patents committees of Congress, as well as the Federal and State Courts, have, for many years, declared by decision and other acts, that the Society was engaged in the lawful and legitimate enterprise of suppressing piracy of the incorporeal and intangible right of public performance for profit secured by its members in their musical works under the Copyright Laws of the United States, and of granting licenses for and in behalf of its members to purveyors of public amusements for profit desiring to publicly perform for profit the duly copyrighted works of its members.

V. Deny each and every allegation contained in paragraph "8," except admit that the defendant Society has its principal office in and directs its business in the Southern District of New York, and avers that the defendant Service Corporation has no office or principal place of business nor does it do any business from any place; that such corporation has ceased and discontinued its activities, business and operations and that the directors of such corporation voted to dissolve the same prior to the commencement of this suit.

VI. Deny each and every allegation contained in paragraph "9," except admit that the defendant Society, an unincorporated association, was organized on the 13th day of February, 1914, by a group consisting of ten leading composers and authors and four prominent publishers of musical compositions in the United States, for ninety-nine years from the date of its organization, for the purposes and objects defined in its articles of association and by-laws; admit that the membership of the Society at the time of the filing of the petition herein consisted of approximately one hundred and two publishers and seven hundred and seventy-eight composers and authors; that the Board of Directors of said Society consists of twenty-four persons, twelve of whom represent publisher members and twelve of whom represent composer and author members; that each director is elected to serve first, for a period of one year, and if reelected, for a period of two years, and if again reelected, for a period of three years; that the terms of office of eight members of said Board expire each year and their successors are elected annually by the remaining members of the Board; that admission to membership in the Society is by election thereto by the Board; that since November, 1921, each member upon admission must execute an agreement granting to the Society the exclusive right to license for a limited period the non-dramatic public performance of such members' musical compositions:

> Of which such member is a copyright proprietor; or
>
> Which such member, alone or jointly, or in collaboration with others, wrote, composed, published, acquired or owned; or
>
> In which such member has any right, title, interest or control whatsoever, in whole or in part; or
>
> Which may be written, composed, acquired, owned, published or copyrighted by such member alone, jointly, or in collaboration with others; or
>
> In which such member may have any right, title, interest or control whatsoever, in whole or in part—all as expressly provided in such agreements;

that the term covered by the first such membership-agreement was for a period of five years from January 1, 1921; that the second such term was for a like period of five years commencing January 1, 1926, and that the third term covered by such agreement was for a like period of five years commencing January 1, 1931, and that the present agreement between the Society and its members, a copy of which is attached to the petition and marked Exhibit "A" and expressly made a part thereof, expires on December 31st, 1935.

Further answering paragraph "9" of the petition, defendants aver that prior to 1914 it was the universal practice throughout the United States on the part of proprietors of places of public resort operated for profit (hereinafter for brevity called "users") to perform publicly for profit duly copyrighted musical works without the let, leave or license of the composers and authors (hereinafter referred to as "writers") of such works and the publishers thereof, to the great and irreparable injury, detriment and damage to such writers and publishers, and frequently in ruinous competition with the stage performances of such works, which were written or produced under an arrangement between the writers and theatrical managers and producers, and from which performances such writers derived royalties, remuneration or other direct compensation; that such writers were and are men of very modest and humble means, who relied for the support of themselves and their families solely upon the royalties derived by them from the performance of such works on the legitimate stage and from the publication of such works in sheet music form and their reproduction in the form of phonograph records and music rolls.

Throughout the length and breadth of the nation, in nearly every hotel, restaurant, motion picture theater, vaudeville theater, cabaret, dance hall and other place of public amusement, the most successful works of American authors were seized and appropriated and publicly performed for the profit of the proprietor of such establishments in violation of the copyrights of the author of such work, and in destruction of their value for use in legitimate attractions, wherever such author derived a royalty, revenue, or other compensation; that such author derived a royalty, revenue or other compensation; that such illegal performances were fugitive, fleeting and momentary and multiplied in every part of the United States, and the illegality of such performances was extremely difficult to establish and prove unless a trustworthy and responsible person located in the vicinage where such illegal performance took place was on hand to witness and hear the same and could notify the infringer of his wrongful act, coupled with a demand that he cease and desist from such further unlawful use of such work; that in order for an individual to protect his lawful rights against infringement by this means, it would have been necessary for him to maintain an inspection service at more than thirty thousand different establishments located in practically every city in the United States, which was wholly impossible; that all composers, authors and publishers, both of the United States and of other countries, were the victims of such unlawful practices. In an evening's performance, the works of many authors, composers and publishers, both American and foreign, were combined in a program and pirated.

Prior to the organization of the Society and since, it has been the uniform and invariable custom of the users to invade and infringe the rights of musical copyright owners in every case and without exception unless and until the Society, in behalf of its members, took measures to discover, report and aid in redressing infringements or, as the alternative in behalf of its members, license the legal use of their works.

After twenty years, the amusement field is honey-combed with establishments by the hundreds as yet unapprehended in their violation of the rights of composers and authors. Throughout this period of two decades since the organization of the Society, there have been less than a dozen voluntary applications for the license to publicly perform duly copyrighted musical compositions owned by members of the Society. In almost every case, with so few exceptions as to make them the proof of the rule, amusement establishments have been habitual infringers until halted by the Society.

The users were organized into trade associations whose chief objects were to resist the demands of music writers and publishers that their performing rights be recognized and respected, and to defend by the paid counsel of each such association those of their members who might be sued for piracy.

With the development of powerful, rich, and influential trade associations of users of such performing rights, the individual unorganized music writer and publisher was helpless to prevent the piracy of his works and could not obtain just, fair, and reasonable compensation for the public performance of his works by others for profit.

Under the pressure of these economic conditions a group of composers which included Victor Herbert, Irving Berlin, Silvio Hein, William Jerome, Gustav Kerker, John Golden, Glenn McDonough, Gene Buck, Ernest R. Ball, Raymond Hubbell, James Weldon Johnson, Louis A. Hirsch, Henry Blossom, and others, with a very few publishers, organized on the 13th day of February, 1914, the American Society, principally for the protection of writers and publishers of musical works against the infringement of their performing rights in their copyrighted works in all countries of the world, and for the granting of licenses for and on behalf of its members to perform for profit such works and to collect royalties for such licenses; that the membership of the Society was and is limited exclusively to and is composed entirely of composers, authors and publishers of musical works; that the royalties collected for and on behalf of the members by the Society from licenses to play the works of its members are distributed among its members exclusively in accordance with a scheme of allotment of royalties provided for in its Articles of Association.

That a part of the royalties accruing to the members of the Society collected from the users and from commercial broadcasting stations is, pursuant to the articles of association, devoted to the support and maintenance of the widows and orphans of deceased members, and of members that have become indigent, infirm, aged and decrepit, and that since the formation of the Society no author or composer of music has been buried in a pauper's grave or permitted to famish, or his family to famish, which conditions existed prior to the formation of the Society while the users were capitalizing and using his works for their unjust enrichment and advantage.

The Society does not consider its expenditures in this department as a charity to those who receive the money. In every case, they are persons, or the dependents of persons, who wrote or composed great musical works that enjoyed wide popularity and brought pleasure to the millions while affording the stock in trade of public amusement enterprises. Stephen Foster was perhaps the greatest songwriter that America ever produced. He wrote the real folk-songs of the old South. "My Old Kentucky Home," "Old Black Joe," "The Old Folks at Home" (Swanee River), "Oh! Susanna," and "Sweet Genevieve" are but a few of the songs given by him to the American people and the world. He made a tremendous contribution to the happiness of humanity. He died a pauper. He was never a member of the Society and he never received a cent from any public performance of his works, and the copyright on those works has long since expired. None the less, the Society has felt that his contribution was so real and his service so great to the users of music, even now in our day, that it has afforded financial assistance to his only living relative known to be in dire need thereof. The Society during the last years of the life of George Cooper, the only collaborator Stephen Foster ever had and who, with him, wrote "Sweet Genevieve," made him financially comfortable. Likewise, the Society today, every day, extends financial aid in the payment of life insurance premiums, the saving of homes from foreclosures of mortgages, the payment of hospital bills, the succor of the living and the burial of the dead; grants its aid to those who have written or are dependent upon the writers of successful musical works that have contributed tremendously toward the profitable operation of public amusement enterprises. None of these people ever received or ever would have received a dollar from the users and commercial broadcasters who prospered commercially because of the use of the works resulting from the creative genius of these people and their ilk through the world.

The defendant Society was organized under the necessities of the situation arising out of the new style of entertainment offered to the public. There was introduced a species of entertainment in restaurants, hotels, inns, and other public resorts, which was advertised as an inducement to the public to patronize these places under the names of "cabarets," "tea dansante," "after-theatre revues," "midnight revues," "dinner dancing," "dinner and music" and similar slogans to acquaint the public with the fact that a musical program was the distinctive feature and main attraction of the establishment. While no special admission fee was charged for these entertainments, it was expected that those who patronized them would purchase food and drink. In some establishments "couvert" or other charges were added to the patron's check. The patrons paid for the entertainment by a direct or indirect charge, and the entertainment was given for direct or indirect profit.

The cabaret or revue entertainment consisted of the rendition of music and the singing of songs and dancing to the accompaniment of music. In some of the establishments, the performances were given in make-up and costume, and on a platform or stage. The entertainment was advertised in the daily newspapers in the same manner, mode and means as regular legitimate attractions playing at first-class theatres, which paid the authors and composers a licensee fee or royalty for the use of the authors' and composers' works.

In its most developed form, the cabaret or revue is a regular show, with appropriate intermissions indicated by a suspension of action instead of lowering a curtain.

Cabaret, motion picture and vaudeville shows and revues were presented in nearly every city in the United States, the dominant, distinctive, and principal features of each such entertainment being the vocal and instrumental numbers of the current grand and comic operas, musical plays, as well as standard and popular compositions.

A leading and attractive feature of the larger hotels in the United States was the orchestra and the musical and dance programs.

Dance halls which relied entirely for their operations upon music sprang up like mushrooms in every part of the United States. A direct admission fee was made at the door of these dance halls; in some instances there was a hatcheck, in others, a specific charge of so much per dance.

Motion pictures were coming into prominence as a form of entertainment, and theatres devoted exclusively to the showing of motion pictures were erected in every city and town and village in the United States, and, of course, music and musical attractions played a very important part in such class of entertainment.

All these places of public entertainment were dependent almost entirely for their success upon the songs and instrumental numbers of the composers, authors and publishers. But no proprietor expressed a willingness to, nor did he pay a fee, royalty, or other compensation to the owners of the works. On the contrary, proprietors of these resorts helped themselves to the current works without the leave or license of the copyright proprietors, completely ignored them and their statutory rights in their property, upon the ground that musical performances given by them were not for profit, because they were given without direct admission fee, or that music was merely incidental to the operation of the premises, and for that reason the performances were not subject to the control of the copyright proprietor.

The writers and publishers realized that their works were capitalized by other and were used for profit, and not only that, but in some instances the performances were in direct competition with those given by legitimate theatrical managers who did pay performing royalties to the writers whose works were used. The creators of these works justly felt that they were entitled to participate and share in a modest way in the profits and revenues made possible by the exploitation of their works.

A single writer or publisher was helpless in dealing with these infringers for the following reasons:

As an individual he could not protect his rights as against the tremendous commercial enterprises who would appropriate it to their use without any compensation to him.

The several groups of users of music were organized in trade associations and were prepared to use the resources of their organizations in resisting the effort of any individual composer to enforce his performing rights, while the composers and publishers were mostly men of humble and moderate means who were not able, singly, to bear the expense of ascertaining and investigating the piracies of protracted and numerous litigations.

Moreover, the use made of copyrighted music in these places was in the form of musical programs in which the works of a number of composers were combined.

The performances as a rule were ephemeral, fleeting, and fugitive, and unless the infringement was detected and established the moment it occurred, proof thereof was well-nigh impossible.

A single entertainment amounted to a composite infringement of a number of compositions of several composers. In the course of a year, the proprietor of a single establishment would violate the rights of hundreds of composers and copyright proprietors, and each of these was a victim of a number of piracies.

Piracies were committed in numerous establishments and in various parts of the United States, and the expense of locating and securing evidence of the piracies was prohibitive for the individual writer or publisher. Separate actions for each act of piracy would involve a multiplicity of litigations.

The piratical practice, having in this way a collective effect, collective and protective action by the writers and publishers was natural and necessary.

There was this further element to urge organized action. The practice grew in leaps and bounds. The resorts where musical works were performed extended to every city and to every part of every city. Motion picture theatres added musical programs to their performances, and their number grew so fast that in a few years the industry connected with motion picture shows became one of the largest industries in the United States, in fact there were some 2,800 theatres in operation by 1921. At the present time there are over 15,000 such theatres.

In many motion picture theatres vaudeville has been displaced by a form of musical and dramatico-musical presentation that runs in competition with legitimate productions. The stage performance often takes an entire hour and such stage performance is advertised in many instances as the main attraction at such motion picture theatres. Indeed, many patrons of motion picture theatres attend merely for the musical presentation.

The box office receipts of some of these theatres has averaged over $100,000 for a single week.

In addition to the competition which these motion picture theatres have set up as against legitimate performances, many regular theatres have been converted into co-called cabarets or night clubs, giving regular ambitious stage performances in the same manner as, and in competition with, legitimate theatres.

In view of the multitude of places where his rights were being infringed, it was impossible for an individual composer to ascertain and prosecute even a small number of the piracies.

Without the collective action of at least a certain number of writers and copyright proprietors, the performing rights secured by the copyright law remained without effective protection. It became evident that unless composers and copyright proprietors organzed in sufficient number to provide mutual aid and the necessary funds for the protection of their rights against an army of pirates, most of whom were banded together in trade associations for the express purpose of making piracy a safe practice, all the

rights granted by the law to copyright proprietors would be nullified.

Furtbermore, an organization of the composers, authors, and copyrigbt proprietors was necessary to meet the needs of tbose establisbments which, discovering tbat tbe intervention of the Society made piracy an unsafe practice were willing to pay compensation for the use of tbe works.

No place of public amusement could carry on its musical entertainment by confining its program exclusively to the works of a single composer. Programs had to be attractive, pleasing, international and diversified, and to present the current songs and instrumental numbers that were in vogue or were tbe reigning "hits" of the day—tbose tbat had received popular acclaim, or appealed to the wbims, taste and fancy of tbeir patrons.

A dance hall required an average of 81 tunes for its nigbtly program and tbe otber places of public entertainment from 15 to 35 separate and distinct numbers of different composers. In other words, tbe program, to be entertaining, had to be composite.

Another element wbicb made the organization necessary was the hardsbip and inconvenience tbat would be imposed upon users and commercial broadcasters in their efforts to secure the consent of tbese writers and proprietors wbose works they wisbed to include in tbeir programs. Writers and publishers were scattered throughout tbe United States and in foreign countries. There would be certain difficulties in locating tbe proprietors of sucb works. Then there would be the endless haggling and bartering over the amount of royalty or license fee payable for a number or group of numbers. All sorts of factors would bave to be taken into consideration in fixing a reasonable royalty. Tbere was also the question of time in carrying on and conducting negotiations. It was obvious tbat it was to the advantage of resort proprietors, writers, and owners of musical works that a large group or body of writers and copyrigbt owners should have an organization to represent tbem as a unit in dealing witb users located in various parts of the United States, particularly when the users would eventually bargain for tbe rigbts collectively througb their respective trade associations.

Tbe value, botb to the author, composer and publisher, as well as to tbe users and commercial broadcasters, of sucb an organization was proven by the experience abroad. Similar societies had been organized and were functioning in England, France, Italy, Austria, and Germany.

In France, in January, 1851, there was organized a society known as "Societe des Auteurs, Compositeurs et Editeurs de Musiques," the purpose of wbicb was to protect composers, authors, and publisbers of musical works against piracies of any kind, and to grant licenses and collect royalties for the public performance of the works of its members. That society conducted its operations and activities to the mutual advantage of all parties interested, and said French society served as the model for the defendant Society.

Under tbe scbeme of organization of the Society, the publisber did not and does not now enjoy any right in tbe work superior to tbat of tbe composer and/or author thereof, in so far as the Society is concerned. The writer and the publisher shared and now sbare equally in tbe royalties or license fees derived from tbe exploitation of tbe performing rights.

From the outset tbe users of copyrighted music refused to recognize tbe society or its demands. Tbe national, state, and city associations representing tbe users of copyrigbted music informed the society tbat tbey would and did actually resist to tbe utmost any attempt to prevent tbeir members from using copyrigbted songs belonging to members of tbe society, and that they would under no circumstances permit any of tbeir members to take out licenses from the society or treat witb it in any way.

The activities of tbe society were but sbort-lived and they came to a dead stop in the winter of 1915, with the handing down of the decision in the case of Jobn Church Co. v. Hilliard Hotel Co. (221 Fed. 229). It was tbere beld tbat tbe playing of copyrigbted musical numbers in a botel dining room where no direct admission fee was made for the performance was not an infringement of the copyright.

Tbe suit was defended by the Hotel Men's Association, through its paid counsel.

This sweeping victory heartened the users and more than ever proved the necessity for an organization sucb as tbe defendant society.

