

The National Association of Broadcasters

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JAMES W. BALDWIN, Managing Director

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American Society of Recording Artists, Inc.

As information to members, there is printed below a report and opinion in respect of the American Society of Recording Artists, Inc.

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CRAWFORD & SPRAGUE
117 Liberty Street
New York, N. Y.

August 28, 1936.

THE NATIONAL ASSOCIATION OF BROADCASTERS,
National Press Building,
Washington, D. C.

GENTLEMEN:

You have requested me to investigate the activities of the American Society of Recording Artists, Inc., a California Corporation, and to report to you the results of my findings, and to submit to you an opinion and brief with respect to the rights of performers who have made phonograph records as against radio stations who broadcast such records.

THE ORGANIZATION OF ASRA

The American Society of Recording Artists, Inc., filed Articles of Incorporation in the office of the Secretary of State of the State of California on May 3, 1934. The incorporators and first directors of the Corporation named in the Certificate are G. Brandt, C. Andrews and E. Hensgen, all of whom gave their addresses as 403 Lane Mortgage Building, Los Angeles, California. The Corporation is authorized to issue 2500 shares of stock of \$10 par value, all of which is common stock, so that the total capitalization is \$25,000.00. The Articles state that the principal office will be located in the County of Los Angeles, in the State of California. The Corporation is given broad general powers. The specific powers deal generally with the business of dealing in, for broadcasting and other commercial purposes, records of "the voice talents or work of artists", promoting the popularity of recording artists, contracting for the reproduction or use of records for broadcasting and commercial purposes, and to deal in copyrights and patents. The Charter appears to have been filed by Leonard J. Meyberg, an attorney at law, located in the Lane Mortgage Building in Los Angeles, and who is now General Counsel of ASRA. A copy of the Articles of Incorporation is attached at the end of this report as Exhibit "1".

On July 17, 1934, the Department of Investment of the Division of Corporations of the State of California granted the application of ASRA for a permit authorizing it to sell its stock and issued a permit with the expiration date of January 17, 1935, authorizing the sale and issuance of not to exceed 2,000 shares at par in cash to the three Incorporators named in the Articles of Incorporation, and to Arthur Levy and William Leeds, or to any of them. No application for an extension of the permit beyond January 17, 1935, is shown on the records of the Secretary of State, so the Corporation either complied with the permit and issued the shares, or permitted the permit to lapse. I believe it is a fair presumption that at least some of the shares have been issued. It is impossible to ascertain the names of the present stockholders and the amount of their holdings without approaching the Executives of ASRA for this information, and this was deemed unwise at present. The application filed by ASRA for the permit is likewise not available from the Division of Corporations, except upon order of ASRA, or its attorney. A copy of the permit is inserted at the end of this report, as Exhibit "2".

It is known that G. Brandt, named in the Certificate as one of the Incorporators and Directors, is Secretary to Leonard J. Meyberg, the attorney who prepared and filed the Articles of Incorporation. It seems quite likely that C. Andrews and E. Hensgen, the other two Incorporators and First Directors, are likewise associated with Mr. Meyberg and have no financial interest in the Corporation, or are acting for undisclosed parties. The appearance of the names Arthur Levy and William Leeds in the permit leads one to the conclusion that these men are the real parties in interest. Mr. Leeds is listed on the letterheads of ASRA as "Executive Secretary". Mr. Leeds has been in New York City recently soliciting licenses from broadcasting stations. It is possible, however, that stock was issued to Brandt, Andrews and Hensgen and that they either retained it for themselves, or transferred it to parties who did not desire their names to appear. The maximum capitalization under the permit is \$20,000.00, and this amount would not be increased without additional permits from the State of California. The actual capital may, however, be substantially less than \$20,000.00,

as the permit did not require the issuance of 2000 shares, that figure being merely the upper limit.

METHODS OF OPERATION OF ASRA

Between May 3, 1934, and February 15, 1935, ASRA undertook to establish the nucleus of a membership of artists. It established an Executive Committee with Al Jolson as its Chairman. It contacted some of the makers of phonograph records and endeavored to have them become members. The plan was that ASRA would keep ten per cent. of the income from royalties and would divide the balance equally between the artist members and the Recording Company members.

On February 15, 1935, a form letter went out to artists over the name of the Chairman of the Executive Committee, inviting the recipient to accept membership in ASRA in order to secure a share in the income which it expected to collect from broadcasters "estimated up to \$5,000,000 annually". A copy of this letter is attached as Exhibit "3".

Enclosed with the letter from ASRA to the artists was a form of "Application for Regular Membership," which contained an assignment to ASRA for five years of "all rights of reproduction for use for broadcast and/or commercial purposes * * * with the right to determine royalties * * *. Rights, otherwise contained in contracts now existing between me and Recording Companies are not included herein." It was further provided that the artist would pay no dues, initiation fees or assessments, and would not be liable for any debts or obligations of ASRA. By this agreement the artist was to receive forty-five per cent. of the royalties collected by ASRA for broadcasting phonograph recordings of the artist. A copy of this application appears as Exhibit "4" at the end of this report.

On April 1, 1935, ASRA sent a form letter to most all of the broadcasting stations in the United States, acquainting the recipients with the Organization of ASRA and its purposes, and that it then had "hundreds of the World's leading recording artists" as members. The letter stated that it had adopted "Licensee memberships" whereby broadcasters might be represented and obtain licenses to broadcast the talents of the members of ASRA through the medium of phonograph records, and stating that it intended to begin the collection of royalties on May 1, 1935, and that any one desiring to continue to broadcast with the consent of the artist should have his signed application in the hands of ASRA not later than April 15, 1935. A copy of this letter of April 1 is attached as Exhibit "5".

With the letter of April 1, 1935, there was enclosed a printed form of "Application for Licensee Membership." A typewritten copy of this form is attached to this report as Exhibit "6".

On the reverse side of the printed form there was printed Sections 1 to 14 of Article XII of the by-laws of ASRA referring to licensee members and a typewritten copy of this map appears as Exhibit "7" attached to this report.

On or about May 1, 1935, ASRA's negotiations with the Phonograph Companies came to an end, the Phonograph Companies declining to accept memberships. Accordingly, ASRA prepared a new form of application to be signed by artists, containing an assignment of "all rights of reproduction or use for broadcasting and/or commercial purposes * * * of the applicant's recorded voice, talents or work, together with the right to determine the royalty * * * excluding therefrom, however, any and all rights included in any contract now existing between applicant and a Reproduction Company." The agreement specifically excluded such "rights of reproduction for ordinary recording purposes, as are now contained in the general form contracts used by Victor, Columbia or Brunswick Companies, copies whereof are on file in the office of the Society * * *". The right is also given ASRA to sue in its own name, or in the name of the applicant, to enforce any of the rights granted by the applicant, but at the sole expense of ASRA. The applicant further agreed to pay ASRA ten per cent. of the sums thereafter received by the applicant by reason of the applicant's work with Recording Companies, or for mechanical reproduction of the applicant's voice, talent or work, whether the contracts were obtained by ASRA or not, it being stated that this additional compensation was agreed upon in view of the increased returns contemplated by the parties from the sale of records through the efforts of ASRA. A copy of this application for membership is attached to this report as Exhibit "8". It is not known which artists have signed this form of application and which have signed the application previously used and referred to herein as Exhibit "4".

On February 10, 1936, another circular form letter was sent to broadcasting stations by ASRA over the signature of its Executive

Secretary, Mr. Arthur W. Levy, to which was attached a copy of a resolution of the Board of Directors of ASRA, held February 1, 1936, and a reprint from page 55 of "Variety" of January 22, 1936, regarding the decision in the Court of Common Pleas in Philadelphia, in the case of Fred Waring v. Station WDAS. On the back of the letter of February 10, there was printed a list of artists whom ASRA claimed had previously assigned to it the right to use their talents for broadcasting purposes through the medium of recordings, pursuant to written memorandum thereof on file with the Society. The letter demanded that the stations refrain from broadcasting phonograph records of these members without a license and that the stations account and pay ASRA for each usage made, if the stations failed or refused to abide by ASRA's demands. Copies of these papers are attached hereto and marked Exhibit "9".

Later in the Spring of 1936, ASRA sent to Broadcasting Stations a printed circular bearing no date, but containing at the top of the page the words "Al Jolson, President" and at the bottom of the first page a list of the Board of Governors and the Chairmen of the various Committees. The inner portion of the circular contained various excerpts from Court decisions, while the back cover bore a list of Court decisions which were supposed to be authority for ASRA's right to demand royalties for the broadcasting of phonograph records. A typewritten copy of this printed circular is attached as Exhibit "10".

The present offices of ASRA are located in Room 205 of the Belson Building at No. 6513 Hollywood Boulevard in Los Angeles, California. The space occupied consists of approximately three rooms and a sparsely furnished reception room. The name "American Society of Recording Artists, Inc." appears on the door of Room 205 and the same name appears on the bulletin board in the lobby of the building, together with the names of Anna Mae Bell and Arthur W. Levy, the latter of whom is the Executive Secretary of ASRA.

ASRA maintains another office in the Bank of America Building in Beverly Hills, California, at No. 9470 Santa Monica Boulevard. On the door of Room 408 of that building there appears the name "American Society of Recording Artists, Inc." and below it the words "Bureau of Investigation." The space occupied seems to consist of only one office, or room.

The last circular letter (Exhibit "10") carries only the Beverly Hills address.

RADIO STATIONS THAT HAVE TAKEN ASRA LICENSES

So far as I have been able to ascertain, only three stations have, during the two years of existence of ASRA, entered into license agreements with it.

This Spring, Station KMPC of Beverly Hills, California, with 500 watts power, and Station KGFJ of Los Angeles, with 100 watts power, signed ASRA contracts, but immediately ceased using phonograph records and changed to electrical transcriptions. These stations are required by their licenses to pay ASRA an annual service fee of \$60.00, even though no phonograph records are broadcast.

Station KPFL of Dublin, Texas, with 100 watts power signed an ASRA contract on March 2, 1936. When it came time to pay its second quarterly service fee, it wrote ASRA requesting that it be relieved of the service charge because it had broadcast only four records of performances of ASRA artists in almost four months, but ASRA declined to eliminate the charge.