Victor Herbert, a distinguished American composer, bad written, in collaboration with others, an operetta entitled "Sweethearts," under a royalty agreement with a firm of theatrical managers of approximately 6 per cent of tbe gross receipts—3 per cent for Victor Herbert and the balance for the book and tbe libretto writers. The play was produced at tbe Liberty Theatre, Forty-second Street near Broadway, in New York City, with an expensive cast and chorus, and appropriate scenic investiture running up into many thousands of dollars. Shanley's Restaurant, located at Broadway and Forty-fourth Street, in New York City, was an outstanding rendezvous for New York nigbt life. It presented nightly a cabaret entertainment, tbe leading feature of wbich was the musical number "Sweethearts" which had proven itself tbe success and hit number of Herbert's operetta.

The number was performed in this cabaret on a stage by actors in make-up and costume, accompanied by an orchestra, and in all respects was competitive with that given in the Liberty Theatre.

As similar infringements were taking place in otber cabaret and similar shows in tbe United States, and as the successful numbers of various legitimate attractions were tbus sung, danced to, and featured in cabaret entertainments, the society determined to protect Herbert's property, in accordance with its articles of association.

Thereupon, on the 14th day of April, 1915, the society's counsel commenced an action on bebalf of Victor Herbert in the United States District Court, Southern District of New York, against the Shanley Company. The bill was dismissed (222 Fed. 344), and the dismissal was affirmed by the Circuit Court of Appeals (Second Circuit), (229 Fed. 340), but it was reversed by tbe Supreme Court of the United States on tbe 22d day of January, 1917 (Herbert v. Sbanley Co., 242 U. S. 591). The expense of tbis suit was borne by all the members of the Society. Herbert alone could not have carried it to a successful conclusion.

The natural effect of tbe decisions of the district court and circuit court of appeals was to encourage and stimulate the users to make every conceivable use of musical works of composers and publisbers.

Shortly after the Supreme Court's decision in Herbert v. Sbanley representatives of tbe New York City Hotel Men's Association (comprising practically all the New York hotels) bad a conference with representatives of the Society, with a view of arranging for a scbedule of rates to be paid by tbe hotels for tbe privilege of playing tbe numbers of the members of the society. Tbe rates proposed by the hotel men themselves were then and there accepted by the society.

The botel men's association, in 1924, at the Senate Committee hearings on the bill to exempt radio broadcasting from copyright (Senate bill, 2600), indorsed the reasonableness of tbe rates cbarged by the Society and the fairness of its policy.

The motion picture theatre proprietors through their trade associations refused to accept the decision in Herbert v. Shanley as applicable to the playing of copyrighted music in motion picture theatres. They declared that no direct admission fee was charged for hearing the music; that the music was incidental to the entertainment.

The Motion Picture Exhibitors League of America, a trade association of motion picture exhibitors, adopted a resolution as follows:

"That the organization undertake the legal defense of any exhibitor against whom infringement action is brought by the American Society of Composers, Authors, and Publishers, to apply to non-members as well as members."

This organization was prepared to defend not only infringement committed in its own ranks, but by outsiders. A defense fund was raised by such exhibitors for such purposes, and every exhibitor was asked to contribute $3.00 witb wbicb to defend tbe infringers.

The challenge of the Motion Picture Exhibitors League was accepted by the Society and its counsel brought a test suit against a member of that organization, i. e., Raymond Hubbell, a composer, against Royal Pastime Amusement Co., a motion picture exhibitor, for playing Mr. Hubbell's song, "Poor Butterfly," the feature hit of the current New York Hippodrome production, from which Hubbell had been deriving a performing royalty.

Judge Mayer, in a decision rendered May 31, 1917, 242 Fed. 1002, held that the copyright law applied to motion picture theatres.

The Motion Picture Exhibitors League retaliated by bringing an action at its own cost and expense and witb tbe aid of counsel supplied by it, in tbe name of one of its members, the One hundred and seventy-fourth Street and St. Nicbolas Amusement Co., against George Maxwell, as president of the Society, and its directors, to restrain the Society from conducting its operations, carrying on its activities, from acting in concert to suppress piracy and from using the funds of the defendant's Society in furtherance of its objects, and enjoining its officers and directors from meeting for any purpose to act in combination or concert, upon the ground that the defendants were a monopoly in restraint of trade.

The decision of Judge Goff, in that case, rendered on April 4, 1918, is as follows (169 N. Y. Supp. 895):

"After considering the arguments of counsel and their briefs, I am of the opinion that the defendant association is exercising only its lawful rights. It existed before the incorporation of the plaintiff and was engaged in the same general work before the plaintiff's existence. The association is formed for lawful purposes, and I find no exercise of any coercion. The institution of legal actions by individual members of the association for violation of copyright is justified for the protection of income from their music. Plaintiff wishes to use the product of the author's labor, ignoring copyright, free of any charge whatever, except the actual purchase price of the printed musical score. *There is no restraint of trade through any act of the association.* Plaintiff may use any music not the property of the members of the association without objection by the association. The only restraint on plaintiff is the possible right of the authors or owners of such music to prevent its use. The moving picture exhibitors have spent thousands of dollars advertising music which may be used by orchestras, irrespective of the wishes of the defendant association, or its individual members. The fact that the music of the authors who are members of the association is popular and in demand presents just so much more reason why it should be protected, and its unauthorized use at public entertainment given for profit prevented. Practically the exhibitors of moving pictures seek to obtain by injunction the right to publicly perform copyrighted musical compositions for profit, without a consent of the holder of copyright, and without compensation to him."

On May 24, 1917, a schedule of rates for motion picture houses was established by the Society.

At the time this schedule of rates was adopted the Motion Picture Exhibitors' League refused to treat with the Society or recognize it in any way, and it refused to treat with the members individually. There was not the slightest hint as to what amount the exhibitors' league and its members would consider a reasonable license fee. There was no fee that they deemed reasonable. The exhibitors did not propose to pay any fee. They wanted to use the works of the members of the defendants' society without any pay and without asking permission of the copyright proprietors. The situation then existing now applies to the case of every user of copyrighted music who prefers to be an infringer rather than a licensee of the copyright proprietors. The average rate was on the basis of 10 cents per seat per year.

In March, 1917, the Society launched a campaign to suppress piracies in Newark, Lakewood, and Atlantic City in New Jersey. A very brief experience made it obvious that it was almost impossible to handle the piracies from the New York office. Letters sent from the New York office to places known to give piratical performances were ignored.

When New York representatives called upon these places to protest against the infringing performances, proprietors of such establishments refused even to see them, much less talk about the infringements. Trade associations with which such infringers were affiliated were appealed to, and endeavors were made to negotiate with such associations upon a basis of license fees satisfactory to such trade associations. They too refused to recognize the society or to respect the rights of the property of the defendant's members. In some instances where members of trade associations were willing to negotiate with the society or its members for licenses, the rules promulgated by such associations prohibited any individual members of its association, under penalty of expulsion, from negotiating directly with or accepting licenses from the defendants' society.

The infringements stubbornly persisted, notwithstanding the several decisions of the court in favor of the society. Not the slightest attention was paid to the activities of the home office, with the result that practically no licenses were issued outside of the city of New York. As the infringements were encouraged by the activities of the trade associations and defended by local counsel representing each trade association in the locality where the infringement occurred, the society could only assert its rights effectively by in like manner engaging local counsel to prosecute the infringers. As the society proceeded in new territory to enforce its rights, a lawyer in that territory had to be engaged. The necessity of the situation compelled the engagement of attorneys residing in the territory where the infringements were the thickest.

On or about January 1, 1921, the members of the Society agreed that it was advisable to vest in the Society a continuous and irrevocable right and power for a period of five years, commencing on January 1, 1921, and ending January 1, 1926, to control the non-dramatic performing rights of the members and to prosecute and defend all actions involving such rights in the names of the members, and the articles of association were duly amended by providing for the execution and delivery by every new member of an assignment to the Society, vesting in it such right and power for such period, and at the same time, all those who were then members executed and delivered to the Society a similar assignment; that by such assignments, it was intended, among other things, to prevent infringers from asserting that an agent or servant of the record holder of the copyright infringed had either expressly or impliedly assented to the performance complained of; such assignments were also intended to enable the Society to establish in any action or proceeding the right and authority of the Society to institute and conduct such actions or proceedings in the names of the members. That this was brought about because the users of copyrighted music in the United States attempted by trick, artifice and device, in the event law suits for infringement were instituted, to defend on the basis of an alleged assent, express or implied on the part of an agent or employee of the record holder of the copyright. That for some time prior to January 1, 1921, the Society had been vested with, and exercised, the rights and powers mentioned in said assignments, and said assignments were not intended to, and did not, in fact, establish a new policy, except that they provided for the continuance of such rights and powers during said period of five years, and made such powers irrevocable during said period. That said assignments did not restrict, or in any manner affect, the rights of purchasers of copies of musical works; that under the copyright laws, the sale or conveyance, by gift or otherwise, of a copy of a copyrighted work, does not transfer to the purchaser or donee the copyright or any right secured by the copyright in such work; that the purchaser of any copy of a musical composition did not, either before or after the dates of said assignments, and does not now, acquire the right to publicly perform the composition for profit.

The Motion Picture Exhibitors League of America was succeeded by the Motion Picture Theatre Owners of America. The Motion Picture Theatre Owners of America is a national organization made up of State organizations with a membership of approximately twelve hundred motion picture theatre owners. This organization waged a bitter and relentless warfare against the Society and its members. In 1922 that organization filed a complaint against the Society with the Federal Trade Commission, charging it with operating in restraint of trade. The Federal Trade Commission investigated the complaint and dismissed it in an opinion as follows:

"FEDERAL TRADE COMMISSION,
"Washington, January 2, 1923.

"Mr. Sydney S. Cohen,
"President Motion Picture
"Theater Owners of America,
"New York City.

"Dear Mr. Cohen: Your letter of the 14th instant, addressed to the secretary of the commission, making application on behalf of the Motion Picture Theater Owners of America against the American Society of Composers, Authors, and Publishers on account of alleged violation of the law against unfair methods of competition by the imposition of a tax or royalty on motion picture theaters for the right to play the copyrighted music of its members, has been considered.

"We have carefully considered the facts, as stated by you, and examined the decision of the courts applicable thereto, with the result that it has been concluded that the case is not one calling for the exercise of the commission's corrective powers. The chief reason for this conclusion may be stated as the fact that the making of a claim for royalties, apparently in good faith, can not be said to constitute 'an unfair method of competition in commerce'; it can not be said to be unfair in the sense in which the word is used in the commission's organic act, but is merely an assertion of a supposed legal right which is fully determinable by the courts; and it is not a 'method of competition' because the parties to the controversy are not in any way competing with each other.

"It is regretted that we are unable to aid you in this instance.

"Very truly yours,
"FEDERAL TRADE COMMISSION,
"Millard F. Hudson,
"Chief Examiner."

Trade associations of users and commercial broadcasters filed a complaint against the Society with the Department of Justice, and that Department, on August 6, 1926, disposed of the charges in an opinion by the Attorney General, reading as follows:

"As the result of a large number of complaints which were received by the Department of Justice with reference to the so-called music tax collected by the American Society of Composers, Authors and Publishers from the owners of motion picture houses and of other public places of entertainment where popular music is played, a thorough and comprehensive investigation was made of the organization and operations of that Society. Several special agents of the Bureau of Investigation were engaged in that investigation and it was conducted almost continuously for a period of about two years.

"After all the facts elicited by the Department's investigation and also the facts and arguments submitted both by the various complainants against the American Society and by the representatives of the American Society, had been very carefully considered by the Department, the Society has been advised that the Department saw no reason for proceeding against it under the Anti-Trust Laws on account of its operations in collecting licenses for the public performance of copyrighted music from the owners of motion picture houses, of hotels, of dance halls and of similar places where copyrighted music is publicly performed for profit.

"It was found that the rights conferred under the Copyright Act by Congress on the owners of copyrighted music had repeatedly been held by the Federal Courts to be violated by the unlicensed performance of such music, in amusement where the performance of the music constituted at least part of the public entertainment from which the owner of the place of amusement derived profit through the charges made to his patrons.

"The only question for consideration by the Department, therefore, was whether the operations of the American Society in receiving assignments from its members of the rights to the public performance of their copyrighted music and the issuance by the Society to many places of amusement, throughout the country, of the right to publicly perform for profit all the copyrighted music of its members constituted a combination which restrained trade and commerce within the prohibitions of the Sherman Act.

"It was found, however, that the American Society has nothing whatsoever to do with the published music or with any physical objects which enter into the course of interstate commerce, and that it has been held repeatedly by the Courts that acts similar to the granting of licenses for the local performance of music in a place of amusement do not constitute interstate commerce, even when the contracts are entered into in a different state from that where the performance may take place.

"No decision has been reached in reference to the licensing of radio broadcasting stations because of the unsettled state of the law relating to radio and the possibilities of legislation by Congress at the next session."

The Motion Picture Theatre Owners of America established a music department, which was open to its exhibitor members, who were informed by its president that:

"We are assured at this writing of sufficient tax-free classical, orchestral, standard, and popular music to meet any and all demands and we desire to extend to you the cooperation in this regard of our music department."

A report made by the president of the Motion Picture Theatre Owners of America to the annual convention of the association, read as follows:

"To relieve the Theatre Owners of the country from the exactions of the American Society of Composers, Authors and Publishers in the imposition of an unfair music license fee or tax for the playing of copyright productions, an amendment was proposed to the Copyright laws through a bill introduced in the last session of Congress by Congressman Florian Lampert, of Wisconsin.

"Every possible effort was made by your National Organization and the state and regional bodies to bring about a favorable line of action on this bill.

"In the next Congress, we are promised definite relief along this line and we propose to handle it then in the same expeditious manner in which your National Organization brought about the repeal of the 5 per cent Film Rental Tax.

"In this relation there are several test cases in different parts of the country bearing upon the Music Tax situation to be decided. We believe the matter has never yet been definitely presented to the courts in such a way as to properly conserve the welfare of the Theatre Owners.

"A department of Music was established at National Heaquarters following the Washington convention and association effected with different music publishers, which has enabled Theatre Owners to secure a liberal supply of tax-free music to meet the needs of their theatres.

"We have also the cooperation of the Radio Broadcasters Association, Hotel, Restaurant and Dancing Master Associations, and can, when the occasion requires it, use our screens, our theatre programs and a portion of the space taken by theatre owners for advertising in newspapers to bring our side of this issue squarely before the public."

The Motion Picture Theatre Owners of Kansas and Missouri, at their annual convention held on or about the 27th or 28th of March, 1922, engaged attorneys, in Missouri and Kansas, to defend and appear for exhibitors charged with infringement of the copyrights of the Society's members. In a speech before that convention, one of the counsel for such association urged that no one pay the license fees and pledged his every effort "to go clear to the finish." The president of that association stated in the convention:

"I just want to say in regard to the music tax that when every State in the Union is paying . . . Kansas is not paying, does not intend to pay, and will not pay . . . and will teach the music tax people that we 'have millions for defense but not one cent for tribute.'"

The members of this association brazenly and defiantly violated the rights of the Society's members and infringed their copyrights. Eleven suits were commenced in Western Missouri against the infringers and were bitterly contested by the attorney for such association. A judgment was rendered thereafter in favor of the Society.

At a meeting of the motion picture theatre owners of Eastern Pennsylvania, Southern New Jersey, and Delaware, its secretary and counsel urged all exhibitors within the radius of 50 miles of Philadelphia not to pay any music royalties, and declared that the organization would defend any action brought by the Society against the organization's members in that district. Acting upon these instructions, the members of that association gave public performances for profit of the music of the members of the Society. Sixty-five suits were commenced in the Eastern District of Pennsylvania. These suits were defended by the counsel for the exhibitors' organization. Thirty-nine were tried before a special master and decrees were recommended in favor of the plaintiffs in those cases.

In the States of Ohio, South Carolina, Connecticut, and Massachusetts, exhibitor members of State organizations of the Motion Picture Theatre Owners of America gave performances of the musical numbers of the Society without the leave or license of the Society. Suits were commenced against the infringers and invariably those suits were defended by the counsel for the State associations. The secretary and counsel of the Motion Picture Theatre Owners of America appeared not only in the Pennsylvania cases, but also in the South Carolina cases, and the answer prepared by him was used in the Connecticut cases. Defense funds were raised by voluntary contributions by exhibitors, to resist and oppose to the bitter end the efforts of the Society to suppress piracy.

In New York, the president of the Motion Picture Theatre Owners of America, in his own theatre, gave infringing performances, and 22 actions were brought against him in the District Court of the United States for the Southern District of New York, and the identical answer interposed in the other suits was interposed in the suits against such president.

The Motion Picture Theatre Owners of America and its several State associations and the members thereof were unwilling to treat with the Society as a whole or with the members thereof. They did not seek to secure a license from any individual member of the Society or the composition of any individual composer. Their attitude has been that they were entitled to the free and unrestricted use of the copyrighted music without the leave or license of the copyright proprietors, and by collective and united action they were prepared to resist the demands of the Society to the utmost. Under such circumstances, the existence of the Society justified itself.

The Motion Picture Theatre Owners of America caused to be introduced a bill in the House of Representatives, providing for the repeal of the musical performing rights provisions of the copyright act. Resolutions were passed by the National Association of Motion Picture Theatre Owners and the various State organizations, asking all exhibitors to write to the Senators and Congressmen from their respective States to vote for such repeal. Contributions were solicited from all exhibitors to provide a fund for propaganda purposes to secure the repeal of the law and such funds were actually collected.

During September and October of this year, the several trade associations and chains of motion picture exhibitors combined to form a united front for the purpose of defeating the right of composers, authors and publishers to a reasonable royalty for the use of their works in performances by means of motion pictures.

The following trade associations were represented in this united front:

Motion Picture Theatre Owners of Eastern Pennsylvania, Southern New Jersey, and Delaware;
Motion Picture Theatre Owners Association;
Motion Picture Theatre Owners of North and South Carolina;
Independent Theatre Owners of Southern California;
Main Exhibitors;
Exhibitors Emergency Committee;
Independent Theatre Owners Association;
Theatre Owners Chamber of Commerce;
Nebraska-Iowa Exhibitors;
Allied State Associations;
Independent Exhibitors Protective Association of Philadelphia;
Southeastern Theatre Owners;
Gulf State Theatre Owners;
Motion Picture Theatre Owners of Maryland;
Allied Theatre Owners of Texas;
Motion Picture Theatre Owners of Buffalo;
Independent Theatre Owners of New York;
Independent Theatre Owners of Northern California;
Motion Picture Theatre Owners of Virginia;
Allied Theatre Owners of New York;
Allied Theatre Owners of Michigan;
Allied Theatre Owners of New Jersey;
Independent Theatre Owners Association of Atlanta.

The Motion Picture Theatre Owners Association agreed to contribute to a fund to be collected by the Exhibitors Emergency Committee which they called the "War Chest" for the purpose of bringing suits to dissolve the Society and for the purpose of opposing the Society, and they agreed to issue questionnaires to every Senator and Congressman to get them committed to the fact that they would favor repeal of the law which secures performance rights to members of the Society.

Each theatre was taxed one cent for each seat, and it was estimated that the "War Chest" secured in this manner would net at least $60,000 with which to combat the Society and to destroy the members' public performing rights. The theatre chains actually contributed a very large sum for this purpose.

They proposed to engage in lobbying on a large scale for Congressional action and to engage one hundred contact men for the purpose of inducing Senators and Congressmen to act in favor of the united front and in opposition to the interests of the Society and its members.

During all this time, the rights of the members of the Society were invaded, and the infringers were protected and defended by the State and local associations of motion picture theatre owners.

The Society published a paid advertisement in the motion picture trade papers in the form of an open letter to the officers and members of the Motion Picture Theatre Owners of America, exhibitors organizations, chambers of commerce, etc., inviting such organizations to a conference for the purpose of reaching an honorable understanding and recognition of each other's lawful rights.

A conference was held at Minneapolis between the representatives of the Society and a committee representing an exhibitors' association of Minnesota and South Dakota, and then and there the committee on behalf of three hundred exhibitors agreed to take out licenses from the Society for each of its members at rates varying from $5.00 per theatre per annum to ten cents per seat per annum in certain other theatres, the rates being adjusted at a joint conference according to the general business condition of the cities in which the theatres were located.

Subsequently, a similar conference was held with a committee representing an exhibitors' association of North Carolina, at Charlotte, North Carolina, where a like procedure was observed. At that conference with that committee, the representatives of the Society agreed upon the rates which should prevail for licenses to be issued to every motion picture theatre in the territory represented by the exhibitors' organization. The rates were mutually agreed upon and as a result of the conference, the exhibitors' organization recommended to each and every of its members that they proceed to take out the licenses at the rates agreed upon.

Further instances of collective bargaining between the Society and other groups of resort proprietors is evidenced by the negotiations and the consummation of negotiations with the Society and the New England Hotel Association, the Atlantic City Hotel Association, the New York Hotel Association, and the Dance Hall Proprietors Association, and the Society of Restauranteurs, the Motion Picture Theatre Owners of Michigan, and the Motion Picture Theatre Owners of Virginia.

The latest instance of this collective bargaining as between the Society on the one hand and a group representing a great industry on the other was conducted with the Exhibitors' Emergency Committee representing some twelve thousand motion picture theatres in the United States. It was held on October 1, 1934, and an agreement, with the terms of which the committee expressed itself as entirely pleased and which represented a substantial compromise by both sides, was reached. During the course of that conference, it was freely and unanimously stated by the members of the committee that the exhibitors of America would be confronted with a tremendously difficult and apparently insoluble problem in connection with the use of copyrighted musical works were the Society to be dissolved. In every instance where a user of music in public performances for profit has been confronted with a question as to whether his operations are more convenient and economical under the existence of the Society than they would be if the user were required to deal with the individual copyright owners, the answer has been to the effect that by all means and under all circumstances the continuance of the Society was most to be desired.

The Motion Picture Exhibitors' League of America created a so-called "tax free music bureau." It engaged the services of a leading music publisher to operate the bureau. It invited the submission of manuscripts by authors and composers everywhere. It published a great number of compositions and circulated them freely to the theatres and declared its purpose to create a library of music sufficient for the use of the theatres so that they would not need to secure any license from any copyright owners other than those represented by the bureau. But in every case they secured from the composers and authors submitting works, contracts definitely and perpetually assigning to the bureau all of the performing rights in such works.

At its convention held at St. Louis, Missouri, early in 1933, the National Association of Broadcasters, an association composed of practically all the broadcasters of the United States, authorized the organization of a similar bureau, to be known as the Radio Program Foundation. The declared purpose of the Radio Program Foundation was "to create a music supply sufficiently large to allow all stations to forego their contracts with ASCAP (Society)." Soon after its organization, the Radio Program Foundation acquired control in the United States of the performing rights for broadcasting of the catalog of Ricordi & Company, including some 123,000 musical compositions of all kinds. It also secured broadcast performing rights from the owners of various domestic musical catalogs.

The experiences of the users no less than the creators of musical works, shows the only practicable method of licensing and securing licenses covering the use of copyrighted music in public performances for profit is by means of an organization of composers, authors and publishers, all of whose copyrights the prospective licensee may use and through which organization the copyright owner may have his rights protected and represented. No other method of operation is practicable.

In about the year 1922, another form of invasion of the rights of writers of musical works came into prominence—radio broadcasting. Radio broadcasting for public entertainment purposes was first introduced in 1921. At the close of that year there were in the entire world about five broadcasting stations more or less regularly transmitting programs of entertainment. Within a year there were five hundred and seventy-six radio broadcasting stations installed, equipped and in operation in the United States alone. The stations were licensed by the Department of Commerce, Bureau of Navigation.

The most distinctive, attractive and prominent feature of the daily and nightly programs broadcast was music, and particularly, the musical "hits" of the day. Radio took a sensational hold of the people. The radio audience pays partially for what it hears through paying for its radio equipment and in purchasing of radio parts. The rendition of songs in the studio is for the purpose of "public performance for profit." That profit has been received by the radio manufacturers who could not easily dispose of their receiving sets unless the purchasers expected to hear something of their liking through them.

The members of the Society, whose sheet music and mechanical royalties have been cut to a fraction of their former total, by reason of radio invasion believed that they should be paid for holding the auditors' attention. In many instances, the broadcasting is done for advertising purposes, to introduce a manufacturer's product into the market, to popularize and create a demand therefor, and to promote the sales of radio receiving apparatus and other radio accessories; to introduce the broadcaster and sponsors of commercial programs and their products to the public in order to get certain advertising, good will, and celebrity from such broadcasting.

The Society viewed with great concern the actions and attitude of the broadcasters in giving or causing to be given performance of the works of its members, without regard to the rights of the creators of such works.

The Society adopted on March 1, 1923, amendments to the articles and by-laws of the Society, as follows:

"(g) To grant licenses and collect royalties for the public representation of the works of its members by instrumentalists, singers, mechanical instruments, *radio broadcasting stations,* or any kind of combination of singers, instrumentalists, and mechanical instruments, and to allot and distribute such royalties." (Section 1, subd. G, Article I.)

The broadcasters, like the hotel men and the motion picture theatre men, were organized into an association under the name of The National Association of Broadcasters. That association issued a proclamation, reading as follows:

"To publishers of dance, jazz, blue, and popular music:

"The members of this association maintain that they will not pay for licenses from any copyright owner or recognize the right to collect any tax until the law plainly states that such payment must be legally collected."

The radio broadcasters took the position that performances given in their studios were not public performances for profit. Printed communications as well as word-of-mouth declarations were issued expressing the intention to broadcast performances of copyrighted musical works, whether or not the proprietors of such works be members of the Society.

The challenge of the broadcasters was accepted by the Society and a suit was brought in behalf of a member, M. Witmark & Sons, against Bamberger & Co., in the United States District Court of New Jersey, to restrain a department store dealing in radio products from broadcasting the plaintiff's copyrighted music. Judge Lynch in that case held that radio broadcasting was a public performance for profit (291 Fed. 776).

Thereupon the National Association of Broadcasters issued a circular letter reading, among other things, as follows:

"AMERICAN SOCIETY WINS AGAINST WOR.

(Being the broadcasting station operated by Bamberger.)

"This decision justifies the position taken by this association from its inception:

"1. That our efforts be directed toward a revision of the copyright act rather than any contest in the courts under the present ambiguous law.

"2. That because of the proven value of broadcasting in creating sales of sheet music, phonograph records, and piano-player rolls (now admitted by Judge Lynch in his decision) it is unreasonable for any musical copyright owner to demand payment for use.

"3. That the American Society of Composers, Authors, and Publishers controls but a small percentage of the copyrights recorded in Washington, and therefore are in no position to make any concerted demand.

"4. That our bureau of music release furnishes weekly (for use by members only) good, new, copyrighted, popular music without the payment of any fee or tax.

"With our rapidly growing membership and the strength which comes from numbers, the future of the broadcasting art becomes clearer."

The National Association of Broadcasters thereupon launched a very vigorous campaign of attack against the Society. A number of conferences were called to which were invited associations of motion picture theatre proprietors, hotel, dance hall, ball room, and other places of public amusement proprietors, as well as broadcasters and various trade associations to join with them, for the purpose of taking united action to prevent the Society from continuing its activities; to defend actions brought by the Society on behalf of its members to suppress infringements; to effectuate a dissolution of the Society; introduce and press legislation to repeal the musical performing rights provision of the copyright act, and to otherwise hinder and obstruct the Society from protecting the rights of property of its members.

It was not a question as to the reasonableness of a license fee or royalty for the privilege of performing copyrighted music. The broadcasters refused to recognize the right of a copyright proprietor to control the performance of his works for broadcasting purposes.

Assessments were levied upon the various members of the National Association of Broadcasters, and sums of money were subscribed by and collected from broadcasters, motion picture theatre owners, hotels, restaurants, cabarets, and dance hall proprietors, as well as from trade associations, to carry on and to wage a warfare, legislative and legal, against the Society.

The Illinois Motion Picture Theatre Owners and the Chicago Exhibitors Association, meeting in executive session, unanimously voted to associate with the National Association of Broadcasters in its fight against the Society. The Chicago organization voted to subscribe at least $10.00 a house toward the fund necessary for fighting the Society.

The Association of Broadcasters' plan of battle developed three points of attack on the Society: First, the refusal to recognize the right of any copyright proprietor to control the performing rights of his works for broadcasting purposes; second, to secure a change in the copyright law which would deprive the copyright proprietor of all control over the performing rights of his works, and thus end the activities of the Society; and third, to disintegrate the Society by inducing its members to resign therefrom and to effect its dissolution.

The broadcasters' association developed a working plan which provided radio stations with a plentiful supply of music in respect to which no license fee was claimed, and the broadcasters' association planned to extend the service of this bureau to picture theatres and to other purveyors of entertainment.

The broadcasters' association announced that the bureau controlled the performing rights of 3,000 musical compositions which were free of royalty.

In order to give motion picture theatres the advantage of the music privileges of the broadcasters' association, it formed a class B associate membership and motion picture men were invited to become members.

Funds collected under this class B membership, it was said, would be used by the association of broadcasters only for the expense of maintaining and operating the music release bureau and for the purpose of conducting a nation-wide campaign for the amendment of the present copyright law.

The National Broadcasters Association raised a fund in excess of $50,000.00 for the purpose of carrying on its legislative and legal activities against the Society and its members, and for the repeal of the musical performing right provisions of the Copyright Act, as the Society is informed and verily believes.

All the activities of the motion picture theatre owners and the broadcasters in attacking the right to publicly perform musical compositions for profit which Congress granted to composers and authors have been carried on exclusively through trade associations and on a national and unified basis. That was true prior to the organization of the Society and has remained true to this very day, and in so far as broadcasters are concerned, from the day broadcasting became a regular business.

Defendants aver upon information and belief that this very suit was induced by and brought at the instigation of the several trade associations representing radio broadcasters and motion picture theatre owners throughout the United States, and that the object of this suit is to disable composers, authors and publishers from dealing collectively in protecting their rights against pirates to the end that such users of music may perform the copyrighted musical numbers of composers, authors and publishers for their own profit without paying a cent of remuneration for the genius and labor which created the musical numbers employed in radio programs, motion pictures, cabarets, hotels, night clubs and other places of public resort and entertainment.

As a matter of fact, the National Association of Broadcasters has publicly announced that it will give its full support to the prosecution of this suit by the United States, and that in the event that this suit is successful, the National Association of Broadcasters will establish a music pool of its own and will use only the musical numbers of such composers, authors and publishers as are members of the said pool.

In other words, the broadcasters are seeking to destroy the Society which has been protecting the rights of composers, authors and publishers against infringements and piracy by broadcasters and other users of music, and propose to substitute in its place a group dominated by the broadcasters and subject to the dictates of such broadcasters.

If their scheme were to succeed, any author, composer, or publisher who refused to join the broadcasters' pool would be discriminated against and he would receive no compensation for the use of his composition. Without an organization to represent him, such as the Society, the individual composer and author could not protect his rights and he would again be powerless to prevent piracy.

In other words, the situation would again be the same as that which existed prior to the organization of the Society except that the creator of musical works would be given an option to forego the rights which the Copyright Law intended to give him, or in the alternative, to subscribe and become a member of the broadcasters' pool and to take whatever crumbs the broadcasters might feed him.

There are many composers and musical authors outside of the Society. There are hundreds of thousands of non-copyrighted

works, as well as works upon which copyrights have expired. The Motion Picture Exhibitors League and its successor, the Motion Picture Theatre Owners of America, publish and distribute lists of musical works not controlled by the Society and of publishers whose publications may be used free of charge.

The Motion Picture Theatre Owners of America have established a music department for the purpose of supplying to the theatre owners everywhere, suitable music for all purposes free from license fees. The National Broadcasters Association has also from time to time issued and distributed similar lists. It has maintained a bureau of music release which releases to its members for radio broadcasting at stated periods, numbers available and suitable for such purposes.

How large the supply is from which radio broadcasters, motion picture houses and hotels can draw without infringing upon the rights of the members of the Society, is demonstrated by the fact that some of the largest and most popular broadcasting stations in the United States held no licenses from the Society until 1927, and during that time furnished to their radio audiences musical programs of the highest quality, character and merit.

Evidently these stations had no difficulty in securing musical works that were not controlled by members of the Society. Mr. Klugh, executive chairman of the National Association of Broadcasters, before the Committee on the Merchant Marine and Fisheries of the House of Representatives, having under consideration House Bill 73357, for the regulation of radio communication, ridiculed the idea that the Society was a monopoly. He there expressed himself as follows:

"As a matter of fact, the American Society consists of 253 publisher members out of a known list of 6,500 publishers, authors and composers in the United States, as can be ascertained by going to the Congressional Library in the Copyright Office. Therefore, we maintain that this organization is an aggressive minority who have been successful in some measure in having their way."

When asked by the chairman of the committee what his complaint was with respect to the Society, he said:

"The complaint is that they ask for payment from broadcasting stations for the right to use compositions of their members, and the charge for that right is out of proportion with what they are able to deliver . . ."

Mr. Klugh there also made a statement as follows:

"The question involved is simply this: A minority owning less than 3 per cent of the current copyrights attempts to dictate, attempts to construe the copyright law, and it has succeeded in a certain measure in forcing through coercive measures and collection of money to which they are not entitled. That is our claim."

Several members of the committee questioned Mr. Klugh, and he replied as follows:

"Mr. Bland: How about this large number of composers that you say do not belong to that society? Can not you use them?

"Mr. Klugh: We can, but there you see one of the effects of lack of organization. Those are all independent operators; they are not organized, whereas this group of 46 publishers out of a known list of 6,500 are well organized and well administered.

"Mr. Davis: Why can not the broadcasters get ample material of meritorious songs of the 97 per cent, instead of being compelled to resort to the 3 per cent?

"Mr. Klugh: I might answer that by saying we are. We have set up competition with the American Society by encouraging the independents, which has really struck fear into their hearts, and has already caused the resignation of two of their principal members and will cause more.

"Mr. Bland: Organizing the 97 per cent would relieve the immediate situation."

The broadcasters made vigorous efforts to have the copyright statutes amended by repealing such part thereof as secures to a writer the performing rights in his works. Accordingly the National Association of Broadcasters sent out a letter to the Independent Authors, Composers, and Publishers. in which it stated:

"The American Society of Composers, Authors, and Publishers, will appear at this meeting and endeavor to show that they represent the majority of authors, composers, and publishers. We want to appear with evidence which will show that they do not represent the majority, and to this end we are inclosing 10 petitions to be signed by you and any other independent author, composer, or publisher who would like to have the truth known."