Station KFOX of Long Beach, California, with 1000 watts power, negotiated with ASRA, but, I am informed, has since decided not to sign any agreement.

Each of these stations that has signed is committed for a period of one year and for two years unless written notice is given ASRA thirty days prior to the end of the first year in accordance with the terms of the agreement.

PERCENTAGE OF RECORDINGS AFFECTED BY ASRA

I have taken the list of artists printed on the back of ASRA's letter to radio stations of February 10, 1936 (See Exhibit "9") and compared these names with the names of artists appearing on lists of the October, 1935, Releases of Columbia and Victor, a 1936 Circular of Releases by Decca, and the Victor Red Seal list in its 1936 catalog with the following result:

COLUMBIA:

Of 282 selections recorded, 64 are by artists on the ASRA list, or 23 per cent.

DECCA:

Of 381 recorded compositions 88 are by artists on the ASRA list, or 23 per cent.

VICTOR:

Of 186 recordings on the October, 1935, Victor list, 49 are by artists on the ASRA list, or 26 per cent.

Of 2,365 recordings on the Victor Red Seal list in its 1936 catalog 653 are by artists on the ASRA list, or 27½ per cent.

The average of the current recordings of the three companies appears to be about 25 per cent ASRA*.

DEFECTS IN FORM OF LICENSE TO STATIONS

(a) Specific Objections to Form of License

By-Laws part of agreement

(1) The first paragraph of the agreement provides that the station "agrees to abide * * * by the By-Laws of the Society applicable to such 'Licensee Memberships'". The third paragraph provides that "The By-Laws printed on the reverse side hereof shall be binding upon the parties hereto the same as though contained herein." Section 4 of Article XII of the By-Laws provides that "such application, together with the By-Laws of the Society pertaining thereto, shall constitute the agreement or license between the Society and the applicant Licensee Member." Section 6 of Article XII of the By-Laws provides that "Each Licensee Member shall be bound by these By-Laws * * *." It is not clear whether the station would or would not be bound by any By-Laws other than those contained on the back of the Agreement. There would seem to be no necessity for the reference to By-Laws in the first paragraph of the agreement unless other By-Laws than those contained on the back of the agreement were contemplated. The clauses in paragraph 1 of the agreement and in section 4 of the By-Laws should be eliminated and if possible a clause should be added to the agreement that no By-Laws other than those enumerated on the back of the agreement shall in any way affect the terms of the agreement and that no modifications of such By-Laws shall affect the terms of the agreement. These changes regarding By-Laws may not be considered by some stations to be of sufficient importance to them to justify insisting on their being made.

Release covering past use

(2) Paragraph 4 of the agreement states:

"Provided the applicant shall have fulfilled this agreement, upon its part, the Society agrees to release the applicant from any and all liability to it or its Regular Members, without compensation whatsoever, or charge therefor to it or its Regular Members, arising from the broadcasting of its members' talent through the medium of recordings, occurring prior to the date of signing of this application."

It is doubtful if this clause legally releases the station from claims by ASRA members for past use. An examination of the forms of application for membership by the artist fail to disclose any such right being given to ASRA by the Artist. The By-Laws applicable to such members are not available to broadcasters but in the absence of some specific right in the By-Laws to release licensees from claims by the Artists this clause affords no protection to the station except that it amounts to a covenant on the part of ASRA (and not its members) not to sue the station. Even this covenant is subject to limitations in that it is effective only if the station fulfills the agreement. With a contract as ambiguous as this, there will be room for many claims by ASRA of non-fulfillment by the station with the corresponding claim made that by reason thereof prior claims have not been released. Any station considering a license with ASRA should ascertain before signing the license that the artist members of ASRA have explicitly agreed either in the By-Laws which they have accepted or in some other specific manner, to the granting of releases, and (b) endeavor to eliminate from the clause the words "Provided the

* (The computation includes recordings of orchestras conducted by ASRA members—for instance Barbirolli conducting the London Symphony. It is extremely doubtful whether Barbirolli has any rights in such recordings as he plays no instrument in these performances. Also a great many recordings are of soloists with orchestral accompaniment. The soloist may be an ASRA member and the orchestra not or vice-versa. ASRA, since it can speak only for its members, cannot give a complete license on these recordings.)

applicant shall have fulfilled this agreement, upon its part, the Society agrees to release" and to substitute the words "Society, for itself and on behalf of its members, hereby releases."

Wattage, wage-length

(3) The sixth paragraph of the agreement fixes the charges for stations with power of less than 500 watts at 5 cents, with power of less than 1000 watts at 10 cents and with 1000 watts or more at 15 cents per "usage." The applicant is required to specify its day wattage and night wattage on the application. Many if not most stations using phonograph records have a higher daytime power than night time power because greater power is necessary in the daytime to cover the same area as lesser power will cover at night. And yet under this arrangement a station may have to pay twice or three times as much for broadcasting a record in the daytime than for broadcasting the same record at night. I am of the opinion that the fee should be fixed on the night time wattage and should be no greater during the daytime and that the agreement should be modified to expressly so provide. Section 8 of Article XII of the By-Laws obliges the station to notify ASRA "of any change * * * in wave length and/or wattage" and to pay royalties covering such wattage at which the station operates. The reference to wave length should be stricken as no change in wave length can possibly affect the royalties payable by the station. The remainder of the clause should be modified by adding after the word "wattage" the clause reading "providing such change in wattage increases or decreases the rate of royalty payable by the station." By incorporating these changes the station will not be put to the annoyance of reporting changes in operation which cannot in any way concern ASRA, and the failure to report which might amount to an innocent breach of the agreement.

Usage

(4) The sixth paragraph of the agreement provides that a fee shall be paid for each usage of the talent of a member. Assuming that two ASRA artists appear on one record are there two fees payable or only one? For instance Richard Crooks sang for a recent Victor release to the accompaniment of an orchestra conducted by Nat Shilkret. Both artists are ASRA members. The agreement should specifically provide as follows: "Where a recording contains talent of two or more 'Regular Members' royalty shall be paid as though the recording contained talent of only one 'Regular Member'."

Electrical Transcriptions

(5) The eighth paragraph from the end of the agreement reads:

"Talent as herein expressed shall be the work or voice or other reproduction from a personal effort which may be broadcast by or through the facilities of the applicant, without the personal appearance of the artist, and whether through the medium of recordings or otherwise."

This clause and Section 10 of Article XII of the ASRA By-Laws would require stations broadcasting electrical transcriptions in which an ASRA member appeared to pay a fee to ASRA although the maker of the transcription had already paid that artist in full for the specific purpose of broadcasting. Electrical transcriptions should be specifically excepted from the terms of the license.

72-Hour Restriction Clause

(6) The sixth paragraph from the bottom of the page of the agreement reads:

"The applicant agrees to refrain from broadcasting such talents through the medium of recordings, at such times as may be designated from time to time in writing by the Society, when the Society believes such broadcast may interfere with the services of any regular member, and due notice of such suspension shall be given the applicant not less than 72 hours in advance of such suspension time or date."

By this clause and Section 11 of the By-Laws of ASRA, ASRA could conceivably restrict all recordings of every one of its "members" without any cause whatsoever, thereby securing by agreement an effective injunction (so to speak) which otherwise only a Court could bring about, if at all. It is my opinion, for the reasons set forth more fully later on in this report, that a performer cannot legally enjoin a radio station from broadcasting a phonograph record (provided the station is using no deception in its broadcasts and correctly announces on the air the recording as a recording) because the performer has no contract with the station. If a sta-

tion signed a license containing this clause the Courts would quite likely enjoin the broadcasting of records after the 72 hour notice of restriction was given irrespective of the reasons or lack of reasons for the ban, although there would probably be some defenses available to the station such as for instance that the performer has an adequate remedy at law by way of damages. But whatever way one looks at it the clause is detrimental to any station who is bound to it. *Therefore efforts should be made (1) to eliminate it entirely on the ground (a) that the Society does not really need it since the agreements with artists give the artists no corresponding right and, (b) that the agreement is terminable by the Society at the end of a year in any event so that if the Society wishes not to have broadcast recordings of any one or more artists the license for the new period can be drawn for only those artists who are willing to have their records broadcast for that year, (2) to change that section reading "when the Society believes such broadcast may interfere with the services of any regular member" to read as follows "so as to prevent the recording of a member to be broadcast in an area covered by a 'live' broadcast of that member within — hours preceding or following such live broadcast," or (3) to fix a limitation on the number of recordings that can be under a ban at any one time.*

The clause in its present form is broad enough to allow the Society to ban a recording of Crumit if it believed it would interfere with the services of "John Charles Thomas," for the language does not provide that the talent to be banned must be that of the member whose services might be believed by the Society to be interfered with. This may seem rather far fetched but the language clearly permits of such a construction. *This ambiguity should in any event be removed by ASRA.*

Reporting records broadcast

(7) The third paragraph from the end of the agreement reads:

"The applicant shall forward to the Society promptly on the last day of each week, on forms to be furnished by the Society, a daily log sheet of all talents broadcast from records played by it."

This clause should be limited by inserting after the word "talents" the words "of 'regular members' of Society." ASRA should have no interest in broadcasts of recordings other than its members. Such information should be confidential to the station.

Service Fee of \$60 a year

(8) The second paragraph from the end of the agreement reads:

"The applicant herein shall pay the Society a monthly service fee of \$5.00, commencing with the date of acceptance hereof, by the Society, payable quarter-annually in advance, remittance for the first quarter to accompany this application." (See also Section 5, Article XII of By-Laws.)

While the amount of this "service fee" may not seem large there seems no justification for any charge whatever. No part of this fee goes to the Artists but only to the stockholders of ASRA. What service is ASRA rendering to the station? ASRA should be content with its percentage of royalties received for its "artist members." *The service fee should be eliminated from the agreement and By-Laws.*

Not a license to broadcast records but admission of artists' rights therein

(9) The concluding paragraph of the agreement reads:

"Nothing herein contained shall be deemed to include or refer to or limit or extend rights to or interfere with the playing of a phonograph record except in so far as there may be a broadcast of the talents of a regular member of the Society through the medium of a recording in which case it shall be the right of the Society to control the use of such talent for broadcasting purposes and collect compensation therefor."