The petition mentioned and inclosed in that letter reads in part as follows:

"Petition: The undersigned, believing that the best interests of the public, the composers of music, the authors of songs, the publishers of music, and the performers thereof, will be served, hereby petitions the Congress of the United States to amend the copyright act of 1909, so that individual or detached songs and melodies, as distinguished from complete musical scores of operas, light operas, musical comedies, oratorios, cantatas, and other musical scores, designed to provide a whole performance, may be publicly performed without restriction by law or otherwise, to the end that 6,500 independent composers, authors, and publishers may have an equal chance with the 326 members of the American Society of Composers, Authors, and Publishers."

Mr. Klugh announced that over "700 petitions for independent composers, authors, and publishers were submitted to the Senate committee." Surely these 700 composers, authors, and publishers ought to be able to supply the reasonable wants of all the broadcasters, all the motion picture theatres, and all the hotels of America.

In accordance with the broadcasters' program, a bill was introduced in the United States Senate (Senate Bill 2600) designed to exempt radio broadcasting from copyright control. This bill was sponsored by the National Association of Broadcasters. The principal line of attack was that the Society enjoyed the benefits of the existing musical performing rights under the provisions of the act and that the Society was a combination in restraint of trade.

There was also introduced, in 1924, in the House of Representatives, a similar bill (H. R. 6250). The National Association of Broadcasters was represented by counsel, and hearings were held before the Patents Committee of the Senate, as well as of the House of Representatives. At said hearings, the Society was represented by its counsel and by its executive officers, and it laid before the respective committees the history of the Society, the manner of its operation, its purposes and objects. The broadcasters were joined in their attack upon the Society by the motion picture theatre associations and other associations of users of music. Exhaustive hearings were held, but the proposed bills failed to become law. In 1925, another bill was introduced in the House of Representatives (H. R. 11258), which proposed to amend the existing copyright act of 1909. At hearings held before the Committee on Patents of the House of Representatives, the National Association of Broadcasters appeared in opposition to the proposed bill, re-enacting the existing law, which secured to the copyright proprietor the exclusive right to communicate the copyrighted work to the public by means of radio broadcasting, telephoning, telegraphing, or any other method of transmitting sounds or pictures. The proposed bill failed to become law. In 1926, new bills were introduced in Congress, to amend the copyright act (S. 2328 and H. R. 10353). The National Association of Broadcasters again appeared and proposed to amend the copyright act to provide for the compulsory price-fixing with respect to radio broadcasting, similar to the compulsory license provision with respect to mechanical reproduction under the existing act of 1909. Thereafter, various bills were introduced in the Senate and the House of Representatives, to amend the copyright act and to permit the United States to join the Berne Convention. Hearings were held before the Patents Committee of the Senate and the House of Representatives, respectively, in 1930 and 1932, and at said hearings, the broadcasters, represented by their counsel, and various other agents and spokesmen, appeared before the respective committees, and attempted to have the proposed amended copyright bill exempt radio broadcasting from the payment of license fees to copyright proprietors; and they also attempted to insert various other provisions which would have effectively prevented the owners of copyrights in musical compositions from enforcing their legal rights through the Society; and at each of said hearings, said spokesmen for the broadcasting interests bitterly attacked the Society. All of the proposed amended bills above mentioned failed to become law.

The revenue derived by the radio broadcasters in the United States, each year, runs into enormous figures. The amounts collected by the Society for the licenses issued to the radio broadcasters represent the merest fraction of the tremendous revenue derived by them. Upon information and belief, during the year, 1931, the gross income of all the broadcasting stations in the United States (including the two chains, National Broadcasting and Columbia Broadcasting) for advertising time, amounted to over $70,000,000.00.

It has been the established policy of the National Association of Broadcasters and its several members to prohibit advertisers using the facilities of any broadcasting station from dealing directly with the Society. The said association and its members have always insisted upon collective bargaining with the Society by the broadcaster or the chain for all its and their advertisers.

The fee charged by the Society to broadcasters is low. The licensed hotels, theatre owners and broadcasters give thousands and thousands of performances per year of the works of the Society's

combined catalogue. Were there no organization such as the Society, users of copyrighted music would be under the same obligation to play none of the musical works of the members of the Society without obtaining a license and without the payment of the fee demanded by the composer; each writer would have the legal right to demand a fee satisfactory to him for the right to play his works; he might also demand that his compositions should not be used as a part of a musical performance in which the works of other writers are infringed, because its use would permit the practice of piracy; if the users were obliged to deal separately and individually with each individual composer, publisher and author, the combined royalties payable to the owners of such works, in order to make up suitable programs for the users, would be many, many times the amounts now charged. The users of music, knowing that they would not get the licenses any cheaper by separate contracts with each composer, have never attempted to approach any member of the Society for an individual license agreement providing for a bona fide payment to the composer of a license fee. The fight has been to pay no fee at all, and to secure the free, unlimited and unrestricted use for all performing purposes of copyrighted music.

Every user may obtain the right to publicly perform the music of the Society's members by paying the reasonable license fees that the Society imposes. The Society has never refused to grant its license to any user of music. Thousands of licenses have been granted by the Society throughout the country in the years that it has been in existence. Not one license has ever been revoked, except for non-payment of the license fee. Parties who obtain licenses to publicly perform the works of the members of the Society are not prohibited from using the works of non-members. They may combine in their programs the works of members of any other groups. There is no attempt to force any party to use the works copyrighted by members of the Society; the only aim that the Society is working for is to prevent unlawful public performance of the work of its members. That is the very aim that the National Association of Broadcasters, Restaurant Association, the Motion Picture Theatre Owners of America, and the American Hotel Association and similar trade associations of users and their constituent members are seeking to defeat. It is their aim to deprive the individual writer of the cooperation of his fellow-composers, and of the aid of the organization formed for the purpose of such cooperation, because it is hoped that after the destruction of their organization, the writers will again be helpless against despoliation.

The users of copyrigbted music are not confronted by any larger restriction by reason of the organization of the Society, than they would be without it. Every action that has been brought against infringers has been brought in the name of the writer or publisher whose work has been infringed, with his knowledge and consent, and under direct authority of the assignment made by him to the Society. What the Society is doing is merely to use the funds contributed by the members and the royalties derived from their works, under the authority of the members, for the purpose of aiding each member in suppressing piracy and in prosecuting his federal remedy.

The real grievance of the hotel man, the motion picture theatre man, the public resort proprietor, and the broadcaster is that they are not satisfied to make up their musical programs from old classical music and from those innumerable composers and copyright proprietors who are not members of the Society; they find it desirable to perform the works of composers of great reputation who are members of the Society; they want the works of these men because they are better drawing cards, the performances of their works will bring larger audiences, more admission fees, and more profit; and they want to use these works for more profit for themselves, without paying anything whatever to the composers, no matter how small the fee may be.

The music publishers who are members of the Society do not as members represent their printing, publishing and selling business. They are joined solely to cooperate for the protection of the performing rights against the piratical practices of others. The Society was not organized for the purpose of affecting in any way the trade in printing and selling musical compositions or musical instruments. The Society does not sell, circulate, publish, or deal, directly or indirectly, in any publication, or concern itself in the sale of publications or musical instruments. The Society does not ask anyone to buy musical works published by its members. It does not hold title to any copyright. It has never published or owned, nor does it own or publish, any musical works. It concerns itself only in suppressing piracies of the performing rights of the works of its members and in granting licenses to publicly perform musical works in places of amusement, as an incident of some other principal business, or trade. It confines its activities solely with the intangible and incorporeal right, to give public performances for profit of the works of its members. There is no dealing with an article of trade or commerce, nor any use made of any of the instrumentalities of commerce. The Society's business is not an aid or facility to commerce and does not affect interstate commerce, directly or indirectly, or substantially or incidentally. It does not consign or ship, or cause to be consigned or shipped, directly or indirectly, to any of its licensees, any musical compositions, parts of instruments serving to reproduce mechanically musical works or other matter. The license between the Society and its licensees, or the contracts between the Society and its members, do not in their effect operate in furtherance and in aid of commerce, nor does the Society furnish any facilities, conveniences, privileges, or services connected, directly or indirectly, with interstate commerce. The Society does not send any performing companies, instrumentalities, or singers throughout the country to render musical work of its members. It does not ship any copies of musical works or parts of instruments serving to reproduce mechanically musical works to any person who wishes to perform them. The licensee may buy the musical score whenever and wherever he likes, and he may, as he frequently does, play what he wishes to perform from memory. It is entirely his business.

The broadcasters refused to recognize the legal rights of the copyright owners, notwithstanding the decision of Judge Lynch in 1923, in Witmark & Sons against Bamberger & Co. (291 Fed. 776), and thereafter a suit was brought in the United States District Court for the Southern District of Ohio, Western Division, by the Society, wherein Jerome H. Remick & Company, a publisher member of the Society, was named plaintiff and the American Automobile Accessories Company was named defendant, based upon infringement by radio broadcasting; a motion to dismiss was made by the defendant in that case, and District Judge Hickenlooper granted the motion; whereupon, the Society appealed to the Circuit Court of Appeals for the Sixth Circuit, and that court in 1925, in an opinion by Circuit Judge Mack, reversed the District Court and held that broadcasting without a license constituted an infringement of the performing rights in a musical composition (5 Fed. [2d] 411). Thereafter, application for certiorari was made by the defendant to the United States Supreme Court, and such application was denied (268 U. S. 556). The Society was compelled to bring another suit against the General Electric Company, in the Southern District of New York, in 1926, based upon infringement by means of radio broadcasting; District Judge Thacher found that picking up an unauthorized performance by a microphone and rebroadcasting is constituted infringement, and he so decided in an opinion reported in 16 Fed. [2d] 829. However, the broadcasters did not accept that decision as final, and they awaited another opportunity to attack the rights of the members of the Society; they found such opportunity, in 1929, when the defendant Buck, as President of the Society, joining with a publisher, brought a suit against one Wilson Duncan, operating a radio station in Missouri, and the Jewell-LaSalle Realty Company, operating a hotel therein—the suit being brought in the United States District Court, Western District of Missouri, Western Division; in that case, the plaintiffs claimed that the hotel in question, having picked up a program emanating from an unlicensed broadcasting station, had committed an infringement; the court granted a decree sustaining the plaintiffs' contention and awarding $250.00 minimum damage (32 Fed. [2d] 366); thereupon, the defendants appealed and the Circuit Court of Appeals certified questions of law to the United States Supreme Court; the case came up in that court in 1931; the Supreme Court upheld, in full, the contention of the Society and established beyond any dispute, the right to the minimum damage of $250.00 (283 U. S. 191). In the appeal to the United States Supreme Court, in the aforementioned case, the counsel for the National Association of Broadcasters acted as counsel for the defendants and filed a brief in their behalf. In the years of litigation between the members of the Society and the proprietors of public resorts operated for profit and radio interests, such interests attempted time and again to interpose defenses, in infringement suits, to the effect that the Society was violating the Sherman Anti-Trust Law; and although such defenses were uniformly thrown out by the courts, they recurred repeatedly in answers interposed by proprietors of motion picture theatres and radio broadcasters in various parts of the country. It required all the resources at the command of the Society to maintain, successfully, litigation establishing the rights of the members of the Society with respect to radio broadcasting.

Tbat the only attacks tbat have ever been made, prior to the commencement of this action, upon tbe legality of the Society and of its policies, were made by infringers who sought to deprive the composers and autbors of musical works of the protection of tbe Society, in order tbat they might continue their piratical practices, witb impunity; that in no litigation in which sucb attacks were made, did any court ever render any decision casting doubt upon the legality of tbe policies of the Society.

That associations similar in character to the defendant Society herein have for a long time existed and carried on similar activities in European countries and have been generally recognized and upheld by the courts of said countries as lawful organizations; that the Performing Rights Society, Ltd., is a similar association which has existed in England since 1914; that in the case of Performing Rights Society, Ltd., against Thompson, tbe High Court of Justice, King's Bench Division, decided in 1918 (34 T. L. R. 351), it was held that the Performing Rights Society, Ltd., was a lawful organization, formed for a legitimate object, and carried out by legitimate methods; that it was formed for the purpose of undertaking tbe protection of the rigbts of its members by enabling tbeir performing rights to be put on the market to the best advantage, by collecting fees for them, and, if necessary, by protecting them from infringement by litigation.

Further answering paragraph "9," tbe Society avers that it was formed principally for the purpose of suppressing piracy of the incorporeal and intangible right to publicly perform for profit the duly copyrighted musical works of its members; to protect the non-dramatic performing rights of the works of its members from infringement both in the United States and in foreign countries and to enter into reciprocal agreements with similar societies organized and functioning in foreign countries to the end that the performing rights in the works of American composers and authors should be protected in foreign countries and foreign authors should similarly be protected against the invasion of their performing rights in their works in the United States, and to grant licenses for and on account of its members to users and radio broadcasting stations choosing to give legitimate public performances of the copyrighted works of the Society's members and to pay over to such members the proceeds of tbe license fees collected from such users and broadcasters, all in accordance with its articles of association as amended from time to time as experience might prove conducive to the best interests of the Society. That it did from time to time enter into reciprocal agreements with similar societies, carrying on their activities in foreign countries and there are still in full force and effect contracts between the Society and the following named foreign societies organized under tbe laws of and operating in the countries set opposite their names, to wit:

Asociacion Argentina de Autores Y Compositores de Musica	Argentina
Gesellschaft der Autoren, Komponisten und Musikverleger	Austria
Nationale Vereeniging Voor Aueteursrecht	Belgium
Sociedade Brasileira de Autores Theatraes	Brazil
The Canadian Performing Right Society, Ltd.	Canada
Ochranne Sdruzeni Autorske, csl. Skladatelu Spisovatelu a Nakladetelu Hudebnich	Czecho Slovakia
Internationalt Forbund til Beskyttelse af Komponistrettigheder I Danmakr	Denmark
Saveltajain Tekijanoikeustoimisto Teosto	Finland
Societe des Auteurs, Compositeurs et Editeurs de Musique	France
Staatlich genehmigte Gesellschaft zur Verwertung musikalischer Urheberrechte	Germany
The Performing Right Society, Ltd.	Great Britain
Magyar Szovekirok, Zeneszerzok es Zenemukiadok Szovetkezete	Hungary
Societa Italiana degli Autori ed Editori	Italy
Norsk Komponistforenings Internasjonale Musikkbyra, Tono	Norway
Sociedade de Escritores e Compositores Teatrais Portugeuses	Portugal
Societatea Compozitorlor Romani	Rumania
Foreningen Svenska Tonsattares Internationella Musikbyra, Stim	Sweden
Schewizerische Gesellschaft fur Aurruhrungsrechte	Switzerland

That the Society represents in the United States in respect of non-dramatic performing rights each member of each such respective Society, and it pays over at stated periods an aliquot part of its total collections from the issuance of licenses to American users and broadcasters to be distributed and divided in such foreign countries by such foreign societies; that the Society under the licenses granted by it to users and broadcasters never directly or indirectly made any extra cbarge for the right to give public performances of works of foreign authors, members of such foreign societies, but, on tbe contrary, under the license issued by the Society to users and broadcasters, such users and broadcasters enjoyed and still enjoy the absolute freedom to give public performances of tbe works not only of its own members but of all the members of any and all foreign societies affiliated with it, so that for tbe same license fee American users and broadcasters may arrange and present an international, diversified and pleasing program in accordance witb the taste, requirements and desires of the users and broadcasters; that under sucb reciprocal agreements American writers are protected against the infringement of the performing rights in their works abroad and are receiving royalties, license fees and similar compensation from the public performance of their works abroad; that the share of the total royalties or license fees collected by each foreign society for or on account of the public performance rights of the Society's members are paid over by such foreign societies to the Society wbicb in turn pays the same over to such of its members as may be entitled thereto; that users and broadcasters abroad of American works are generally required to pay a fixed and special fee for the privilege of giving public performances of works of American origin: it furtber avers that there are in the public domain thousands of works free and open to all users of music, including broadcasters; that there are bundreds of young men and women, not members of the Society, talented and eager to write especially for the users and broadcasters; that there are numerous works of nonmembers of the Society only too anxious to have the users utilize, exploit and capitalize them, and the Society avers that the users and broadcasters desire to give public performances of such works only as, through the expenditure of money, time, labor, skill and organization on tbe part of the Society's members, have been introduced to tbe public, advertised, publicized, popularized, given a vogue, celebrity and popular appeal; the users and broadcasters have a large and varied field of music open to them, but they choose to use only such as the Society's members have made successful, popular and appealing at great expenditure of time, labor, skill and organization. Some users and broadcasters have gone into the field of acquiring compositions, in order to control the performing rights thereof, some bave discontinued their activities in that direction because the cost of operation has far exceeded the yield from the use of the works.

The defendant Society further avers tbat its management is governed, controlled and determined by its articles of association as aforestated.

The membership of the Society is comprised of

(a) production writers, i. e., those who devote themselves to writing the books or librettos, words and lyrics and music of operas, operettas, musical plays, plays with music, and kindred works intended and adapted for legitimate stage presentations, and music publisbers that specialize in the arranging, preparation, printing and publisbing of such works;

(b) standard writers and standard publisbers, i. e., those who devote themselves to tbe writing of dramatic ballads, choral and religious works and songs, such as "The Holy City," "The Road to Mandalay," "Drink to me only with Thine Eyes," "Rock of Ages," "When the Sands of the Desert Grow Cold," suites, concertos, oratorios, and orchestral works, and those who arrange, prepare, print and publish such works;

(c) popular song writers and publishers, i. e., tbose who specialize in writing topical songs, the songs of the day, songs of an ephemeral, temporary and very short vogue, and those who print and publish such songs.

Production writers and publishers, and standard writers and publishers have always constituted the smallest number of those engaged in the profession of music writing and the business of music publishing. The interests of each group of members of the Society are not the same; they generally do not cater to the same public; their problems are not identical.

From the date of the formation of the Society to the date of the filing of the petition, the overwhelming majority of the membership consisted of popular song writers and popular publishers. If provision had not been made in the articles of association for the proper representation of standard writers and standard publishers, production writers and production publishers, on the direc-

torate of the Society, in all probability (by virtue of the preponderance of popular songwriters and popular publishers in the membersbip of the Society) tbe Board would consist entirely of popular songwriters and popular publisbers, so that the other classes would be denied representation on the Board. Furtbermore, it was contemplated and intended that the Board should always consist of an equal number

(a) of the authors of the books, words and lyrics of stage productions, the composers of the music of stage productions and publishers of stage productions;
(b) of the autbors of tbe words of standard numbers, of the composers of standard numbers and the publishers of standard numbers;
(c) of the authors of the words of popular songs, of the composers of the music of popular songs, and of the publishers of popular songs,

so that tbe directorate consists of

(1) 2 authors of words of productions
2 composers of music of productions
4 publishers of production music
(2) 2 authors of words of standard numbers
2 composers of music of standard numbers
4 publishers of standard music
(3) 2 autbors of the words of popular songs
2 composers of music of popular songs
4 publishers of popular music.

The number, character, prestige, vogue, popularity and celebrity of the works written and copyrighted, and the reputation, popularity and celebrity of the writers of the works are not the same nor are they substantially alike.

To assure equality of representation; to prevent any class of tbe membersbip from dominating over any otber class; to insure against the adoption of any policy inimical, injurious or detrimental to tbe best interests of any particular class, the plan was devised to have the first Board elected by the vote of the entire membership and thereafter upon tbe death, resignation or expiration of the term of office of any incumbent in the directorate, to have tbe remaining directors choose his successor, but from the same class to which his predecessor belonged, *i. e.,* if a vacancy occurred in respect of the writer of the music of standard songs, then tbe board choose in his place a composer of standard songs of the same rank, popularity, reputation and celebrity as his predecessor and then usually upon the recommendation of the group of the membership to which he belonged. By virtue of this policy the Society was never dominated or controlled by any particular class, clique or group. Thereby the interests and problems of each class of the Society were and are safeguarded and no advantage was or could be taken by one group against any other. Under this system experienced and well qualified persons tboroughly conversant witb the problems affecting their class, represented their class on the directorate. The membership by a vote of two-thirds under the Articles of Association could and can change the method of selecting the directors, but it has not seen fit so to do to date.

The Society, its Board of Directors, officers, agents and servants concern themselves with no activity whatsoever except with the non-dramatic performing rights as herein described.

VII. Deny each and every allegation contained in paragraph "10" of tbe petition, except admit that licenses to perform publicly for profit the musical compositions copyrighted by its members are issued by the Society to all applicants therefor, and that four forms of licenses are in use, copies of which are attached to the petition marked Exhibits "B," "C," "D," and "E," respectively, and made a part tbereof; and aver that the Society's agents visit places of public resort operated for profit and listen in on commercial radio broadcasts and if, as is usually the case, the operator of the establishment or the radio broadcaster gives an unlicensed performance for profit of a number in the repertory of the Society, such user or broadcaster is notified of such infringing performance and is required to cease and desist from such illegal practice and his attention is called to the provisions of the Copyright Law covering the subject matter of performance; such user or broadcaster is also informed that if he desires to perform legitimately any of tbe works in the repertory of the Society, the Society will issue a license to him, which is in the form of Exhibits "A," "B," "C," and "D" attacbed to the petition, as the case may be; that by such licenses the Society does not expressly or impliedly restrict the licensee to the use of works of Society members exclusively, nor does it exact as a condition for the granting of licenses that the licensee shall during the term of the license limit himself to tbe use of works of Society members, nor does the Society by such license expressly or impliedly agree or undertake directly or indirectly tbat either it or any of its members or any tbird party shall furnish to the licensee any copy of any work in the Society's repertory which the licensee desires to perform, nor does tbe Society in fact furnish any such copies, nor does it require any of its members or any third party to furnish the same; sucb licenses to perform publicly for profit the works in tbe repertory of the Society are issued to all desiring the same without any restriction, condition or limitation wbatsoever. No applicant or licensee is required to perform the works of the members of the Society exclusively. He may combine in bis program the works of non-members of the Society or works in the public domain. The Society's licensees do perform the works of non-members and/or works in the public domain.

That the Society from its very inception granted only blanket licenses to perform any and all musical compositions of all its members and the members of its affiliated foreign societies upon the payment of a fixed annual royalty, covering botb domestic and foreign works. The various trade associations, *i. e.,* Hotel Men's Association, Restaurant Owners Association, Dance Hall Association, Motion Picture Theatre Owners Association, and other associations of users and originally the National Association of Broadcasters acting for their various groups in collective bargaining demanded blanket licenses covering all the works in the repertory of tbe Society and its affiliated societies and themselves dictated and fixed the rates which tbey would and did pay under such licenses. They did not wisb to deal witb the individual owners of copyrighted works because they realized that to bargain separately for such works with owners thereof scattered througbout the world would entail endless and tedious negotiations with such individual owners and would result in tbe payment of prices far in excess of the license fees paid to the Society. Furtbermore, in many cases, it would be impossible to obtain a license from the individual copyright owner because of deatb, removal, inaccessibility, ownership in several parties, and many other reasons. Since the daily program of users and broadcasters involves from twenty-one to eigbty-six separate songs of different authorsbip, nationality, character, taste, fancy and appeal, it was and is essential the Society issue blanket licenses to the users and broadcasters, leaving it to the Society to work out an equitable system for the division of the royalties among its members and tbose of its foreign affiliates.

In respect of the establishments licensed by tbe Society it is spared the expense of attending performances and/or listening in to ascertain whether or not the works of its members are pirated. Were the Society to issue licenses for individual songs it would have to maintain at a prohibitive expense an enormous staff of investigators to ascertain whether or not the holder of the license for the single number is adhering strictly to bis license or simply using it as a cloak or subterfuge to infringe the entire repertory of the Society; the Society would have to engage in extensive negotiations with its several members to ascertain tbe price for which such member would agree to license the specific work; the Society would have to maintain a tremendous bookkeeping staff to keep track of all these individual licenses, all of which would tend to make its operations costly and impractical.

As a matter of fact the Society has had no application for individual numbers until recently when the National Association of Broadcasters, defeated in its attempts to secure legislation detrimental to the Society, conceived the idea of asking for single numbers in negotiations with tbe Society in order to use such negotiations as a basis of complaint.

VIII. Deny each and every allegation contained in paragraph "11" and aver that the Society has never granted licenses or dealt with entertainers or groups of entertainers; that it has been its consistent policy from the outset to deal only with the proprietor of a public resort operated for profit and with commercial broadcasters.

IX. Deny each and every allegation contained in paragrapb "12," and aver that at the inception of the Society and during its early years proprietors of resorts located outside of New York City ignored the notices of the Society to cease and desist from using the works in its repertory; that tbey openly defied the Society througb their respective trade associations and challenged the Society to vindicate the rights of its members in the courts located in the various federal districts; that tbereupon and under the necessities of the situation so created the Society employed attorneys in good standing and of good repute in the several federal districts to ascertain infringements and to prosecute the same.

X. Deny each and every allegation contained in paragraphs "13," "14," and "15," and further answering said paragrapbs "13," "14," and "15," the defendants aver that the Association was formed in or about April, 1917, upward of three years after the organization of the defendant Society; that such Association was formed witbout the knowledge, consent, acquiescence, participation or ap-

proval of the Society; that at no time had the Society any association, or connection, or relationship with the Association, nor had it anything to do, either directly or indirectly, with the formation of such Association, or with any of its business, affairs, operations or policies; that it never, directly or indirectly, transacted any business with such Association, or had any communications with it, nor was the Society directly or indirectly concerned with or interested in the business, management, operations, affairs or policies of such Association, nor did it participate in any way, directly or indirectly, in its management, or in any of its business, affairs, operations, activities or policies, nor in the selection, designation, election or naming of any member of its board of directors, officers, agents and servants; that the Society did not, directly or indirectly, require that the Association render any services to it or to its licensees, nor did the Association directly or indirectly render any such services; that the designation, selection, election or naming of any officer, director, agent or servant of the Association was not dependent upon his being a member, officer, director, agent or servant of the Society; that persons not members, officers, directors, agents or servants of the Society have been, and are, members, officers, directors, agents and servants of the Association; and that there is and was nothing in common or any community of interest between the Society and such Association, in any particular, respect or manner whatsoever; that if any member of the Society happens to be a member of the Association, it is purely and solely because such person happens to be an active music publisher, and not because of, on account of or by reason of his being a member of the Society; that the Association has neither directly or indirectly any connection or association with the Society nor has it anything to do with the Society nor has it anything to do with the selection, election, designation or naming of any of its officers, directors, agents, or servants; that it never did, and does not now, direct or participate in the policies, activities, business, operations or affairs of the Society, nor has it anything to do with the administration of its affairs, operations and activities of the Society; that it has not participated, concerned itself or interested itself therein, directly or indirectly; that these two organizations have been, and are, separate and distinct entities, having nothing whatsoever to do with each other in any manner or by any means or mode whatsoever and are absolutely foreign to each other in every respect.

XI. Deny each and every allegation contained in paragraphs "16," "17" and "18," and further answering said paragraphs "16," "17" and "18," defendants aver that the Service Corporation has ceased and discontinued all business, activities and operations and its directors voted to dissolve such corporation before the commencement of this suit; that such corporation was organized in or about June, 1932, upward of eighteen years after the organization of the defendant Society; that such Service Corporation was organized without the knowledge, consent, acquiescence, approval or participation of the defendant Society; that at no time did the said corporation render any service, directly or indirectly, to the Society, or to any of its licensees nor did it require any service to it or to any of its licensees; nor did the Society have anything to do with the cessation and discontinuance of the business, activities and operations of such Service Corporation; that at no time had the Society any connection, association or relationship with the Service Corporation or had it anything to do, either directly or indirectly, with the formation of such Service Corporation or with any of its business, activities, operations or affairs; that it never, directly or indirectly, owned any part of its capital stock, nor directly or indirectly, transacted any business with it, nor had any communication with it, nor was it directly or indirectly concerned with it or interested in its ownership, management, operations or policies; that the Society did not participate in any way, directly or indirectly, in its management or in any of its affairs, business, operations or activities, nor in the selection of its board of directors, officers, agents or servants; that if any member of the Society was at any time in any wise connected with the Service Corporation, then he was so associated and connected solely in his capacity as an active music publisher and not in connection with or on account of or because of his membership or association with the Society; and that his association and connection with such Service Corporation was without the prior consent or approval of the Society and was not dependent upon or connected with his membership in the Society; that he did not first ask the Society for its consent, approval or acquiescence, nor did the Society, by any act, directly or indirectly, consent or approve of his association or connection with such Service Corporation; and that the association or connection of any member of the Society with the Service Corporation, prior to its dissolution, had no relation whatsoever to such member being a member, officer or director of the Society; that there was no connection or community of interest whatsoever between the Society and such Service Corporation in any particular; that the defendant Society never selected, designated or named, or had anything to do, directly or indirectly, with the selection, designation or naming of any of the officers, directors, agents, or servants of the Service Corporation.

XII. Deny each and every allegation contained in paragraphs "19" and "20" and "22."

XIII. Deny each and every allegation contained in paragraph "21," and further answering said paragraph "21," the defendants aver there is absolutely no competition with respect to the performing rights of musical works for the reason that each number is *sui generis*. It stands in a class by itself, upon its own merit, quality, and pleasing attractiveness, and appeal to the public. A person desiring to hear "Mother Machree" is not satisfied with and will not accept a rendition of "A Kiss in the Dark." A famous opera singer, the predominant feature of whose repertoire is "Madame Butterfly" will, under no circumstances, sing "Carioca." Instances can be multiplied *ad infinitum*. The commercial value of the performing rights in a song lies in its use in combination with and as part of a mixed composite program. Never in the history of the Society was there a request made for permission to give a public performance of a single number or a group of numbers, or for the numbers in the catalogue of a given publisher until recently, when such requests were made at the instigation of the National Association of Broadcasters for the sole purpose of harassing the Society and laying the foundation for a lawsuit. The usual request is for the privilege of selecting from the Society's repertoire a suitable program to be changed daily or weekly as the necessities of the licensee's business may require. There is no way of placing a value upon the performing rights of a single number or group of numbers, or even of the numbers of an entire catalogue of a music publisher. Other than the statutory guide of determining the value of such rights, there is no other method of fixing or ascertaining the value of such rights with the possible exception of production numbers; that is to say, numbers especially written for or interpolated in musical plays, reviews, and comic operas for legitimate theatrical performances. In the case where an entire musical play is written by a composer and author in collaboration, they receive a royalty based upon a percentage of the gross weekly receipts, customarily aggregating to 6 per cent of such gross receipts. In the case of a single number or group of numbers, the royalty varies from one-half to 1 per cent of the gross receipts. Sometimes the royalty is fixed at sums ranging from $50 a week upward, depending upon whether a single number is interpolated or a group of numbers.

Prior to the formation of the Society there was no market among users for performing rights of single numbers or for groups of numbers or for even the numbers of entire catalogues of writers and publishers. The establishments with which the Society deals helped themselves to the same without trading or bartering for such rights. They never paid for any such rights, never offered or suggested paying for such rights, and there never was any price fixed for such rights, and there was no means of determining the value of such rights.

The only dealings that users of music and broadcasters desire to engage in is upon the basis that they pay no price at all for the rights to use copyrighted music. They claim a perfect *quid pro quo* in the form of the publicity that they give to a number by publicly having it played or sung although it is well known that the constant broadcasting of a particular composition destroys its popularity and disables the writer from securing royalties through other means of production and exploitation.

XIV. Deny each and every allegation contained in paragraph "23," and further answering said paragraph "23," the defendants aver that the owners of radio broadcasting stations have not employed writers to write music, but have simply waited for the music of authors and composers to be popularized by publication or presentation on the stage and have thereafter used the music so published or presented and popularized by others; that instead of the radio popularizing music, the constant plugging of the musical compositions by radio broadcasting has shortened the life of musical numbers and has resulted in a tremendous decrease in the royalties received from the publication and sale of sheet music and the primary source of revenue from copyrighted musical numbers to which the composer, authors and publisher may look as the revenue derived from the public performance for profit of their musical numbers; that under the Copyright Law, the copyright proprietor has an absolute right to select his vehicle for the use of his copyrighted works and if he should decide to refuse to give his music to be used by the radio broadcasters, he is privileged and within his right in so doing; that the activities of the broadcasters with respect to music have been and are limited solely to an attempt to take the music without paying for it.

XV. Deny each and every allegation contained in paragraphs "24," "25," "26" and "27," and further answering said paragraphs "24," "25," "26" and "27," the defendants aver that the composers and authors of all countries have been permitted to organize for their mutual protection against piracy, and to issue their licenses for the public use of their works through one single central agency. In no case throughout the world do the users seek the actual dissolution of such agencies or desire an opportunity to deal with copyright owners separately if they are going to have to pay. If they are going to have to pay at all, they prefer to deal with the organized group. If they could disorganize and separate the group into its constituent elements, they know they would not have to pay because the individual could not enforce, or protect his rights. That is precisely what the users of music have been attempting to accomplish. Were it not for the existence of the Society not a single one of its licensees could hope (if he conducted his business according to the present amusement policy) within the cost of what he is at present paying the Society, to negotiate with individual copyright owners and secure as wide a selection of music as is available under Society's license for anything like the present cost to him. If the users of music really desired Society to be dissolved, there could be but one conclusion drawn from an expression of that desire and that would be that there is an intention toward wholesale piracy of the works of unorganized individuals. To negotiate for individual licenses would require that dealings be transacted with several thousand different copyright owners located all over the world as well as in the United States of America. In the history of Society, there has not been one single instance in which a licensee, actual or prospective, has requested the Society to afford him an opportunity to deal with the individual copyright owners nor, in the entire experience of Society, has there been a single instance in which any licensee or user of music has requested Society to adopt a policy of quoting a price for the use of individual compositions until recently for the purpose of framing a lawsuit. Nor has Society ever offered to quote a price for the use of individual compositions, but it has often offered to users of music an opportunity to deal directly with individual copyright owners and disregard Society entirely. These users wish no opportunity to deal with individual copyright owners nor to have quotations given them upon a license to use individual works. No place of public amusement could purvey a balanced entertainment through the use in its programs of the works exclusively of a single composer or a single publisher. Programs of musical entertainment, in order to accomplish the purpose for which they are intended, the profit of him who presents them, must contain widely varied and diversified compositions. To be entertaining, a program must be composite—it is customary to include currently successful compositions as well as old-time melodies. A dance hall requires eighty or more different compositions with which to provide an evening's entertainment. A broadcasting station on the average plays more than five hundred musical titles in a full day of operation. In both cases, these compositions run the entire gamut of old-time and modern music, domestic and foreign music, popular and classical music, except as to the dance hall, which confines its uses mostly to the popular music of the day. No matter how good his intentions the average user of music could not possibly, within a reasonable time, establish a practical contact with the owners of the copyrights, in the music which he would have to use to present balanced and attractive programs. A failure to establish such contacts would leave him in the position of either infringing the right or not using the work. In either case, he is confronted with a substantial hardship and hazard.