At first glance this might appear to be harmless to the station. On further examination, however, it is apparent that it is a specific back-handed admission by the station that the ASRA members have rights in phonograph records and that such members may interfere with the broadcasting of the same and control their use and collect royalties. Assume that the station decided a year or two later that it could not afford to pay the royalties then demanded. The station would not be in a position then to do anything but cease using records of any artist who had at any time been an ASRA member because the station would be faced with

its prior admission in writing of the artists' rights. If sued the station would then find itself with either no defense or very limited and doubtful defenses.

Assume that the station broadcasts a record containing not only the performance of an ASRA member but (as will usually be the case) also the performance of an orchestra, the leader and members of which are not ASRA members. Assume further that one or more of the non-members sues the station and proves to the Court or jury that this station had admitted in writing that the ASRA artists had rights in that recording, can one seriously believe that the station could succeed in convincing the Court or jury that while the ASRA artist admittedly had rights that the non-ASRA artist had none? The clause would be nearly as embarrassing when the non-ASRA artist sued on a recording containing no performances by a co-artist of ASRA. This clause should also be read in conjunction with my analysis of Section 13 of the By-Laws in paragraph (11) which follows shortly hereafter. *Both this clause and Section 13 of the By-Laws should be stricken from the agreement.*

Cooperation

(10) Section 7 of Article XII of the By-Laws provides:

"One of the purposes of the Society shall be to regulate and collect a royalty by reason of the broadcasting of talent of its artist or regular members through the medium of recordings."

Section 8 of Article XII of the By-Laws concludes with the sentence:

"Each member shall lend his every cooperation at all times to the interest of the Society to the end that the Society may carry out its purposes in the most economical, effective and speedy manner."

Just what is the purpose behind these provisions is not clear but the purpose, whatever it may be, is certainly not for the advantage of the broadcaster. By becoming a "licensee member" of ASRA a station thereby subscribes in writing to the purpose of regulating and collecting royalties for the broadcasting of records. This admission would be damaging to a station sued by a non-ASRA member or, after the license expired, by an ASRA member.

The "cooperation" mentioned in Section 8 might mean that a station might be guilty of a breach of the agreement and might thereby subject itself to damages if it failed to "cooperate" to enable the Society to collect its royalties economically, effectively and speedily. The cooperation called for by the Society might conceivably be to urge the enactment of statutes giving rights to performers in recordings. The station might be called upon to urge other stations to become "licensee members." Dozens of other instances of possible cooperation might be demanded which the station would never wish to undertake. The station could perhaps never sue ASRA for that might be construed to be a breach of the station's agreement to "cooperate." Conceivably, if ASRA should sometime be charged to be operating in violation of the Anti-Trust Statutes, the station might be charged as a co-conspirator with ASRA as a party to a common scheme.

There is no justification for the above provision quoted from Sections 7 and 8 and they should be eliminated at all costs because they are highly dangerous.

Not a license to broadcast records

(11) Section 13 of Article XII of the By-Laws provides:

"The licenses to be granted to the Licensee Members through the acceptance of the application is a license under the provisions of the Application and these By-Laws to the use of the talent of the Society's Regular Members for broadcasting purposes through the medium of recordings, but shall not in any manner affect or pertain to his phonograph record or the playing thereof."

The meaning of this clause is not clear. Probably the language is purposely vague, its real purpose being to protect ASRA from damage claims by a station which has been sued by non-ASRA members or phonograph record companies claiming rights in the identical record containing performances of ASRA members. For example, Benny Goodman, an ASRA member, has a trio known as The Benny Goodman Trio. Victor made a record #25324 of two popular dance numbers—"Too Good To Be True" and "All My Life." The vocal choruses are sung by Helen Ward. She is not an ASRA member. ASRA by this clause is endeavoring to escape any liability for claims of misrepresentation or indemnity arising out of claims made by Helen Ward, the members of the trio other than Benny Goodman himself, and by Victor. *The*

agreement thus narrows itself down to a mere covenant not to sue instead of a license to broadcast phonograph records containing performances of ASRA artists. A station could not safely broadcast any recording of an ASRA member pursuant to a contract with ASRA without first ascertaining that no other artists had performances recorded in the record and that the recording company claimed no rights. The vast majority of phonograph records contain performances of more than one artist. In fact a soloist without an accompanist is a rarity.

A further purpose behind this By-Law may be ASRA's desire to escape suits for accounting by non-ASRA artists and recording companies who may have equal rights in the recordings. This By-Law should be eliminated.

Station's guarantee to use certain percentage of records of ASRA members

(12) We understand that recently ASRA has been adding a rider to the contracts it attempts to secure from stations to the effect that the station agrees that of the records broadcast at least —% (we think it is 40%) will be of the talents of ASRA members. We think this is an inexcusable provision and one that should be refused by all stations. It is too much of a straight jacket on the programming activities of the stations and is not in the public interest.

(b) General Objections to Form of Licenses

Membership plan

(13) The corporate structure of ASRA is most unusual. The charter, a copy of which is attached to this report, discloses that ASRA is a stock corporation. No provision is made in the charter for memberships. I find no provision in the Civil Code of California authorizing stock corporations to have members. The California Code defines a stock corporation as one authorized to issue shares of stock, and "nonstock corporations" as including all corporations other than stock corporation. A member is defined as a person signing the articles of a nonstock corporation and each person admitted to membership therein. Section 303 of the California Civil Code provides what may be regulated in by-laws of corporations. Sections 10 and 15 inclusive contain the only provisions relating to memberships and they refer to nonstock corporations. Since ASRA is a stock corporation as distinguished from a nonstock corporation, it is difficult to see by what authority it can issue memberships and make provisions for members in its by-laws.

Both the applications signed by the artists and those for the signatures of radio stations specifically provide that neither the applications, nor the memberships nor licenses constitute stock or investment security and that the member does not participate in the Society's profits or losses and that the membership is non-assessable, non-negotiable and non-voting, and the members are to pay no dues or initiation fees and they shall not be responsible or liable for the debts or obligations of the Society. However, it is possible that a "licensee member" or an artist member might not escape liability in a suit by a third party against such member for the reason that the member has acquiesced in being classified as a member and in being held out to the public as such. Such members might conceivably be held to be engaged in a joint adventure, for which each member would be liable to third parties dealing with ASRA. Since the "licensee members" have really nothing to gain by being so classified, I am of the opinion that no station should accept such a classification, but should, if it chooses to contract with ASRA, do so only on the basis of a simple commercial contract without any entangling alliances which might come up to haunt the station later on.

Indemnity agreement

(14) The agreement is very defective in its present form for the lack of an agreement by ASRA to protect the station against suits arising out of the broadcasting of phonograph records. I am of the opinion that the agreement should be modified by adding the following language:

"The Society agrees to indemnify, save and hold the applicant harmless, and defend the applicant from and against any claim, demands or suits that may be made or brought against the applicant with respect to the broadcasting of recordings on which are contained the talents of any 'regular member' of the Society."

Financial responsibility under indemnity

(15) The present paid-in capital of ASRA appears to be not in excess of \$20,000. Therefore, an indemnity by ASRA would

presumably be good only to the extent of that amount of money and perhaps much less depending upon how much money they have left on hand. I am of the opinion that ASRA should furnish each radio station it licenses with a good and sufficient surety company bond guaranteeing the performance of the indemnity agreement.

List of artist members and periods of membership

(16) The agreement refers to the talents of ASRA's "regular members," but nowhere does it state the names of these members. There should be attached to each agreement a list of each and every "regular member" with the beginning and expiration dates set forth beside each name or in some other satisfactory way. It is essential that the periods of the memberships should be known to the stations in order that they may know during what period the recordings may be broadcast, and so that they may avoid broadcasting recordings of artists after the memberships have expired. There should be a clause in the agreement specifically providing that the Society agrees to notify the applicant of any additions or deletions from the list of members and of all renewals and expirations and that the Society will indemnify and save and hold the applicant harmless against all claims for broadcasting recordings of such members prior to the receipt of notice of such changes by the station from the Society.

List of records that may be performed under license

(17) As I pointed out in some of the specific objections to the form of this agreement no station can feel free under the terms of the present license to broadcast a phonograph record merely because the name of an ASRA artist is on the label for the reason that practically every record contains the performances of two or more artists and in most cases those two or more artists will not all be ASRA members. The obligation of determining whether or not any other artists or other parties have rights in these recordings should not fall upon the radio station, but should be assumed by ASRA since that is its business and since it is the "seller" and because it must have access to this information. I recommend that there be added to the agreement a clause specifically providing that the Society agrees to send to the station with the executed license application a list of all phonograph records giving the name of each composition, the name of the artist, the name of the manufacturer and the manufacturer's number which ASRA guarantees to the station full performance rights, excepting only the performance rights in the musical compositions contained therein and that the Society agrees to keep this list supplemented each month by listing recordings currently being released by the recording companies.

No protection from claims by non-ASRA artists and recording companies

(18) As indicated previously in this report and in Paragraph 17 above the present license form gives no protection against claims by the recording companies and by non-ASRA artists whose performances may be recorded in the same records as the performances of ASRA artists. If the indemnity agreement set forth in Paragraph 14 above can be included and if a list of guaranteed records can be secured and kept up to date as suggested in Paragraph 17 above, then the stations will have some measure of protection. Without such changes the stations are acting at their peril. ASCAP indemnifies the stations against all claims made by anyone claiming a right in the musical compositions licensed by it, and so there is no reason why ASRA should not likewise indemnify and protect the stations against claims made by others with respect to the phonograph records containing performances of ASRA members.

DISADVANTAGES OF CONTRACTING WITH ASRA

Recognition of a non-established right

(1) As stated elsewhere in this report there are no statutes in the United States or in any state giving artists property rights in their performances which have been recorded. There has been only one judicial decision in this country on the exact point, and while that decision was in favor of the artist, it is a decision of a lower court of the State of Pennsylvania and is subject to reversal by the higher courts of the State. In addition the facts in that case varied considerably from the facts that would ordinarily be present. I am of the opinion as stated elsewhere in this report that the decision is contrary to analogous cases decided in the United States Supreme Court. By signing the license a station recognizes to some extent at least the existence of the right which is being claimed by ASRA and which has not yet been established either by

statute or by any high tribunal. The United States Congress had a bill before it last Spring which would give performing artists the right ASRA is now contending that it has. This bill met with strong objection by broadcasters, motion picture producers and others and it is sufficient to say that Congress apparently did not feel the giving of such a right was sufficiently in the public interest to justify the passage of the bill. I believe that it will be disadvantageous to recognize the right claimed by ASRA until Congress has passed a statute giving such a right or until the highest courts of the land have judicially determined that such a right exists without a statute.