The nearly six hundred broadcasting stations are scattered all over the United States. They are owned and operated by many different interests, and in some cases by huge corporations. The preparation and conduct of a suit for infringement of copyright is an involved and expensive procedure, too involved and too expensive to be undertaken by an individual copyright owner. The disposition of the stations first, to deny entirely the rights of copyright owners. and secondly, to openly infringe them if these rights were not safeguarded by the Society, was perfectly apparent. Had Society not been available as an instrumentality through which the musical copyright owners could ascertain piracies and protect their rights as well as license the legitimate public performance of their works, there can be no doubt but that these rights in actual practice would have been completely lost and the owners thus illegally deprived of their properties.

Broadcasting attained tremendous popularity, reaching in a few years a point where it entertained as nearly as could be estimated 50,000,000 people per day. In the brief period between 1921, with 5 stations, to 1932, with 607 stations, radio grew from a novel toy into a gigantic enterprise with an investment of approximately $1,800,000,000, paying to entertainers alone salaries amounting to nearly $40,000,000 per annum, and with more than 35,000,000 receiving sets then in use throughout the world. In 1925, there were less than 5,000,000 homes in the United States equipped with radio receiving sets. In June, 1932, there were 16,800,000 thus equipped. 51,000 retailers in the United States handling radio sets sold, in the year 1931, $309,270,000 of these products. In the United States, at the end of 1932, there were 133 radio sets per 1,000 inhabitants. During the year 1932, the radio industry sold 44,300,000 tubes, 140,000 automobile radios, 150,000 "cigar box" model receivers, 1,830,000 "midget" sets, and 500,000 "console" type receivers, a total of 2,620,000 radio sets with a retail value of $196,190,000. 152 manufacturers were engaged solely in the business of making radio receiving sets. A tabulation of the total sales of radio products for a period of seven years, 1926-1932, inclusive, shows the following:

1926	$506,000,000
1927	425,600,000
1928	690,550,000
1929	842,548,000
1930	500,951,500
1931	309,270,000
1932	196,190,000
	$3,471,109,500

In the brief period of seven years, the people of the United States purchased radio receiving equipment at an expenditure averaging $495,873,000 per annum.

It was not until 1927 that the broadcasting stations began really to sell their "time" to sponsors, and their sales of "time" to sponsors grew from $3,832,500 in the year 1927 to $49,107,000 in 1932, and during the current year (1934) the expenditure by advertisers for radio "time" of the stations in the United States is estimated to exceed $100,000,000.

Several of the largest and most powerful broadcasting stations in the United States are owned and operated by companies engaged in the manufacture of radio receiving apparatus. The purchasers of radio sets buy them only because a service of entertainment is available through this means. The broadcasting stations are enabled to render an entertaining service sufficient to induce the purchase of such sets only if music is available for their use. In direct proportion as the program is entertaining, the number of sets purchased increases. In direct proportion as the number of sets in use increases, the value of "time" to an advertiser is enhanced and the opportunity of the station to sell the use of its facilities at increasing prices is enlarged.

In round figures, 80% of the time a station is "on the air," it is broadcasting musical works. This spectacular and unprecedented growth in the popularity of radio as a medium of entertainment has changed the musical habits of the nation. Of pianos, there were sold in the United States in the year 1925 the total value of $93,670,000, but in 1931, this figure had shrunk to $12,000,000. The sale of phonograph records in the United States shrank, from 1925 to 1931, over 80% and by 1932, the shrinkage had reached 90%, and today there is being sold something less than 10% of the phonograph records that found a ready market in 1925. In 1925 sales of phonographs totalled $22,600,000, but in 1931 the sales had shrunk to $4,869,000, a shrinkage of about 75%. From 1925 to the end of 1931, the average sales of sheet music shrank more than 70%. The broadcasters grew tremendously in strength, financially and politically, whilst those who created music grew poorer and poorer. It would have been impracticable and impossible for an individual musical copyright owner in such circumstances to have protected his rights.

There were a total of 16,885 commercial motion picture theaters in the United States in 1934. In 1925, the average weekly attendance at these theaters was 90,000,000 persons. In 1931, the average weekly attendance was 115,000,000. In 1930, the public purchased admission tickets to motion picture theaters of a value exceeding $1,500,000,000.

No individual copyright owner could hope to successfully ascertain infringements, protect or license his performing rights to more than 20,000 theatres situated in every city, village and hamlet in the United States of America, in view of the manifest disposition of these users of music to disregard and ignore the rights of musical copyright owners. There are thousands of dance halls, cabarets, road houses and restaurants scattered throughout the United States.

Many of them are in remote localities. The average expenditure per annum in "dance halls and night clubs" for the years 1928-1930 was $23,725,000. This group as well as those previously described are represented through powerful trade associations, and this group no less than the others has through the years shown a disposition to deliberately and willfully disregard the rights of musical copyright owners. No such individual copyright owner could hope to successfully ascertain infringements, and protect or license his rights to these establishments. Music enables these enterprises to be conducted by these groups at a substantial profit. It is imperative that the musical copyright owner have a means and method whereby he may protect his properties against unlawful use by them, or license them to perform the same.

As a result of these economic conditions, practically the only reward that the writer receives for his labors, and that the publisher receives for the expenditure of time, labor, capital and organization on his part are the royalties received through the Society from the licensing of the right of public performance. If the Society should be dissolved, many writers will be deprived of their livelihood and will become unable to support their families.

XVI. Deny each and every allegation contained in paragraph "28," except that they admit that in 1932, the defendant Society notified all radio broadcasting stations throughout the United States, which had theretofore entered into license agreement with Society, that on and after June 1, 1932, the defendant Society would issue to such broadcasting stations general licenses covering all of the musical compositions of all members of the Society, upon the basis of a fixed sum, plus a percentage of the gross income derived by broadcasters from advertisers; and that after protracted negotiations, the broadcasters entered into agreements, respectively, with the Society, in the form annexed to the petition, upon the basis of royalty payments, plus a graduated percentage of the net receipts from advertisers, to wit,—three per cent for the first year, four per cent for the second year, and five per cent for the third year.

XVII. Deny each and every allegation contained in paragraph "29," except that they admit that with respect to radio broadcasting stations operated by newspapers, fifty-one per cent of the stock thereof being owned by such newspapers, the rates are lower than the rates paid by other radio broadcasters, and are in accordance with the exhibit attached to the petition; that the defendants allege that this distinction in the rates is made for the reason that newspaper-owned radio broadcasting stations do not sell advertising time upon any substantial scale and are not operated primarily for the sole purpose of obtaining revenue from commercial advertisers, but, on the contrary, such broadcasting stations are operated as semi-public media for the dissemination of news and other matters of general interest.

Further answering said paragraph "29" defendants aver that few musical compositions are withdrawn from radio broadcasting; that such musical compositions are withdrawn only when the continued radio broadcasting of such numbers, if not restricted, would destroy the grand or stage or symphonic rights of the members in such works; that the defendant Society, by virtue of the performing rights obtained under its license agreements with its members, is bound in equity and good conscience, to do nothing that will destroy the value of the rights reserved to such members; that one of the important rights reserved to such members is the grand performing right on the stage of the musical compositions composed and published, respectively, by them; that continued radio broadcasting of musical compositions has a tendency to surfeit the public and to destroy the popularity and value of musical compositions within a few weeks after their publication; that dramatico-musical compositions currently successful upon the stage, are produced at a great investment, sometimes as high as $200,000.00 or $300,000.00; that if radio broadcasters were permitted, unrestrained and unrestricted, to perform the musical compositions which are part and parcel of such dramatico-musical works, the desire of the public to attend such productions in the theater would be extinguished, and the value of the rights in said musical compositions and dramatico-musical works would be likewise destroyed; and for that reason the Society, at the instance of individual members thereof, restricts from indiscriminate broadcasting, from time to time, such musical compositions, in order to prevent destruction of the rights therein and the rights of the members of the Society therein.

XVIII. Deny each and every allegation contained in paragraphs "30," "31," and "32."

XIX. Deny each and every allegation contained in paragraph "33," except admit that the Society has adopted and maintains a system for the acquiring of information relative to the musical compositions used by broadcasting stations.

XX. Deny each and every allegation contained in paragraphs "34," "35," "36," "37," "38" and "39."

WHEREFORE the said defendants respectfully pray that the petition be dismissed with costs.

NATHAN BURKAN,
Solicitor for Defendants,

American Society of Composers, Authors and Publishers et al.

O. & P. O. Address, 1450 Broadway, Borough of Manhattan, City of New York.

ENGINEERING DATA FURNISHED

Mr. A. S. Clark, of the Radio Research Company, Washington, D. C., has furnished the NAB and its Engineering Committee with data accumulated during the past year on measured characteristics of broadcasting station apparatus. Publication of the data in these REPORTS is thought timely nd pertinent, in view of current discussion of high-fidelity transmission.

Little data has heretofore been available on the standards of transmission maintained among broadcasting stations. There has been a general supposition on the part of broadcasters that the transmitted signal is usually of far better quality than the present-day receivers are capable of reproducing. This thought has been encouraged by data on transmitters furnished by manufacturers which invariably depict characteristics little short of perfection. When a transmitter is installed in the field, operated by average personnel, and perhaps connected to a none-too-good telephone line supplied by a miscellaneous assortment of speech input equipment, it is frequently found that the measured over-all characteristics depart somewhat from perfection regardless of whether the apparatus is home-made or made by prominent manufacturers.

Mr. Clark's measurements were made on 35 stations ranging in power from 100 to 5000 watts.

Audio fidelity was measured at 50% modulation. A variable input was applied to the mixer system to maintain that degree of modulation at the various test frequencies.

Audio harmonic content was measured at 400 cycles in each case. The value indicated in the data represents the r. m. s. value of combined harmonics, rather than the arithmetic sum as specified in the FCC Rules. The effective value is, of course, smaller than the arithmetic sum.

The power and type of modulator employed by the various transmitters are shown in Table 1.

The audio fidelity measurements are shown in Table 2. These measurements indicate the audio fidelity of the entire plant from the mixer to the antenna. The departure from the 1000-cyle zero level is indicated in decibels.

While there is some difference of opinion regarding the specifications for good quality transmission which makes a comparison with an empirical standard inadvisable, it can be seen from Table 2 that 47% of the composite installations and 43% of the so-called "standard" transmitters are decidedly deficient in the transmission of the lower frequencies to an extent that they would fail to meet any reasonable standard. Likewise, 71% of the composite transmitters and 54% of the standard transmitters have decidedly poor high frequency characteristics. Disregarding classification of a total of 35 transmitters measured, 52% of them are deficient on the "lows" and 66% of them are deficient on the "highs."

Many stations are dependent upon recorded program material. For lateral recording by far the majority of them use pickups of the general characteristic of curve A in Figure 2. This is a pickup regarded for years as the last word in quality, and was much sought after. Recently, there has been made available at comparatively low cost a lateral pickup having characteristics, as tested in the field, similar to that of curve B, Figure 2. This curve is comparatively flat from 50 to 5000 cycles. With present-day recordings this pickup gives an over-all result in startling contrast to those obtained with old style pickups. Many of the stations using a considerable amount of lateral recordings could make a decided improvement in the quality of transmission through the use of a relatively inexpensive modernization of their pickup equipment. Both curves shown in Figure 2 are a combination of pickup characteristic with the characteristic of the cutter and recording amplifier used by one of the major recording companies,

and depict the net over-all result from the input to the recording amplifier to the output of the pickup.

The curves on audio harmonic content are shown in Figure 1. The difference in harmonic content shown between transmitters of "composite" design and those of "standard" make should not be taken as either a disparagement of one or a recommendation of the other. The difference is accounted for by reason of the fact that the majority of composite transmitters were high-level modulated, and since, in most cases, the designers were not so sure of their ground, they installed a surplus of modulator capacity. On the other hand, almost all of the standard transmitters were of a type and design employing low-level modulation and two "linear" stages with tubes worked right up to their limit. In some power classifications, the tube used in the final amplifier was admittedly not capable of delivering the rated power fully modulated. Such a transmitter is difficult to keep properly adjusted with the checking and maintenance equipment usually available, which consists of a voltmeter and pocket knife both furnished by the operator. In passing, it might be noted that over-modulation was found to be very prevalent, especially among the composite transmitter group.

In view of the interest among stations in Class B modulation, there is included in Figure 1 a curve (D showing the average distortion in 8 transmitters so modulated.

TABLE NO. 1

Composite Transmitters

No.	*Power*	*Modulation*	*No.*	*Power*	*Modulation*
1	100	High	13	100	High
2	250	High	14	500	High
3	1000	Low	15	250	Low
4	500	High	16	100	High
5	100	High	17	500	High
6	1000	Low	18	500	Low
7	250	Low	19	100	High
8	100	High	20	100	High
9	100	High	21	100	Low
10	1000	Low	22	100	Low
11	500	Low	23	100	High
12	500	High	24	100	Low

Standard Transmitters

No.	*Power*	*Modulation*	*No.*	*Power*	*Modulation*
25	1000	High	31	250	High
26	5000	Low	32	500	Low
27	100	Low	33	500	Low
28	2500	Low	34	1000	Low
29	1000	Low	35	250	Low
30	5000	Low	36	1000	Low

TABLE NO. 2

Composite Equipment

FREQUENCY

Station No.	40	50	60	80	100	200	500	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
1	+ 2.0	+ 2.0	+ 1.5	+1.0	0	0	0	0	0	+1.0	—1.0	— 4.5	—11.0	—16.0	..	..	..
2	+ 0.5	+ 1.0	+ 1.0	+1.0	+1.0	0	0	0	0	0	+1.0	+ 1.5	+ 2.0	+ 2.5	+ 4.0	+ 2.0	0
3	— 5.0	— 4.0	— 3.0	—1.0	0	0	0	0	0	0	0	— 3.0	— 6.0	— 7.0	— 8.0	..	..
4	..	—10.0	— 8.0	—6.0	—5.0	—2.0	—1.0	0	0	0	—1.0	— 4.0	—10.0	..	..	..	..
5	..	— 3.0	— 2.0	—1.5	—1.0	0	0	0	0	0	+0.5	0	+ 1.0	0	0	— 1.0	—3.0
6	..	0	+ 6.0	+5.0	+3.5	0	0	0	0	+1.5	+2.5	+ 3.5	+ 2.0	— 6.0	..	..	..
7	..	—18.0	—12.0	—8.0	—6.0	—3.0	—1.5	0	0	0	—1.0	— 5.0	— 8.0	..	..	..	..
8	— 4.0	— 3.0	— 2.0	—1.0	—1.0	0	0	0	0	0	0	— 1.0	— 3.0	— 8.0	—13.0	..	..
9	— 3.0	— 0.5	— 3.0	—4.0	—3.0	—2.0	0	0	0	0	0	0	— 0.5	— 0.5	— 2.0	— 3.0	—4.0
10	0	+ 1.0	+ 1.0	+0.75	+0.5	0	0	0	—1.5	—4.0	—8.0	—12.0	—16.0	..	..	..	..
11	0	— 1.0	— 2.0	—2.0	—1.0	0	0	0	0	—1.0	—1.0	— 4.5	—12.0	..	..	..	..
12	..	— 9.0	— 6.0	—4.0	—3.0	—1.0	0	0	0	0	0	0	— 2.5	—10.0	..	..	..
13	— 2.0	— 2.5	— 3.0	—2.2	—2.2	—2.0	0	0	0	0	0	— 1.0	— 1.0	— 1.0	— 1.5	..	..
14	0	+ 0.5	+ 1.0	+0.5	+0.5	0	0	0	0	0	0	0	0	— 1.0	— 1.0	— 2.0	—3.5
15	— 4.0	— 3.0	— 2.5	—2.0	—1.0	0	0	0	0	0	—1.0	— 3.0	— 5.0	— 9.0	..	..	..
16	— 5.0	— 4.5	— 4.0	—3.0	—3.0	—1.5	0	0	0	+3.0	+4.0	+ 4.5	+ 4.0	+ 3.0	+ 2.0	..	..
17	— 9.0	— 8.0	— 7.0	—5.0	—4.0	—2.0	0	0	0	0	—2.0	— 3.0	— 5.0	..	..	..	..
18	—10.0	— 7.25	— 5.5	—2.0	—0.75	0	0	0	+1.0	+1.0	—0.5	— 2.75	— 6.0	—10.0	..	..	..
19	— 8.0	— 6.0	— 4.5	—3.0	—2.0	—0.5	0	0	0	—2.0	—3.0	— 4.5	— 6.0	— 7.5	— 9.0	—10.25	..
20	..	..	..	—9.5	—6.0	—1.0	0	0	0	—0.25	—1.25	— 3.5	— 7.0	..	..	..	..
21	..	..	— 5.0	—2.5	—1.5	0	0	0	—1.5	—1.0	0	— 8.0	..	..	..	..	..
22	..	..	..	—8.0	—6.5	—2.0	0	0	0	0	0	— 1.0	— 5.0	—10.75	..	..	..
23	..	— 5.0	— 3.5	—2.75	—1.25	0	0	0	0	0	0	0	0	— 1.0	— 1.1	— 1.5	—9.0
24	— 0.5	— 0.25	0	0	0	0	0	0	0	—0.8	—1.7	— 2.5	— 3.25	— 4.7	— 6.0	— 8.5	..