Encouragement of other societies

(2) The broadcasters are well acquainted with the activities of organized groups in the field of copyrighted music. Were the radio stations to contract with ASRA at this time, the field would become lucrative to other groups who would undoubtedly organize other societies with the result that eventually one would have to have a license from a number of different groups.

Reporting of broadcasts of records

(3) The agreement provides that every week a report must be made to ASRA of all records broadcast by it. I have recommended that the agreement be changed by limiting the reports to those records containing performances of ASRA members, but even then this reporting is going to be annoying and obnoxious to the stations and will entail considerable work.

Increased royalties in future

(4) The custom of corporations of this kind has been to increase the charges greatly after the practice of paying royalties has become established. I believe the royalties paid by radio stations to ASCAP has increased about 300% in the last four years. It is to be noted that in ASRA's letter of February 15, 1935 to artists, a copy of which is attached to this report, that the royalties estimated to be collected from broadcasters would be up to \$5,000,000 annually. While this figure is rather fantastic because it is nearly twice as much as ASCAP is collecting from radio stations for its huge catalogue of copyrighted music, nevertheless it is significant of what the stations may expect to be charged after the first year or two of license. The station may feel now that if the fees grow too high in the future, it may decide to litigate the right of ASRA to collect these royalties. However, as I have pointed out more fully in this report, the station will find its defenses greatly weakened by the mere fact of having recognized this principle for a period of time and having paid royalties for the use of records.

Disadvantage in form

(5) The disadvantages mentioned in the preceding four paragraphs are those general disadvantages which would result from signing any contract with ASRA even in a greatly changed form. If the changes that have been suggested previously in this report are not made, then each of the changes that is refused adds to the disadvantage of taking out the license.

ADVANTAGES OF CONTRACTING WITH ASRA

Relief from litigation

(1) The members of ASRA should not be able to sue for any uses made of records containing their performances by broadcasting during the period of the license. This is not of any particular importance because probably very few, if any of them, would ever bother to bring suit. From 1920 to 1935 not a single suit was instituted by an artist against a radio station for broadcasting a phonograph record, and the situation would be the same today if it were not for the organization of ASRA and similar societies which are trying to create new rights where none existed before. It should be noted here that unless many of the changes suggested previously in this report are made in the agreement, that the covenant not to sue is merely a covenant on the part of ASRA and does not bind anyone else unless such other persons are in fact members of ASRA. Under the present form of agreement the station is not apprised of the names of the members.

Release of damage claims for past use

(2) As indicated in Paragraph 2 of the specific objections to the form of license this release is of doubtful validity because it does not appear from any of the documents that we have been able to examine that ASRA has the right to release claims for past use. Even if this release proved valid, it is important that it should

not be over emphasized. It would be a very difficult task for ASRA or any artist to establish rights in the records, prove what broadcasts were made and prove damage resulting therefrom.

LEGAL RIGHTS OF ASRA

Reference should be made here to two clauses in the latest form of application for membership for use by artists as they may have some bearing on the rights of ASRA. They read:

"During the term hereof, nothing herein contained shall be deemed to include any rights of reproduction for ordinary recording purposes, as are now contained in the general form contracts used by Victor, Columbia, or Brunswick Companies, copies whereof are on file in the office of the 'SOCIETY,' and are specifically referred to herein, and by such reference made a part hereof."

"Included in this assignment shall be the rights herein mentioned for all recordings heretofore made or to be made during the term hereof, and as to past recordings shall be all rights to the use of any mechanical production of the 'APPLICANT'S' recorded voice, talents or work not included in the contract under which the said recording was made, and the 'SOCIETY'S' rights therein shall be for broadcasting, commercial, or use otherwise."

These clauses and the Victor, Columbia and Brunswick contracts referred to as being in the ASRA file should be carefully studied by any station which is either contemplating a license with ASRA or is defending a suit brought in the name of ASRA. Perhaps the clauses were included at the insistence of the recording companies who also claim property rights and in order to forestall claims of interference with the contracts between the artists and the recording companies. If ASRA has no possible rights in certain of these records then certainly the stations should not agree to pay royalties for using such records.

It is self-evident that ASRA can have no more rights than its artist "members" had immediately prior to the signing of the membership applications.

I am of the opinion that the artists never had any property rights in the phonograph records.

See

Ingram v. Bowers, 47 F (2d) 925; 57 F (2d) 65;
Cheney Bros. v. Doris Silk, 35 F (2d) 279; cert. denied 281 U. S. 728;
Bristol v. Equitable Life, 132 N. Y. 264;
Chappell v. Fields, 210 F 864.

Even if the artists once had property rights in phonograph records they cease to have such rights after the records are sold as restrictions as to use do not follow chattels once they are sold.

See

Bobbs-Merrill Co. v. Straus, 210 U. S. 339;
Bauer v. O'Donnell, 229 U. S. 1;
Dr. Miles Medical Co. v. Park, 220 U. S. 373;
Boston Store v. American Graphophone, 246 U. S. 8;
Universal Film v. Copperman, 218 F 577.

I am also of the opinion that there is no unfair competition since the station causes no deception.

Howe Scale v. Wyckoff, 198 U. S. 118;
Gotham Music v. Denton & Haskin, 259 N. Y. 86;
Apollinaris v. Scherer, 27 F 18.

I believe that the opinion of the Court of Common Pleas of Pennsylvania in the case of *Waring v. WDAS* is contrary to the above authorities of the Supreme Court of the United States and is based upon decisions which are distinguishable and that the decision should not be followed by the higher courts of Pennsylvania to which it will be appealed or by courts of other jurisdictions.

For a full analysis of these and other decisions on which I base my opinion see the draft of defendant's brief in the case of *Crumit v. Marcus Loew Booking Agency* in opposition to the plaintiff's motion for temporary injunction in the Supreme Court of the State of New York, County of New York, of which a copy has been previously sent you. (Ed. Note: A copy of this brief will be furnished the members at an early date.)

RIGHTS OF ASRA TO DAMAGES

Assuming for the purposes of argument that ASRA and its "members" have some property rights in phonograph records

(which we believe they have not) the question arises as to whether any money judgment can be secured against radio stations for the broadcasting of such records.

The statutory minimum damage provisions of the Copyright Act (\$250.00) will have no application since the rights which will be sought to be enforced will not be copyrighted.

There is no precise precedent on which to base an opinion regarding damages. There have been relatively few decisions regarding damages for the wrongful use of literary property protected by the common law, and such decisions as have been rendered are based upon facts that are so different from the facts that would arise on any suit by ASRA or its members that such decisions will carry little or no weight.

Such rights as may exist are of an intangible nature and most analogous to patent and trademark rights. Therefore we have examined cases of this nature to ascertain what the courts have decided with respect to intangible property of that character.

It is said that in a suit in equity the net profits may be recovered as profits made by the use of the plaintiff's property and that the defendant, as constructive trustee, is compelled to account for them.

It is said that in an action at law only damages can be recovered and they will be measured by the plaintiff's loss and not by the defendant's gain, profits being held not to be the measure of damages nor any element thereof where there is any other method of ascertaining and measuring the damages (*Sutherland on Damages*, page 4492).

It is my opinion that ASRA and its artists will not be able to show any evidence of actual damage sustained by the broadcasting of phonograph records. Damages are to be calculated on definite proof and not imagined (*New York City v. Ransom*, 64 U. S. 487, 8; *Rude v. Westcott*, 130 U. S. 152 at 167). In patent cases where the plaintiff has licensed the use of his patent on a royalty basis the courts have allowed a recovery based upon a reasonable royalty (*Dowagiac Mfg. Co. v. Minnesota Moline Plow Co.*, 235 U. S. 641; *Alliance v. DeVilbliss*, 76 Fed. (2d) 503; *Duplicate v. Triplex*, 81 Fed. (2d) 352). Since ASRA has fixed a maximum royalty of \$.15 a broadcast and has offered to grant licenses to all stations on that basis or at a lesser price I am of the opinion that the courts would use the reasonable royalty measure of damage and that ASRA would be estopped from claiming any greater fee.

Even assuming that ASRA could get away from the reasonable royalty measure of damage it would be a difficult task to secure an accounting of the plaintiff's profits from the broadcasting of phonograph records for the burden would be upon ASRA to apportion the net profits of the station attributable to the use of the record because the profits in every case will be commingled with the profits derived from the use of other program material by the station (*Westinghouse v. Wagner*, 235 U. S. 604; *Dowagiac Mfg. Co. v. Minnesota Moline Plow Co.*, 235 U. S. 641).

It is quite probable that the courts would not require the stations to account for profits because the stations have acted in good faith and because there would be no evidence of fraudulent conduct on their part (*Saxlehner v. Siegel-Cooper Co.*, 179 U. S. 42); furthermore, I believe that the courts should find that the damage has been too insignificant to warrant a decree for an accounting which was the decision in *Hennessy v. Wine-Growers Association*, 212 Fed. 308 at 311. Both of the two cases cited above are trademark cases.

The broadcasting of phonograph records has been acquiesced in by artists ever since the inception of broadcasting in 1920, 16 years ago. The failure to assert rights should amount to laches and should be a bar to an injunction or at least to damages (*Saxlehner v. Eisner*, 179 U. S. 19; *McLean v. Fleming*, 96 U. S. 245).

CONCLUSIONS

My conclusions may be summarized as follows:

1. The artists have no legal right to prevent radio stations from broadcasting phonograph records.
2. The disadvantages of entering into a contract with ASRA far outweigh any possible advantages.
3. The form of agreement submitted by ASRA to radio stations is basically defective and objectionable in many important particulars.
4. ASRA's right to damages is dependent upon the right to prevent stations from broadcasting phonograph records and since I conclude that neither ASRA nor the artists have that right, then it follows there can be no damages.

Respectfully submitted,

STUART SPRAGUE.

EXHIBIT 1

Filed in the office of the Secretary of State of the State of California, May 31, 1934, Frank C. Jordan, Secretary of State, (signed) Chas. J. Hagan, Deputy.

Department of State, Corporation Number 158671.

ARTICLES OF INCORPORATION

of

AMERICAN SOCIETY OF RECORDING ARTISTS, INC.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, G. BRANT, C. ANDREWS and E. HENSGEN, a majority of whom are residents and citizens of the State of California, United States of America, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California;

AND WE DO HEREBY CERTIFY:

First: That the name of the corporation shall be

AMERICAN SOCIETY OF RECORDING ARTISTS, INC.

Second: That the purposes for which this corporation is formed, are:

To make, manufacture, rent, lease, purchase, sell or trade in records and recordings of voice talents or work of artists or others, and to record for all purposes.

To acquire, buy, sell, rent, lease, trade and deal in for broadcasting and/or commercial purposes, or for any other purpose, records and recordings of the voice talents or work of artists, or any other person or persons, and to contract in relation thereto, and to generally deal in copyrights, royalties, patents or any rights to records or recordings, or anything arising therefrom or a part thereof.

To deal in recording or recordation and the reproduction of voice talents or work of recording artists; to acquire rights of reproduction of voice talents on work of artists, and to use and deal in the same for all purposes.

To carry on the business of dealing in recordings and to promote the popularity of recording for private broadcasting or commercial purposes, or any other purpose for which the said recordings may be used to promote the popularity of recording artists.

To buy, sell, trade in, import, export, manufacture, rent, handle, and use radio sets, cabinets and receiving apparatus and recording and reproduction instruments and devices, of any kind or nature used in conjunction therewith, or incidental or accessory thereto; and to conduct the business of rendering service in the installation, operation, supply of parts, repairs, maintenance and upkeep of such apparatus, instruments or accessories.

To buy, sell, trade in at wholesale or retail, export, manufacture, rent, handle, repair, and use acoustic devices of all sorts, musical instruments, phonographs, phonograph records, transcription cabinets, telephones, and all sound receiving, recording, amplifying, producing, or reproducing devices, machines, apparatus or instruments, and to do each and everything incidental thereto.

To make contracts for the reproduction of use of records or recordings for broadcasting and commercial purposes and for such other purposes as the same may be used, and to arrange, provide and contract for the use thereof.

To deal in copyrights, rights of representation, licenses, and privileges of any sort likely to be conducive to the objects of the company, and to employ persons to write, compose or invent plays, songs, interludes, prologues, epilogues, poetry, music and dances, and to remunerate such persons, and to print and publish, or cause to be printed or published or recorded, any play, poem, song or words of which the company may have the copyright or the right to publish or record, and to sell, distribute and deal with any matter so printed or recorded as the company may think fit; and to grant licenses or rights in respect of any property of the company or that the company may acquire a right or interest in, to any other person, firm or company.

To enter into, make, perform and carry out contracts of every sort and kind, with any person, firm, association, corporation, private, public or municipal or body politic, and with the government of the United States, or any state, territory or colony thereof or any foreign government.

To purchase, lease or otherwise acquire all kinds of personal property which the corporation may deem necessary or convenient for the purpose of its business.

Generally to purchase, take on lease or in exchange, hire or otherwise acquire any real and personal property, and any rights

or privileges which the company may think necessary or convenient for the purposes of its business.

To borrow money, to make and issue promissory notes, bills of exchange, bonds, debentures and obligations and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise without limit as to amount, and to secure the same by mortgage, pledge or otherwise.

To conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage and convey real and personal property in or out of this State, and in such place and places in the several States and territories of the United States, colonial possessions and territorial acquisitions of the United States, and in foreign countries, as shall from time to time be found necessary and convenient for the purpose of the company's business.

To purchase or otherwise acquire and to hold, sell, acquire, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock and bonds, debentures or other evidences of indebtedness created by any other corporation or corporations, domestic or foreign, and, while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

To issue bonds, debentures or obligations of the company, from time to time, for any of the objects or purposes of the company, and to secure the same by mortgage or mortgages, or deed or deeds of trust, or pledge, or lien on any or all of the real and personal property, rights, privileges and franchises of the company wherever situated, and to be acquired, and to sell, trade or otherwise dispose of any or all of the same, all in such manner and upon such terms as the Board of Directors may deem proper.

It is the intention that the objects and powers specified and clauses contained in this paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects or powers specified in each of the clauses of this paragraph shall be regarded as independent objects and powers.

But nothing herein set forth is to be construed to authorize the formation hereby of an insurance, safe deposit or trust company, banking corporation or savings bank, railroad company or corporation deemed to possess any of the powers prohibited to corporations formed under the statutory provisions aforesaid.

To deal with patents, and copyrights, and acquire those taken out by others, acquire or grant licenses in respect to patents and copyrights, or work, transfer or do whatever else with them may be thought fit.

To acquire, hold, use, sell, assign, lease, mortgage or otherwise dispose of letters patent and copyrights of the United States or of any foreign country, patents, patent rights, copyrights, licenses and privileges, inventions, improvements and processes, trademarks and trade names, compositions, works of art, or anything that may become the subject of a copyright or patent, or pending applications therefor relating thereto or useful in connection with any business of the corporation. To purchase or by any other means acquire, and protect, prolong and renew, whether in the United States or elsewhere, any patents, patent rights, copyrights, licenses, protections and concessions which may appear likely to be advantageous or useful to the company, and to use and turn to account any such or any right therein or thereto, and to manufacture under or grant licenses and privileges in respect to the same, and to do each and everything in connection therewith that may be allowed by law and that may be deemed right and proper by the Board of Directors of the company.

To do all and everything necessary, suitable, convenient, or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objects herein enumerated, or incidental to the powers herein named, or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holders of or interested in, any property or otherwise; with all the powers now or hereafter conferred by the laws of California upon corporations.

Third: That the principal office for the transaction of the business of the corporation will be located in the County of Los Angeles, State of California.

Fourth: That the total number of shares of stock which the corporation shall have authority to issue is Twenty Five Hundred, (2,500), the par value of each share shall be Ten (\$10.00) Dollars; the aggregate par value of the stock of the corporation shall be Twenty Five Thousand (\$25,000.00) Dollars.

Fifth: All of said shares of capital stock shall be Common stock without preference.

Sixth: That the number of directors of this corporation shall be

three (3); that the names and addresses of the persons who are hereby appointed to act as first directors of this corporation are:

Name	Address
G. Brandt,	403 Lane Mortgage Building, Los Angeles, Calif.
C. Andrews,	403 Lane Mortgage Building, Los Angeles, Calif.
E. Hensgen,	403 Lane Mortgage Building, Los Angeles, Calif.

Seventh: No stock shall be assessable; preemptive rights shall be granted to shareholders.

IN WITNESS WHEREOF, we, all the incorporators and directors of said corporation, have hereunto set out hands and seals as such incorporators and directors of said corporation in the State of California, 16th day of May, 1934.

Signed,

G. BRANDT,
C. ANDREWS,
E. HENSGEN.

STATE OF CALIFORNIA,

County of Los Angeles, ss:

On this 16th day of May, 1934, before me, Paul Joseph, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared G. BRANDT, C. ANDREWS and E. HENSGEN, known to me to be the persons whose names are subscribed to the within instrument and severally acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

PAUL JOSEPH,
Notary Public in and for said
County and State.

EXHIBIT 2

Before the
DEPARTMENT OF INVESTMENT
DIVISION OF CORPORATIONS
of the
STATE OF CALIFORNIA

In the matter of the application of

AMERICAN SOCIETY OF RECORDING ARTISTS, INC.
for a permit authorizing it to sell and issue its securities

Permit, File No. 59415LA; Receipt No. LA11266

THIS PERMIT DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE SECURITIES PERMITTED TO BE ISSUED, BUT IS PERMISSIVE ONLY

AMERICAN SOCIETY OF RECORDING ARTISTS, INC.,

a California corporation, is hereby authorized to sell and issue its securities as hereinbelow set forth:

1. To sell and issue to C. Andrews, E. Hensgen, G. Brandt, Arthur Levy and William Leeds, or any of them, an aggregate of not to exceed 2,000 of its shares, at par, for cash, lawful money of the United States, for the uses and purposes recited in its application, and so as to net applicant the full amount of the selling price thereof.

This permit is issued upon the following condition:

(a) That unless sooner revoked, suspended, or renewed by the Commissioner upon such terms and conditions as he may deem proper, this permit and all authority to sell or issue securities hereunder, shall terminate and expire on the 17th day of January, 1935.

Dated: Los Angeles, California
July 17, 1934.

EDWIN M. DAUGHERTY,
Commissioner of Corporations.

(S E A L)

By FRANK P. BARTON (Signed)
FRANK P. BARTON,
Deputy.

WSP-MM

EXHIBIT 3

AMERICAN SOCIETY OF RECORDING
ARTISTS, INCORPORATED
GUARANTY BUILDING, HOLLYWOOD, CAL.

February 15, 1935.

In view of your prominence in the professional world, the Executive Committee has requested that we invite you to accept membership in our Society. This involves no obligation whatever on your part but rather, will serve to bring you additional income from your recordings.

We, you and I, and all other recording artists, have been losing millions of dollars yearly through the unauthorized use of our records for broadcasting.

As individuals, we were ignored when we asked broadcasters not to play our records in competition with our personal services. We were also ignored when we asked for royalties for playing our records on the air.

But now, we have our own Society to regulate and license the use of our records, to restrict their use when they interfere with our personal services, to collect and distribute royalties for the use of our records for broadcasting, and to otherwise protect our rights. Membership already includes many prominent recording artists too numerous to mention here.

Ours is the only organization in the world devoted exclusively to protection of the rights of recording artists and recording companies. We, artist-members, pay NO DUES, NO INITIATION FEES, NO ASSESSMENTS. Royalties collected from broadcasters, estimated up to five million dollars annually, will be distributed:

45% to the artists-members
45% to the recording company-members
10% to the Society for its expenses

Personally, I am heart and soul in this movement, which aims to secure for recording artists what is rightfully theirs. I am sure you want to join us and receive your share. Fill out the enclosed application and mail it at once.

With kindest personal regards,

Faternally,
Al Jolson (Signed)
Chairman Executive Committee.