N. B.—No. 24 transmitter only without studio equipment.

Standard Equipment

Station No.	40	50	60	80	100	200	500	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
25	— 3.0	— 2.0	— 2.0	—1.5	—1.25	0	0	0	0	0	0	0	0	0	0	— 1.0	—2.0
26	— 8.0	— 6.0	— 4.0	—2.0	—1.5	—1.25	0	0	+1.0	+2.0	+1.0	0	— 1.0	— 3.0	—10.0	..	..
27	— 3.0	— 2.0	— 1.5	—0.75	0	0	0	0	0	0	0	0	0	0	0	— 0.5	—1.0
28	—11.0	— 8.5	— 5.0	—3.0	—2.0	0	0	0	0	0	—1.0	— 6.0	—12.0	—19.0	..	..	..
29	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
30	..	— 6.0	— 3.0	—2.5	—1.5	0	0	0	0	0	0	0	0	— 1.0	— 1.0	— 2.0	..
31	— 6.0	— 5.5	— 5.0	—1.5	0	0	0	0	0	0	0	0	— 2.5	— 3.0	— 1.0	..	..
32	..	..	— 8.0	—4.75	—3.5	—1.5	0	0	0	+0.5	+1.25	— 2.0	0	— 3.8	—10.0	..	..
33	..	— 4.0	— 1.5	—1.5	—1.5	—0.75	0	0	+1.0	+2.0	+3.0	— 2.0	— 3.50	—10.0	..	..	..
34	— 3.0	— 1.75	— 1.0	—0.75	—0.5	0	0	0	0	0	0	0	— 1.25	— 4.0	— 7.0	—10.0	..
35	— 9.5	— 7.5	— 5.0	—3.75	—1.25	0	0	0	+0.5	+1.5	+2.25	+ 1.0	— 2.0	— 6.0	..	..	..
36	— 1.0	+ 5.0	+ 3.25	+1.25	+0.25	0	0	0	+0.5	+2.0	+2.5	+ 3.5	+ 2.0	+ 0.75	— 1.5	— 2.75	—5.0

TABLE NO. 3

Audio Harmonic Content of Output

Percentage of Modulation (Neg.)

Station No.	20	30	40	50	60	70	80	90
1	3.0	5.0	8.5	11.0	14.0	16.0	18.0	20.0
2	2.1	2.5	2.75	3.0	3.6	4.2	5.2	6.0
3	5.5	7.5	10.5	13.0	15.0	16.0	16.5	18.0
4	2.0	2.0	2.5	2.7	3.5	5	5.7	6.1
5	2.5	3.5	6.5	8.0	9.0	9.0	9.2	14.0
6	4.5	4.5	4.5	4.5	4.5	4.5	5.0	5.6
7	2.0	3.0	4.0	5.0	6.0	7.0	9.0	10.0
8	5.6	5.6	5.6	5.6	6.4	7.6	8.4	9.8
9	3.5	4.0	4.5	5.4	5.8	6.3	7.0	9.0
10	..	5.0	6.5	7.8	8.2	9.0	10.4	13.0
11	2.0	2.0	2.5	3.0	4.0	7.0	16.7	20.0
12	3.0	3.0	4.0	5.0	6.0	7.5	8.2	9.5
13	3.0	3.0	3.0	3.5	3.8	4.2	5.0	6.0
14	4.0	5.8	6.8	7.8	8.6	10.0	11.5	12.0
15	2.5	2.5	2.5	2.5	2.5	2.8	3.6	5.6
16	3.5	4.0	5.5	7.0	9.0	10.5	13.0	15.5
17	4.0	6.0	8.5	8.0	7.8	8.2	9.5	11.0
18	3.5	5.0	6.5	7.5	7.5	7.25	7.6	8.5

TABLE NO. 3

Audio Harmonic Content of Output

Percentage of Modulation (Neg.)

Station No.	20	30	40	50	60	70	80	90
19	1.0	1.0	1.0	1.25	1.9	2.1	2.5	3.5
20	2.25	3.0	5.0	5.7	5.8	5.5	5.7	6.5
21	..	..	..	..	..	..	..	..
22	4.0	5.2	6.0	6.8	7.4	7.8	8.2	9.0
23	4.5	5.2	6.0	6.6	7.0	7.6	8.7	9.5
24	3.0	4.0	4.6	4.8	5.2	5.7	5.7	6.2
25	10.0	12.0	14.5	14.0	14.0	14.0	14.0	15.0
26	5.0	7.0	9.5	11.5	14.0	16.0	18.0	19.5
27	1.0	1.0	1.1	1.7	2.4	2.9	3.5	3.8
28	5.0	5.0	5.0	5.0	5.0	5.0	6.0	7.8
29	5.0	5.0	5.5	8.5	13.0	17.0	20.0	23.0
30	4.0	6.5	9.0	10.0	11.5	12.5	13.4	14.5
31	5.0	7.5	11.0	16.0	18.5	22.0	25.0	30.0
32	3.0	3.1	3.3	3.8	4.0	5.0	8.5	19.0
33	3.0	3.9	5.1	6.3	7.5	8.1	9.6	..
34	3.0	3.5	5.0	8.0	10.5	13.5	16.0	19.5
35	4.0	5.2	6.5	8.6	11.8	14.0	20.5	..
36	3.7	5.6	8.0	10.9	13.8	17.0	20.7	25.7

FIGURE 1

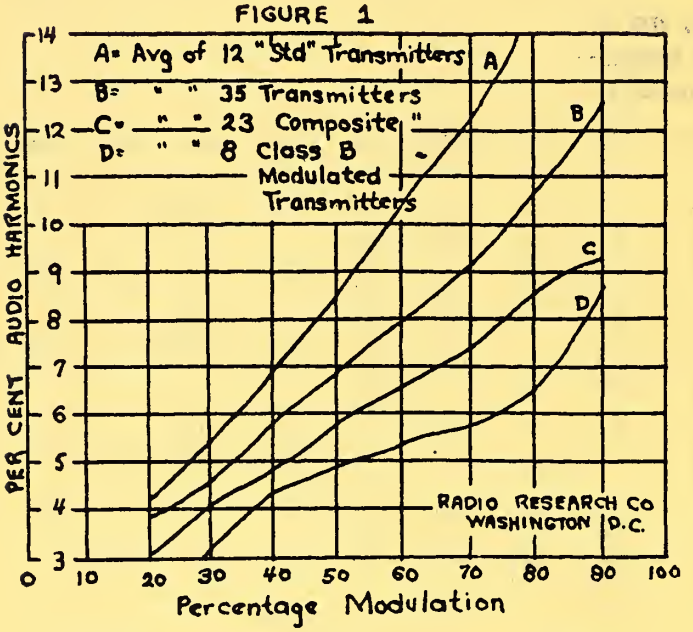
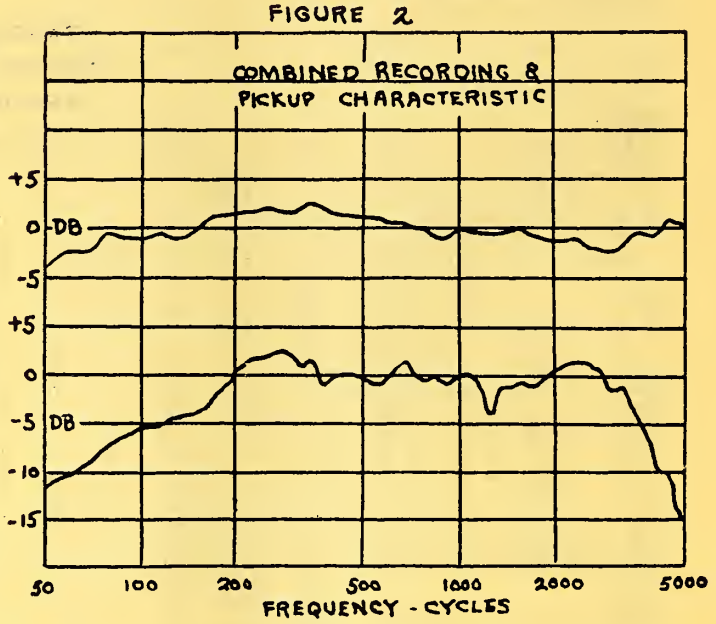


FIGURE 2



FEDERAL COMMUNICATIONS COMMISSION ACTION

HEARING CALENDAR

Tuesday, November 13, 1934

KMLB—Liners Broadcasting Station, Inc., Monroe, La.—C. P., **630 kc.**, 250 watts, unlimited time. Present assignment, **1200 kc.**, 100 watts, unlimited time.

Thursday, November 15, 1934

WBNX—Standard Cahill Co., Inc., New York City.—Special experimental, authority, **1350 kc.**, 500 watts, shares WAWZ. Present assignment, **1350 kc.**, 250 watts, shares WAWZ. Also license to cover C. P., and renewal of license.

APPLICATIONS GRANTED

WLLH—Albert S. Moffat, Lowell, Mass.—Granted license to cover 1370 C. P., **1370 kc.**, 100 watts night, 250 watts day, specified hours.

KGHF—Curtis P. Ritchie, Pueblo, Colo.—Granted license covering 1320 C. P. covering changes in equipment and increase in night power from 250 to 500 watts; **1320 kc.**, unlimited time.

KVL—KVL, Inc., Seattle, Wash.—Granted license covering changes 1370 in equipment; **1370 kc.**, 100 watts, sharing with KRKO.

WSPD—Toledo Broadcasting Co., Toledo, Ohio.—Granted modifi- 1340 cation of C. P. extending completion date of C. P. from October 29, 1934, to January 29, 1935.

KECA—Earle C. Anthony, Inc., Los Angeles, Calif.—Granted modi- 1430 fication of C. P. extending completion date of C. P. from October 15, 1934, to December 15, 1934.

WSBT—South Bend Tribune, South Bend, Ind.—Granted modifica- 1230 tion of license to change hours of operation from specified to sharing with WGES.

WGES—Oak Leaves Broadcasting Station, Inc., Chicago, Ill.— 1230 Granted modification of license to change hours of operation from specified to sharing with WSBT.

SPECIAL AUTHORIZATIONS GRANTED

WLNH—Northern Broadcasting Co., Inc., Laconia, N. H.—Granted special temporary authorization to operate from 8 p. m., EST, November 6, to 2 a. m., EST, November 7, in order to broadcast election returns.

WISN—American Radio News Corp., Milwaukee, Wis.—Granted extension of special experimental authorization to use transmitter formerly licensed as main transmitter of WHAD as an auxiliary of WISN, to be operated with power of 250 watts, for period October 1 to November 29, 1934.

WPRO—Cherry & Webb Broadcasting Co., Providence, R. I.—
630 Granted special temporary authorization to operate without approved frequency monitor for a period not to exceed 30 days.

WHDF—Upper Michigan Broadcasting Co., Calumet, Mich.—Granted special temporary authorization to operate from 6:30 p. m. to 12 midnight, CST, November 6, 1934, in order to broadcast election returns.

KFJB—Marshall Electric Co., Inc., Marshalltown, Iowa.—Granted special temporary authorization to operate unlimited time for the period November 7 and ending not later than 3 a. m., EST, December 1, in order to broadcast political, religious and civic activities.

WRGA—Rome Broadcasting Corp., Rome, Ga.—Granted special temporary authorization to operate simultaneously with station WKEU from 3 to 4 p. m., CST, November 25, in order to broadcast Watchtower program with Judge Rutherford speaking.

KGCX—E. W. Krebsbach, Wolf Point, Mont.—Granted special temporary authorization to operate from 12 midnight, MST, November 6, to 6 a. m., MST, November 7, in order to broadcast election returns.

WFAS—Westchester Broadcasting Corp., White Plains, N. Y.—Granted special temporary authorization to operate simultaneously with WGNY from 2:30 to 3 p. m., EST, November 17 and 24, in order to broadcast football games.

KGBX—KGBX, Inc., Springfield, Mo.—Granted special temporary authorization to operate from 12 midnight, November 6, to 1 a. m., CST, November 7, in order to complete election returns.

WBSO—Broadcasting Service Organization, Inc., Needham, Mass.—Granted special temporary authorization to remain silent November 29 in order to observe Thanksgiving Day, and December 25 in order to observe Christmas Day.

WTRC—Truth Radio Corp., Elkhart, Ind.—Granted special temporary authorization to operate simultaneously with station WLBC for period beginning 7:30 p. m., CST, November 6, and ending 1 a. m., CST, November 7, in order to broadcast election returns.

KGY—KGY, Inc., Olympia, Wash.—Granted special temporary authorization to operate from 11 p. m., PST, November 6, to 2:30 a. m., PST, November 7, in order to broadcast election returns.

KIDW—The Lamar Broadcasting Co., Lamar, Colo.—Granted special temporary authorization to operate simultaneously with KGIW from 10 a. m. to 12:30 p. m., MST, for the period beginning November 8 and ending not later than December 8, 1934.

MISCELLANEOUS

On motion of Commissioner Sykes, the Commission reconsidered and granted by a unanimous vote the application of WLBW to move station from Erie, Pa., to Dayton, Ohio, and to assign license to the Miami Valley Broadcasting Corp. The transmitter site is subject to the approval of the Commission.

WGLC—The Adirondack Broadcasting Co., Hudson Falls, N. Y.—
1370 Granted a regular renewal license as application for facilities made by Harold E. Smith has been dismissed at Smith's request.

WJW—WJW, Inc., Akron, Ohio.—Suspended grant and designated
1210 for hearing application for C. P. to increase daytime power from 100 watts to 250 watts because of the protest of station WHBC, Canton, Ohio.

NEW—Patrick J. Goode, New Haven, Conn.—Denied petition to
970 reconsider application for new station at New Haven to operate on **970 kc.**, 250 watts.

KOL—Seattle Broadcasting Co., Inc., Seattle, Wash.—Denied re-
850 quest for continuance of a hearing now set for November 14, 1934, to change frequency from **1270 kc.** to **850 kc.** on a special experimental basis.

WMEX—The Northern Corp., Chelsea, Mass.—Denied special tem-
1500 porary authorization to operate with additional power of 150 watts night for period beginning November 7 and ending not later than November 21, 1934.

SET FOR HEARING

WRDW—Musicove, Inc., Augusta, Ga.—Voluntary assignment of
1370 license from Musicove, Inc., to Augusta Broadcasting Co.

NEW—Joseph M. Kirby, Boston, Mass.—Set for hearing amended
1120 application for a new station at Boston to operate on **1120 kc.**, with 250 watts night, 500 watts day, unlimited time.

APPLICATIONS DISMISSED

The following applications, heretofore designated for hearing, were dismissed at the request of applicants:

KTAT—KTAT Broadcast Co., Inc., Fort Worth, Tex.—Special
970 experimental authorization, 970 kc., 1 KW night and 1 KW LS, unlimited time.

NEW—The Journal Co. (Milwaukee Journal), Milwaukee, Wis.—
620 Authority to use frequency requested for high-speed facsimile and transmitter of WTMJ, **620 kc.**, 1 KW 12 midnight to 6 a. m.

KWEA—International Broadcasting Corp., Shreveport, La.—C. P.
1500 to move transmitter and studio to Baton Rouge, La.; **1500 kc.**, 100 watts night, 100 watts day, unlimited time.

NEW—Samuel L. Finn, Dayton, Ohio.—C. P. to erect a new station
1250 in Dayton, Ohio; **1250 kc.**, 250 watts night and day, unlimited time.

ORAL ARGUMENT GRANTED

WKZO—WKZO, Inc., Kalamazoo, Mich.—Granted oral argument before the Broadcast Division to be held November 19, 1934.

APPLICATIONS RECEIVED

First Zone

NEW—Bamberger Broadcasting Service, Inc. (to be determined).—Construction permit for a general experimental broadcast station on **41000, 38600, 35600, 31600 kc.**, 1 KW, A1-A3.

Atlantic Broadcasting Corp., New York, N. Y.—Authority to transmit sustaining programs to CKLW, Windsor; CKAC, Montreal; CFRB, Toronto, on Columbia network.

NEW—Palmer Broadcasting Syndicate, Inc., Wilmington, Del.—
1210 Construction permit for new station on **1210 kc.**, 100 watts, unlimited; transmitter and studio sites to be determined at Lewiston, Maine.

NEW—Wodaam Corporation, Newark, N. J.—Modification of
1250 license to increase daytime power from 2½ KW to 5 KW.

WEEI—Edison Electric Illuminating Company of Boston, Boston,
590 Mass.—Construction permit for installation of new equipment, and change power from 1 KW to 5 KW, day and night.

WBNX—Standard Cahill Co., Inc., Bronx, N. Y.—Construction
1350 permit to install new equipment, increase day power from 250 watts to 2½ KW.