EXHIBIT 4

AMERICAN SOCIETY OF RECORDING ARTISTS
Incorporated
Guaranty Building, Hollywood, California

APPLICATION FOR REGULAR MEMBERSHIP

I hereby file application for a Membership of the American Society of Recording Artists, Inc., and will abide by its By-laws, applicable to such memberships. So that the Society may regulate and license, etc., broadcasting of, or commercial use of records or recordings heretofore, or hereafter to be made by me (meaning reproduction of my recorded voice, talent or work), for value received, I hereby assign to said Society for five (5) years, irrespective of date the same was, is, or will be released for sale, all rights of reproduction for use for broadcast and/or commercial purposes for which such recording may be used, with the right to determine royalty, charge or use to be made therefor. Rights, otherwise, contained in contracts now existing between me and recording companies are not included herein. The Society at its own expense may take such action and in such form as it deems necessary to enforce such rights against any person whomsoever, and I will execute such instruments from time to time as may be required by the Society to carry out its intentions or purposes. I shall receive a sum equal to 45% of any and all royalties collected by the Society for the broadcasting or commercial use of records or mechanical reproductions of my recorded voice, talent or work, payable monthly as received by the Society. Neither this application nor membership is stock or investment security; it includes no participation in the Society's profits or losses. It is not assessable under any condition, is non-negotiable, non-voting and non-transferable.

IT IS UNDERSTOOD THAT I PAY NO DUES, NO INITIATION FEES, NO ASSESSMENTS, AND THAT I SHALL AT

NO TIME BE RESPONSIBLE OR LIABLE FOR ANY DEBTS OR OBLIGATIONS OF THE SOCIETY, WHATSOEVER.

Signed
Address
(Give address to which you wish royalty checks mailed)
Telephone..... Introduced by.....

EXHIBIT 5

AMERICAN SOCIETY OF RECORDING ARTISTS
Incorporated
Guaranty Bldg., Hollywood, Cal.

April 1, 1935.

GENTLEMEN:

As a broadcaster you are undoubtedly aware of the great injustices and financial losses being suffered by recording artists through the exploitation of their talents by radio stations, their sponsors, and advertisers, through the medium of phonograph records without the consent or authorization of the artist by either such radio station, its sponsor or its advertiser and without compensation to the artist therefor.

One of the contributing factors to this unauthorized, but general practice (which is so admittedly unfair to the artist), is that such artists collectively have had no medium or representation heretofore through which they asserted or protected their rights.

To this end the American Society of Recording Artists was founded more than a year ago and today includes among its membership hundreds of the world's leading recording artists.

A purpose of the Society is to represent its members in the broadcasting field, to license broadcasters, establish a usage rate for each use of the artist's talents and to collect for its artist members certain compensation to which, it must be admitted, they are rightfully entitled; that is, compensation for the use of their talents for broadcasting through the medium of recordings.

This Society has adopted "licensee memberships" whereby broadcasters may be represented and thus obtain for themselves and their sponsors and advertisers, a license to broadcast such talents.

The Society believes that the responsibility for the unlicensed use of its member's talents for broadcasting through the medium of recordings, rests with both the advertiser, sponsor, and broadcaster and such licensee membership is intended to afford protection to all parties concerned and to offer a medium through which broadcasters, and through them, their sponsors and advertisers, may compensate artists reasonably for the use of their talents through the medium of recordings.

It is intended also that such cooperation would tend to stop legislative and other methods of prohibiting entirely the use over the air of talent not recorded specifically for broadcast purposes. To the applicants who respond immediately it is intended that the licensee membership shall release the broadcaster, and through it its sponsors and advertisers from liability to the Society's artist member, for the past use of his or her talent, and grant the artist member's rights to the use of his or her talents over the air in the future through the medium of recordings under the provisions and terms of its By-laws and application.

As specified in the application, there is a service fee of \$5.00 per month, payable quarter-annually in advance in addition to the modest rate to be paid for each usage of the artist members' recorded talents.

The Society in no way proposes to hamper or harm broadcasters, large or small, and the moderation of its terms governing licensee membership, the integrity of its members whose rights noted in the licensee membership have been vested in the Society, and the honest sincerity of purpose on which the Society is founded evidence this fact.

The so-called royalty charges may at the broadcaster's discretion be passed on to its sponsors or advertisers who really enjoy the benefit of the use of the talent of the Society's members.

You will realize, of course, the Society's premise, that the purchase of a record which may carry with it the right to play it on your phonograph or turn-table carries no license or authorization from the artist to broadcast his or her recorded talents, nor have your sponsors or advertisers such right from the artist through your purchase of such a record.

The Society intends to begin the collection of royalties on May 1st, 1935. If it is your desire to continue the broadcasting of the talents of its artist members, with a specific license, authorization and the consent of the artist, the Society would like to have your signed application filed with it at its home office not later than April 15, 1935.

Upon its receipt, log sheets will be forwarded as well as further instructions for facilitating the tabulation of usages and the distribution of funds collected.

Trusting that you will give this your immediate attention,

Very truly yours,

GEORGE H. HALL (Signed)

EXHIBIT 6

APPLICATION FOR LICENSEE MEMBERSHIP

to

AMERICAN SOCIETY OF RECORDING ARTISTS

Incorporated

GUARANTY BUILDING, HOLLYWOOD, CALIFORNIA

The undersigned hereby files application with the American Society of Recording Artists, Inc., for the license hereinafter described (herein called a "Licensee Membership" of the said Society) and if accepted, agrees to abide by the terms and regulations herein set forth and by the By-laws of the Society applicable to such "Licensee Membership."

This Application, when duly executed by the Executive Secretary of the Society, shall constitute the license agreement between the Society as assignee of the rights of its "Regular Members" herein described, and the undersigned broadcaster as licensee of the right to broadcast the talents of the said "Regular Members" as herein described, and under the terms and conditions herein named; the Society having obtained assignments from its Regular Members for the broadcasting purposes herein described, under which this license is to be granted.

The By-laws printed on the reverse side hereof shall be binding upon the parties hereto the same as though contained herein. The term of this license shall be for one year and shall renew for a second year unless terminated by either of the parties upon written notice thirty days prior to date of expiration.

Provided the applicant shall have fulfilled this agreement, upon its part, the Society agrees to release the applicant from any and all liability to it or its Regular Members, without compensation whatsoever, or charge therefor to it or its Regular Members, arising from the broadcasting of its members' talent through the medium of recordings, occurring prior to the date of signing of this application.

This license is granted to the applicant under the following terms and conditions:

Payable on the 5th day of the month following such broadcasts, by remittance addressed to the Society at its home office, the applicant shall pay to the Society for the broadcasting of the talents of its regular members through the medium of recordings and for the license herein granted as follows:

Class A station 1000 watts and up shall pay 15 cents per usage.

Class B station 500 watts to 999 watts shall pay 10 cents per usage.

Class C station 499 watts or less shall pay 5 cents per usage.

1. An uninterrupted use of talent broadcast through the medium of a recording or reproduced from either side of a 10-inch double-faced 78 R.P.M. record where the playing time is not more than three minutes and forty-five seconds will constitute one usage.

2. An uninterrupted use of talent broadcast through the medium of a recording or reproduced from either side of a 12-inch double-faced 78 R.P.M. record where the playing time or recorded portion thereof does not exceed five and one-half minutes shall constitute two usages.

3. An uninterrupted use of talent broadcast through the medium of a recording or reproduced from either side of a 10-inch double-faced 33 1/3 R.P.M. record where the playing time does not exceed six minutes shall constitute two usages.

4. An uninterrupted use of talent broadcast through the medium of a recording or reproduced from either side of a twelve-inch double-faced 33 1/3 R.P.M. record where the playing time does not exceed nine minutes shall constitute three usages.

5. Usage of talents for broadcast through the medium of single faced records shall come under the various classifications, as noted elsewhere herein, in proportion to the actual recorded or playing time on the record, but in no event at the rate of less than one usage.

6. The partial or interrupted use of the broadcasting of the said talent through the medium of a record or recorded program for radio broadcast purposes constitutes one usage, provided such partial usage does not exceed at any time a period greater than three minutes of actual playing time, subsequent usages to be charged for at the rate noted.

The above regulations also serve to cover the broadcasting of the said talents through the medium of recordings or records whose outside diameter is less than ten inches and more than twelve inches where the recorded portion comes under the various classes as mentioned.

The broadcasting of talent reproduced from records as re-recordings, by the transfer method commonly known as dubbing or otherwise, shall be paid for under the same rates as an original broadcast from such records. Talent as herein expressed shall be the work or voice or other reproduction from a personal effort which may be broadcast by or through the facilities of the applicant, without the personal appearance of the artist, and whether through the medium of recordings or otherwise.

Nothing herein contained shall prohibit the applicant from charging its advertiser, sponsor or customer for the broadcasting of the said talents of the Society's said "artist members" through the medium of said recordings.

The applicant agrees to refrain from broadcasting such talents through the medium of recordings, at such times as may be designated from time to time in writing by the Society, when the Society believes such broadcast may interfere with the services of any regular member, and due notice of such suspension shall be given the applicant not less than 72 hours in advance of such suspension time or date.

Neither this application nor "memberships" or license is stock or investment security and includes no participation in the Society's profits or losses. It is not assessable under any condition, is non-negotiable, and non-voting.

It is understood that the applicant pays no dues, no initiation fees, no assessments, and shall not be responsible or liable for any debts or obligations of the Society whatsoever.

The applicant shall forward to the Society promptly on the last day of each week, on forms to be furnished by the Society, a daily log sheet of all talents broadcast from records played by it.

The applicant herein shall pay the Society a monthly service fee of \$5.00, commencing with the date of acceptance hereof, by the Society, payable quarter-annually in advance, remittance for the first quarter to accompany this application.

Nothing herein contained shall be deemed to include or refer to or limit or extend rights to or interfere with the playing of a phonograph record except insofar as there may be a broadcast of the talents of a regular member of the Society through the medium of a recording in which case it shall be the right of the Society to control the use of such talent for broadcasting purposes and collect compensation therefor.

Dated 193..

Signed
Authorized Officer

Station

Owner

Address

Wattage (Day) (Night).....

Accepted by:

AMERICAN SOCIETY OF RECORDING ARTISTS
INCORPORATED

(Seal)

By
Executive Secretary.

EXHIBIT 7

BY-LAWS

OF

AMERICAN SOCIETY OF RECORDING ARTISTS, INC.

Referring to Licensee Members

ARTICLE XII

Licensee Members

Section 1.

The provisions of Article XII shall refer to "Licensee Members." There shall be other forms of membership of the Society which shall be described in further or other Articles, but the provisions and sections of Article XII shall apply only to Licensee Members.

Separate and apart from stockholders of the Corporation (herein in these By-laws sometimes termed the "Society"), and irrespective of the stockholders (the rights of stockholders being separate and apart from rights of members), there shall be a "Licensee Membership" in the "Society." Such membership shall be non-participating

and shall have no right to vote or to hold office. No Licensee Member by reason of such membership shall be or be deemed to be a stockholder of the Corporation or to have any interest in the property or assets thereof. Such memberships, unless otherwise specified in the application or acceptance, may be terminated at any yearly period after one year from the date of acceptance of such membership by the "Society."

Section 2.

The Licensee Membership of the Society shall consist of the owners, or owner's representative so designated by the owner, whether a corporation, partnership or individual, of a duly licensed radio broadcasting station, who shall have executed applications on the form provided by the Board of Directors of the Society, and whose applications shall have been accepted by the Society, and whose names shall have been entered in the Register of Licensee Members, which shall be kept by the Executive Secretary of the corporation.

Section 3.

Licensee Membership in the Society shall not constitute stock or investment security; no Licensee Membership or Member shall participate in the Society's profits or losses. Each such membership is non-negotiable and not transferable and shall be non-voting. Such membership shall not be assessable or liable in any manner or form whatever, for any debts or obligations of the Society, except for the payment of service fees and royalties as hereinafter set forth, and nothing shall be construed to so obligate a member beyond the provisions of these By-laws.

Section 4.

When the application for Licensee Membership as may be adopted by the Board of Directors of the Society, shall be executed by the "Licensee Member Applicant" and accepted by the Society, the applicant shall thereupon be thereafter known as a Licensee Member, and be then entitled to the rights specified in the said application, as well as to those rights set forth in these By-laws applicable to Licensee Members, Licensee Memberships and/or such applicants, and such application, together with the By-laws of the Society pertaining thereto, shall constitute the agreement or license between the Society and the applicant Licensee Member.

Section 5.

Licensee Membership shall entail no initiation fees and no assessments except that each Licensee Member shall be obligated to pay to the Society, payable quarter annually in advance, a service fee of Five Dollars (\$5.00) per month during the period of such membership, and in addition thereto, the royalties as provided in Section 12 hereof. Licensee Members shall at no time be responsible or liable for any debts or obligations of the Society whatsoever.

Section 6.

Each Licensee Member shall be bound by these By-laws, wherein the same refer to such Applicants, Licensee Members, or Licensee Memberships, and any and all reference thereto shall be to such applicant as a party to such agreement or license.

Section 7.

One of the purposes of the Society shall be to regulate and collect a royalty by reason of the broadcasting of talent of its artist or regular members through the medium of recordings.

Section 8.

All notices or communications between the Licensee Members and the Society shall be addressed to the Society at its home office, and to the Licensee Member to such address as he may have theretofore filed with the Executive Secretary of the Society at the home office of the Society. Each Licensee Member must immediately notify the Executive Secretary at the home office of the Society of any change of address, and should the Society fail to receive such notice, such Licensee Member shall be deemed to have waived any notice provided for under the By-laws and rules and regulations of the Society. Licensee Members shall forthwith notify the Executive Secretary of the Society at the home office of the Society, of any change in ownership and/or wave length and/or wattage, and each Licensee Member shall be bound and obligated to pay to the Society, royalties as provided for covering such wattage under which he shall operate his station in the use of records. The Society, through its Board of Directors, shall have the power to enter into contracts with individuals who shall be known as members and who may or may not be stockholders of the corporation. As a protection, however, against liability, it is expressly stipulated and understood that no property rights or vested rights of any kind in or to the corporation or its assets, accrue to the benefit of

members other than such provisions as may be set forth in the application of the member, and such as may be set forth in these By-laws, none whereof shall constitute any interest in the corporation or its assets in favor of the Licensee Member who shall have no liability whatever for assessments, dues or debts whatever of the Society (service fee and royalty excepted). Each member shall lend his every cooperation at all times to the interest of the Society to the end that the Society may carry out its purposes in the most economical, effective and speedy manner.

Section 9.

All Licensee Members in good standing shall be entitled to receive a membership certificate which shall certify to such membership or license, which certificate shall be signed by the Executive Secretary of the Society.

Section 10.

Talent as herein expressed shall be the work or voice or other reproduction from a personal effort which may be broadcast by or through the facilities of a Licensee Member without the personal appearance of the artist, or whether through the medium of recordings or otherwise. Recordings or recordation shall mean a reproduction of the recorded voice, talent, or work of a member of the Society.

Section 11.

A Licensee Member shall refrain from broadcasting such talents of Regular Members of the Society through the medium of recordings at such time or times as may be designated from time to time in writing by the Society, when the Society believes such broadcast may interfere with the services of any Regular Member, and due notice of such suspension shall be given the applicant not less than seventy-two (72) hours in advance of such suspension time or date, such suspension notices to be over the signature of the Executive Secretary.

Section 12.

All payments due or payable to the Society by the Licensee Member shall be payable at the Home Office of the Society in the manner and at the times in these By-laws or in the Application provided. The "Regular Members" of the Society shall include artists who shall have assigned to the Society the right to broadcast their talents as herein described. Each Licensee Member shall pay to the Society on the 5th of the month following such broadcast by remittance addressed to the Society at its Home Office a royalty for its use of talents of Regular Members for broadcasting purposes through the medium of recordings in the amount and as specified in the Application.

Section 13.

The licenses to be granted to the Licensee Member through the acceptance of the application is a license under the provisions of the Application and these By-laws to the use of the talent of the Society's Regular Members for broadcasting purposes through the medium of recordings, but shall not in any manner affect or pertain to his phonograph record or the playing thereof.

Section 14.

The Licensee Member shall have a right, if it so desires, to charge its advertiser, sponsor or customer for the broadcasting of the said talent of the Society's said artist or Regular Members through the medium of the said recordings, and the license granted to the applicant through said acceptance of said application by the Society shall include without further compensation the same license in the said sponsors, advertisers or customers using such talent as herein set forth.

EXHIBIT 8

APPLICATION FOR MEMBERSHIP

TO

AMERICAN SOCIETY OF RECORDING ARTISTS INCORPORATED

The undersigned, hereinafter called "APPLICANT" hereby makes application to the American Society of Recording Artists, Inc., a California corporation, hereinafter called the "SOCIETY," for an agreement hereinafter called "MEMBERSHIP," which shall be considered effective as the agreement between the "SOCIETY" and the "APPLICANT," pursuant to the terms and conditions embodied herein, upon acceptance thereof by the "SOCIETY," and when so accepted by the "SOCIETY" and the "APPLICANT," and the "APPLICANT" may thereupon be thereafter known as a "MEMBER."

SUCH MEMBERSHIP ENTAILS NO ASSESSMENTS, NO DUES, NO INITIATION FEES.

The "APPLICANT" shall be bound by the rules and regulations as well as the By-Laws of the "SOCIETY," heretofore or hereafter adopted by the "SOCIETY," wherein the same refer to "APPLICANTS," "MEMBERS," or "MEMBERSHIPS," and any and all reference thereto shall be to the "APPLICANT" as a party to this agreement.

It is understood that one of the purposes of the "SOCIETY," is to TAKE SUCH ACTION AS IT DEEMS NECESSARY TO PUT A STOP TO THE INDISCRIMINATE BROADCASTING OF RECORDS OF THE "APPLICANT," to the end that the "APPLICANT" may enjoy the largest financial returns from his work, both from returns on the sale of records, as well as from the use of said or special recordings for broadcasting or commercial purposes.

The "SOCIETY" agrees to use its best efforts at all times to obtain for the "APPLICANT" the largest compensation it deems proper for the use of broadcasting or commercial purposes, of records or recordings heretofore, or hereafter to be, made by the "APPLICANT."

IT IS THE INTENTION OF THE "SOCIETY" AT ALL TIMES TO PROMOTE THE POPULARITY AND THE SALE OF THE "APPLICANTS'" RECORDINGS.

Recording or recordation, as used herein, shall mean a reproduction of the recorded voice, talents or work of the "APPLICANT," but nothing herein contained shall be construed to include the use of the "APPLICANT'S" recorded voice, talents or work where recorded as a part of the photograph of a motion picture.

For value received, and so as to permit the "SOCIETY" to more effectually carry out its purposes herein, the "APPLICANT" hereby assigns and transfers unto the "SOCIETY" all rights of reproduction or use for broadcasting and/or commercial purposes or any purpose for which any such recording may be used, of the "APPLICANT'S" recorded voice, talents or work, together with the right to determine the royalty or charge to be made therefor excluding therefrom however any and all rights included in any contract now existing between "APPLICANT" and a reproduction company.

During the term hereof, nothing herein contained shall be deemed to include any rights of reproduction for ordinary recording purposes, as are now contained in the general form contracts used by Victor, Columbia, or Brunswick Companies, copies whereof are on file in the office of the "SOCIETY," and are specifically referred to herein, and by such reference made a part hereof.

It is understood that included herein is the right in the "SOCIETY" to sue in its own name, the name of the "APPLICANT" or otherwise, to enforce any of the rights herein granted and against any person whomsoever, AT THE EXPENSE HOWEVER OF THE "SOCIETY" AND NO EXPENSE IS TO BE ATTACHED TO THE "APPLICANT" in connection with any action upon the part of the "SOCIETY" to enforce any of said rights.

In consideration hereof, the "APPLICANT" shall receive from the "SOCIETY" a sum equal to 90% of any and all receipts obtained by the "SOCIETY," arising on account of the rights herein assigned during the period hereof, payable to the "APPLICANT" monthly following receipt thereof by the "SOCIETY."

Included in this assignment shall be the rights herein mentioned for all recordings heretofore made or to be made during the term hereof, and as to past recordings shall be all rights to the use of any mechanical production of the "APPLICANT'S" recorded voice, talent or work not included in the contract under which the said recording was made, and the "SOCIETY'S" rights therein shall be for broadcasting, commercial, or use otherwise.