NEW—Philip J. Wiseman, Lewiston, Maine.—Construction permit
1210 for new station to be operated on **1210 kc.**, 100 watts power, unlimited time. Studio located at Pine St., No. 40, Lewiston, Maine; transmitter, Dewitt Hotel, Pine St., Lewiston, Maine. *Amended:* Transmitter site changed to Webber Avenue, near Lewiston reservoir, Lewiston, Maine.

W8XAI—Stromberg Carlson Tel. Mfg. Co., Rochester, N. Y.—Modification of construction permit, extension of completion date to 12-1-34.

NEW—City of New York, Dept. of Plant and Structures, New York, N. Y.—Construction permit for one frequency between **17760** and **17800**; 100 watts, A3.

WNBF—Howitt-Wood Radio Co., Inc., Binghamton, N. Y.—
1500 Construction permit to increase power from 100 watts to 100 watts night, 250 watts day, and make changes in equipment.

WTAG—Worcester Telegram Publishing Company, Inc., Worcester,
580 Mass.—Special experimental authorization to operate on **580 kc.**, 1 KW power, unlimited time, for a period ending 3-1-35.

WNEL—Juan Piza, San Juan, Puerto Rico.—License to cover con-
1290 struction permit (1-P-B-2848) as modified.

WNBZ—Earl J. Smith and Wm. Mace, d/b as Smith & Mace,
1290 Saranac Lake, N. Y.—Construction permit to install new equipment and increase power from 50 watts day to 100 watts daytime.

WFEA—New Hampshire Broadcasting Co., Manchester, N. H.—
1340 Special experimental authorization to increase night power from 500 watts to 1 KW, for period ending May 1, 1935.

Second Zone

WKRC—WKRC, Inc., Cincinnati, Ohio.—Modification of con-
550 struction permit (2-P-B-3282) to extend completion date to 1-29-35.

WLVA—Lynchburg Broadcasting Corp., Lynchburg, Va.—License
1200 to cover construction permit (B-2-P-32) to increase power and make equipment changes.

KGRS—E. B. Gish (Gish Radio Service), Amarillo, Tex.—License
1410 to cover construction permit (3-PB-3319) to install new equipment and increase power.

WLBW—Miami Valley Broadcasting Corp., Dayton, Ohio.—Con-
1260 struction permit to move studio from Lawrence Hotel, Erie, Pa., to 39 S. Ludlow St., Dayton, Ohio; move transmitter from Hershey and Robertson Roads, Summit Township, Pa., to site to be determined, Dayton, Ohio; install new equipment. *Amended:* 10-25-34, re equipment; move transmitter to Montgomery County, outside of Dayton, Ohio.

NEW—Brothers and England (L. C. Brothers and H. P. England),
1370 Mansfield, Ohio.—Construction permit for new station, **1370 kc.,** 100 watts, unlimited time. Studio and transmitter, Westside Public Square, Mansfield, Ohio. *Amended:* **1300 kc.,** 250 watts; studio and transmitter, Richland Bank Building, Mansfield, Ohio.

WHJB—Pittsburgh Radio Supply House, Greensburgh, Pa.—
620 License to cover construction permit (B2-P-3090) to erect new station on **620 kc.,** 250 watts, daytime, and extend commencement and completion dates.

WIBM—WIBM, Inc., Jackson, Mich.—License to cover construc-
1370 tion permit (B2-P-21) to increase power from 100 watts to 100 watts night and 250 watts daytime, and make equipment changes.

WCAE—WCAE, Inc., Pittsburgh, Pa.—Construction permit to in-
1220 stall new equipment and increase day power from 1 KW to 5 KW.

WHK—Radio Air Service Corp., Cleveland, Ohio.—Modification
1390 of license to increase power from 1 KW and 2½ KW to 1 KW night and 5 KW day.

WHK—Radio Air Service Corp., Cleveland, Ohio.—Modification
1390 of license to increase power from 1 KW night and 2½ KW day to 5 KW day and night.

WPHR—WLBG, Inc., Petersburg, Va.—Modification of construc-
880 tion permit (2-P-B-3291) to extend commencement date to 12-15-34 and completion date to 1-15-35.

Third Zone

KARK—Arkansas Radio and Equipment Co., Little Rock, Ark.—
890 Construction permit to install new equipment, move transmitter, and change power from 250 watts night and 500 watts day to 1 KW day and night. (Request of applicant.)

NEW—Wilton E. Hall, Anderson, S. C.—Construction permit for
1200 a new station to be operated on **1200 kc.,** 100 watts, 250 watts, unlimited time. Transmitter and studio located at 112 East Market St., Anderson, S. C.

KADA—C. C. Morris, Ada, Okla.—License to cover construction
1200 permit (3-P-B-3149) as modified. Resubmitted and amended regard to equipment.

NEW—James M. Patterson, Jr., Stillwater, Okla.—Construction
1290 permit for new station on **1290 kc.,** 100 watts, daytime. Transmitter and studio located at Stillwater, Okla. *Amended,* changed frequency to **1210 kc.**

KARK—Arkansas Radio & Equipment Company, Little Rock,
890 Ark.—Construction permit to make equipment changes and increase power from 250 watts night, 500 watts day, to 500 watts night, 1 KW daytime.

WJBO—Baton Rouge Broadcasting Company, Inc., Baton Rouge,
1420 La.—Modification of construction permit (3-P-B-2743) as modified, to extend the completion date to 1-1-35.

NEW—William L. Waltman, Muskogee, Okla.—Construction per-
1200 mit to erect a new broadcast station on **1200 kc.,** 100 watts, daytime. Studio located at Fifth and Wall Sts., Hotel Severs, Muskogee, Okla., and transmitter located at Fifth and Wall Streets, Muskogee, Okla.

NEW—East Texas Broadcasting Company, Dallas, Tex.—Con-
1500 struction permit to erect a new broadcast station on **1500 kc.,** 100 watts power, specified hours of operation. Studio located at 1415 Main Street, Dallas, Tex.; transmitter located Trinity River Industrial Blvd., Dallas, Tex.

WJBO—Baton Rouge Broadcasting Co., Inc., Baton Rouge, La.—
1420 Voluntary assignment of license to Capital City Press, of Baton Rouge, La. Requests call letters of WBRG.

WMC—WMC, Inc., Memphis, Tenn.—Voluntary assignment of
780 license to Memphis Commercial Appeal, Inc.

NEW—David Parmer, Atlanta, Ga.—Construction permit for new
1370 station on **1370 kc.,** 100 watts power night, 250 watts power daytime, unlimited time. Studio and transmitter, 660 Peachtree St., Atlanta, Ga. Requesting facilities of radio station WJTL.

NEW—Pope Foster, Mobile, Ala.—Construction permit for new
1200 station on **1200 kc.,** 100 watts power, daytime. Studio and transmitter on Cawthon Hotel, corner St. Francis and Conception Sts., Mobile, Ala.

Fourth Zone

KYW—Westinghouse Electric & Manufacturing Co., Chicopee
1020 Falls, Mass.—Modification of construction permit (2-MP-B-521) to extend completion date to 1-10-35.

NEW—W. R. Cramer and G. A. Anderson, d/b as Omaha Broad-
1200 casting Co., Omaha, Nebr.—Construction permit to erect a new station to be operated on **1200 kc.,** 100 watts power, unlimited time. Transmitter located at Washington and So. 36th St., Omaha, Nebr.; studio located at Paxton Hotel, 14th and Farnam Sts., Omaha, Nebr.

NEW—Wm. H. West, St. Louis, Mo.—Construction permit for new
1200 station on **1200 kc.,** 100 watts power, unlimited time. Studio and transmitter location to be determined, St. Louis, Mo. (Contingent on the granting of B4-P-142, Radio Station WIL.)

KSTP—National Battery Broadcasting Co., St. Paul, Minn.—
1460 Modification of special experimental authority to change night power from 10 KW to 25 KW.

WDGY—Dr. George W. Young, Minneapolis, Minn.—Construc-
1180 tion permit to increase daytime power from 2½ KW to 5 KW and make changes in equipment. Consideration under Rule 6 (g).

KMBC—Midland Broadcasting Co., Kansas City, Mo.—Modifica-
950 tion of license to use present licensed auxiliary transmitter as regular transmitter for nighttime operation.

NEW—D. E. Kendrick and W. E. Vogelback, Indianapolis, Ind.—
850 Construction permit for a new station to be operated on **850 kc.,** 5 KW power, unlimited time. Transmitter location, Crawfordsville Road, Highway 52, 1 mile northwest of Clermont, Ind. Studio located at 540½ North Meridian, Indianapolis, Ind.

WIBU—Wm. C. Forrest, Poynette, Wis.—Construction permit to
1210 install new equipment, increase day power from 100 watts to 250 watts.

KWK—Thomas Patrick, Inc., St. Louis, Mo.—Construction permit
1350 to make changes in equipment, increase day power from 2½ KW to 5 KW.

NEW—National Battery Broadcasting Company, St. Paul, Minn.—
680 Construction permit to erect a new broadcast station to be operated on **680 kc.,** 500 watts night and 1 KW daytime, unlimited time. Transmitter location to be determined, St. Paul, Minn. Studio location, St. Paul Hotel, St. Paul, Minn.

KWCR—Cedar Rapids Broadcast Co., Des Moines, Iowa.—Con-
1430 struction permit to move transmitter from 3rd Ave. and 3rd St., Cedar Rapids, Iowa, to site to be determined near Des Moines, Iowa; and studio from Montrose Hotel, 3rd Ave. and 3rd St., Cedar Rapids, Iowa, to 715 Locust St., Cedar Rapids, Iowa.

WEBC—Head of the Lakes Broadcasting Company, Superior,
1290 Wis.—Construction permit to increase power from 1 KW night, 2½ KW daytime, to 1 KW night, 5 KW daytime, and make change in equipment.

WIBW—Topeka Broadcasting Association, Inc., Topeka, Kans.—
580 Modification of construction permit (4B-P-57) to increase power from 1 KW night, 2½ KW day, to 1 KW night and 5 KW day.

NEW—Southern Minnesota Broadcasting Co., Rochester, Minn.—
1310 Construction permit for new station to be erected on **1310 kc.,** 100 watts power, unlimited time. Studio and transmitter sites to be determined, Rochester, Minn.

WMT—Waterloo Broadcasting Co., Des Moines, Iowa.—Construc-
620 tion permit to change location of transmitter from approximately 5 miles from Waterloo, Iowa, to site to be determined near Cedar Rapids, Iowa, and the studio from Third and Lafayette Sts., Waterloo, Iowa, to 3rd Ave. and 3rd St., Cedar Rapids, Iowa.

Fifth Zone

KID—KID Broadcasting Co., Inc., Idaho Falls, Idaho.—Modifi-
1320 cation of license to increase nighttime power from 250 watts to 500 watts. *Amended:* Change power from 250 watts night, 500 watts day, to 500 watts night and 1 KW day.

KLO—Interstate Broadcasting Corp, Ogden, Utah.—Construction
1400 permit to make changes in equipment. (Signature, 15(d), transmitter and geographical location.)

KOIN—KOIN, Inc., Portland, Oreg.—Construction permits to in-
940 crease day power to 5 KW, install new equipment. Considered under Rule 6. (Request of applicant.)

KJBS—Julius Brunton & Sons Co., San Francisco, Calif.—Modi-
1070 fication of license to change hours of operation from specified hours to unlimited time.

KHJ—Don Lee Broadcasting System, Los Angeles, Calif.—Modi-
900 fication of construction permit (5-P-B-3199) as modified to increase daytime power from 2½ KW to 5 KW.

KGAR—Tucson Motor Service Co., Tucson, Ariz.—Modification
1450 of license to change frequency from **1370 kc.** to **1450 kc.**, increase nighttime power from 100 watts to 250 watts.

KFSG—Echo Park Evangelistic Association, Los Angeles, Calif.—
1120 Modification of license (B-5-R-15) to increase day power from 500 watts to 1 KW.

NEW—Northern California Amusement Co., Inc., Yreka, Calif.—
1500 Construction permit for a new station for **1500 kc.**, 100 watts power, unlimited time, transmitter and studio located at Broadway Street, Yreka, Calif.

KGA—Louis Wasmer, Spokane, Wash.—Modification of license to
950 change frequency from **1470 kc.** to **950 kc.**, change power from 5 KW day and night to 1 KW night and 5 KW daytime.

KHQ—Louis Wasmer, Inc., Spokane, Wash.—Modification of
590 license to increase power from 1 KW to 2 KW-LS to 5 KW day and night.

NEW—Hauser Radio Co., C. R. Hauser & John McGinnis, Ven-
1160 tura, Calif.—Construction permit for a new radio station to be operated on **1160 kc.**, 100 watts power, daytime operation. Transmitter and studio located at 487 Main Street, Ventura, Calif. *Amended:* Regard to equipment, change power from 100 watts day to 100 watts day and night and change frequency from **1160** to **1210 kc.**, change hours of operation from daytime to unlimited.

KFRC—Don Lee Broadcasting System, San Francisco, Calif.—
610 Modification of construction permit (5-P-B-3200) as modified to increase day power from 2½ KW to 5 KW.

KGW—Oregonian Publishing Co., Portland, Oreg.—Modification
620 of construction permit (B-5-P-3106) as modified to increase day power from 2½ KW to 5 KW.

NEW—Richard Field Lewis, Del Monte, Calif.—Construction per-
1210 mit to erect a new broadcast station to be operated on **1210 kc.**, 100 watts power, daytime operation; to be considered under Rule 6. Transmitter and studio located at Del Monte Hotel, Del Monte, Calif. *Amended:* 10-15-34 to request unlimited time and 100 watt power for nighttime operation.

KLO—Interstate Broadcasting Corp., Ogden, Utah.—Construction
1400 permit to make changes in the equipment. *Amended:* In regard to equipment.

NEW—Fred L. Packard, A. Rosenberg, Los Angeles, Calif. (West-
1160 wood Village).—Construction permit for a new broadcast station to be operated on **1160 kc.**, 100 watts power, limited time. Studio: Recreation and Masonic Club, Westwood Village, Los Angeles, Calif. Transmitter site to be determined, Westwood Village, Los Angeles, Calif.

NEW—The Close-Up Publishing Co., Bell., Calif.—Construction
1070 permit for a new station to be operated on **1070 kc.**, 100 watts power, daytime. Studio and transmitter at 4313 E. Gage, Bell, Calif.

KPCB—Queen City Broadcasting Co., Seattle, Wash.—License to
710 cover construction permit (5-P-B-3160) as modified to install new equipment and increase power.

KPCB—Queen City Broadcasting Co., Seattle, Wash.—Modification
710 of special experimental authorization to operate with 250 watts power on **710 kc.**

KFIO—Spokane Broadcasting Corp., Spokane, Wash.—Construc-
1120 tion permit to move transmitter locally from 213 Riverside Ave. to 526 Riverside Ave., Spokane, Wash. *Amended:* Move studio from 213 Riverside Ave. to 526 W. Riverside Ave., Spokane, Wash.

KUJ—KUJ, Inc., Walla Walla, Wash.—Extension of special ex-
1370 perimental authorization for period ending July 1, 1935.

APPLICATIONS RETURNED

NEW—W. L. Gleason, Sacramento, Calif.—Special experimental
1490 authorization to erect a new station on **1490 kc.**, 5 KW power, unlimited time. Transmitter located over 6 miles south of city of Sacramento, Calif., on Sacramento River. Studio location to be determined, Sacramento, Calif. *Amended:* To request limited time. (Rule 5.)

NEW—General Television Corp., Boston, Mass.—Construction
1570 permit for experimental broadcast station **1570 kc.**, 1 KW, variable. (Returned, Rule 49.)

WGCM—Grace Jones Stewart under trade name of Great South-
1210 ern Land, No. (Not Inc.), Gulfport, Miss.—Special experimental authorization to operate with additional 150 watts night and changes in specified hours of operation. (Request of applicant.)

KHQ—Louis Wasmer, Inc., Spokane, Wash.—Modification of
590 license to increase power from 2 KW day to 5 KW. (Request of attorney.)

NEW—Harold Thomas, New Britain, Conn.—Construction permit
930 for a new station to be operated on **930 kc.**, 100 watts power, daytime operation. Transmitter and studio location to be determined, New Britain, Conn. (Rule 120.)

NEW—Mildred English and Genevieve C. Wilson d/b as Dallas
1210 Broadcasting Co., Dallas, Tex.—Construction permit for a new broadcast station to be operated on **1210 kc.**, 100 watts, daytime. Shares with KNOW. Studio and transmitter: 1610 Ross Ave., Dallas, Tex. (Superseded by application No. B-3-P-166.)

WSGN—R. B. Broyles, Tr. as R. B. Broyles Furniture Co., Bir-
1310 mingham, Ala.—License to cover construction permit (3-P-B-3034) as modified to increase power and make change in authorized equipment. (Signature.)

KCMC—North Mississippi Broadcast Corp., Texarkana, Ark.—
1420 Construction permit to increase power from 100 watts to 1 KW and install new equipment. (Power and transmitter site.)

NEW—George H. Johnson, Helena, Mont.—Construction permit
1420 for new station on **1420 kc.**, 100 or 250 watts power night, 250 watts day, unlimited. Transmitter and studio Adj. Intermountain Union.