In view of the increased returns contemplated by the parties hereto to be realized from the sale of records through the efforts of the "SOCIETY," it is understood that the "APPLICANT" shall pay to the "SOCIETY," when, as and if received by the "APPLICANT," after a period of thirty days from the date of acceptance by the "SOCIETY" hereof, a sum equal to 10% of any and all royalty or payments accruing in favor of the "APPLICANT" by reason of the "APPLICANT'S" work with recording companies or for mechanical reproduction of the "APPLICANT'S" voice, talent or work whether contracts therefor have been obtained by or through the "SOCIETY" or otherwise. It is understood that when, as and if in the opinion of the Board of Directors of the "SOCIETY" the remuneration herein set forth has become adequate to compensate the "SOCIETY" for its efforts in accomplishing its purpose, the "SOCIETY" may reduce the remuneration herein provided for to such amount as it may

deem to be reasonable, but the Board of Directors of the "SOCIETY" shall be the sole judge as to any such reductions and any such allowance shall only become effective upon written notice from the "SOCIETY" to the "APPLICANT." IN NO EVENT, HOWEVER, SHALL THE REMUNERATION OF THE "SOCIETY" BE IN EXCESS OF THE AMOUNT IN THIS APPLICATION SET FORTH.

NO LIABILITY TO MEMBERS:

It is understood that this application or membership is not stock or "investment security;" that it includes no participation in the "SOCIETY'S" profits or loss, and is non-negotiable and non-voting. The "APPLICANT" shall not be assessable or liable in any manner or form whatever for any debts or obligations of the "SOCIETY," and nothing herein contained or otherwise shall be construed to so obligate him. Neither this agreement, nor any interest or right therein, or arising therefrom shall be negotiable, assignable, or revokable by the "APPLICANT" and the term hereof shall be five (5) years from the date of its acceptance by the "SOCIETY."

The "APPLICANT" shall execute such instruments from time to time as may be required by the "SOCIETY" to carry out the terms of this contract.

.....
"APPLICANT" (Please Print Name After Signature)

.....
Permanent Address (Print)

Accepted by:

AMERICAN SOCIETY OF RECORDING ARTISTS
INCORPORATED

(Seal)

By
Executive Secretary

Dated..... 193...

No.....
Recommended by Approved by

EXHIBIT 9

AMERICAN SOCIETY OF RECORDING ARTISTS
INCORPORATED

Guaranty Building, Hollywood, California

Telephone Gladstone 1371

Arthur W. Levy, Executive Sec'y

L. J. Mayberg, General Counsel

BOARD OF GOVERNORS: L. E. Behymer, Honorary Chairman; Gene Austin, Chairman; Fred Astaire, Ben Bernie, Don Bestor, Henry Busse, Eddie Cantor, Noel Coward, Jesse Crawford, Frank Crumit, Eli Dantzig, Jack Denny, Morton Downey, Jimmy Durante, Ted Fio Rito, Jan Garber, Ernie Golden, Jimmy Grier, Al Jolson, Roger Wolfe Kahn, Ted Lewis, Little Jack Little, Vincent Lopez, Freddy Martin, Jeanette MacDonald, Helen Morgan, George Olsen, Raymond Paige, Eddie Peabody, Dick Powell, Buddy Rogers, Lanny Ross, Nathaniel Shilkret, Frances Williams, Victor Young. CONCERT-OPERA DIVISION: Georges Barrere, Lieut. Charles Benter (United States Navy Band), Lucrezia Bori, Richard Crooks, Mischa Elman, Osip Gabrilowitsch, Mary Garden, John Goss, Alfred Hertz, Jose Iturbi, Maria Jeritza, Dr. Hans Kindler, Josef Lhevinne, John McCormack, Jose Mojica, Grace Moore, Elizabeth Reithberg, Felix Salmond, Carlos Salzedo, Tito Schipa, Toscha Seidel, Fabian Sevitzy, Marion Talley, John Charles Thomas. COMMITTEES: *Executive*: Al Jolson, Chairman. *OPERA*: Lucrezia Bori, Chairman. *CONCERT*: Mary Garden, Chairman. *ORCHESTRA*: Nathaniel Shilkret, Chairman.

February 10, 1936.

GENTLEMEN:

In its letter of April 1, 1935, this Society invited you to apply for a "Licensee Membership" whereby broadcasters might be represented in its structure and thus obtain for themselves and their sponsors and advertisers a license to broadcast the talents of its "Artist Members" through the medium of recordings, as well as to lend their voices to the general purposes of the Society which represents its "Artist Members" in the broadcasting field wherein their talents are broadcast through the medium of records; to license broadcasters; establish a usage rate for each such use of the artists' talents; to collect for its "Artist Members" the compensation to which such members may be rightfully en-

titled; to remedy the inequitable and unjust practice of unauthorized and uncompensated use by broadcasters and advertisers of such artists' talents, and to avoid, where possible, litigation and misunderstandings arising therefrom and to make it possible for such proper use to be continued.

The Society realizes that there are several movements gaining considerable headway, interested in prohibiting entirely the use over the air of talent not recorded specifically for broadcasting purposes.

The Society intends to lend its cooperation to avoid legislative and other methods of prohibiting entirely the use over the air of talent not recorded specifically for broadcasting purposes, and it intends to afford its protection to all parties concerned under the terms prescribed by it and to offer a medium through which broadcasters, and through them their sponsors and advertisers, may compensate artists reasonably for the use of such talents through the medium of recordings and thus continue such a system without hindrance, legal, statutory or otherwise.

The Society believes that the interests of all radio stations in the broadcasting of records are not identical. That certain stations and groups of stations would be best served if the use of records in broadcasting were entirely eliminated through legislative or other means, confining this field only to transcriptions. Stations and groups of stations which specialize in the use of "live" talent and transcriptions must realize that a complete stoppage of the use of records on the air could probably mean the complete elimination from the broadcasting industry of hundreds of radio stations which because of geographic or other reasons are dependent upon talent through the use of records to furnish the majority of their entertainment to the listeners-in of the station. Further, stoppage could give transcription monopolies to certain groups.

In the same way, it is to the interest of certain recording-artists to remove from the air forever the use of their recorded talents for broadcasting purposes and to also eliminate from such usage the talents of all other recording artists, and we are informed groups and organizations have been formed with this objective.

The Society is aware that at the present time the greater number of recording artists are willing to permit the use of their talents on the air through the medium of recordings if the broadcasters of such talents pay the reasonable fee for each and every such usage as required by its By-Laws.

However, the Society believes that unless broadcasters interested in retaining talents on the air through the medium of records, cooperate with it, the use of all such recorded entertainment may be completely eliminated very shortly from the air or charges therefor become prohibitive. The Society heretofore demanded of you collection of royalties for your use of its "Artist Members" said talents as of May 1, 1935, to which your station has not satisfactorily replied though our investigation discloses that you have continued the unauthorized use of the talents of its "Artist Members" through the medium of recordings.

You are hereby notified that the "Artist Members" whose names appear on the reverse side of this page, have heretofore assigned to this Society the rights to the use of their talents for broadcasting purposes through the medium of recordings pursuant to written memo thereof on file with the Society and that such "Artist Members" require you to obtain permission from the Society for such use and to make accounting and payment accordingly. The Society therefore in its own behalf and in behalf of each of such persons hereby demands:

1. That you must not broadcast their talents through the medium of records without license first obtained therefor.
2. That you account for each usage of such talents including such usage by your advertiser or sponsor, and you are advised it will hold you liable to it for any and every failure or refusal to abide by such demand, for accounting and payment pursuant thereto.

The Society maintains that the responsibility for the unauthorized use of its "Artist Members'" talents for broadcasting through the medium of recordings rests with the advertiser and sponsor, as well as the broadcaster.

We want you to realize the full significance of events which are transpiring and which we believe will profoundly affect the broadcasting stations using recorded talent. There is enclosed a copy of resolutions passed by the board of directors of the Society, together with an excerpt from "Variety" of January 22, 1936, dealing with the judgment of the court in the case of Station WDAS, of Philadelphia.

It is regrettable to the Society that it has not received a favorable response from your station and that you have failed and refused up to this time to account for your use of such talents

of its "Artist Members," either prior or since the demand mentioned, nor have you extended any cooperation. If it is case law you are relying upon and you are not interested in the equity and property of our position, then the responsibility for your position now rests entirely with you.

Respectfully,

AMERICAN SOCIETY OF
RECORDING ARTISTS, INC.
(Signed) ARTHUR W. LEVY,
Executive Secretary.

Alda, Frances	Divine, Grace
Altglass, Max	Doe, Doris
Anglo Persians	Downey, Morton
Appollon, Dave	Duncan, Myron
Arnold, Gene	Duncan, Sisters
Astaire, Fred	Dunn, Jack
Atchison, Shelby	Dunne, Irene
Austin, Gene	Durante, Jimmy
Bada, Angelo	Eckles, Charley
Baggiore, Attilio	Eddy, Nelson
Baker, Elsie	Egan, James
Ballew, Smith	Elkins, Eddie
Bampton, Rose	Elman, Mischa
Barbirolli, John	English Singers, The
Barnet, Charles	Faulkner, Georgene
Barrere, Georges	Faye, Alice
Bauer, Hermie	Ferdinando, Angelo
Bauer, Franklyn	Fio Rito, Ted
Belasco, Leon	Finston, Nat
Bernhardt, Louise	Flexer, Dorothea
Bernie, Ben	Foresythe, Reginald
Bestor, Don	Friedman, Ignaz
Black, Frank	Froman, Jane
Blue Grass Ramblers	Gabrilowitsch, Ossip
Boles, John	Gandolfi, Alfredo
Bori, Lucrezia	Garber, Jan
Bouquet, Max	Garden, Mary
Bourdon, Rosario	Golden, Ernie
Bowden, Len	Goldman, Edwin Franko
Bowly, Al	Goodman, Benny
Boynet, Emma	Goss, John
Branson, Capt. Taylor	Green, Johnny
Branzell, Karin	Greene, Harrison
Braslau, Sophie	Grier, Jimmie
Bright, Sol Kekipi	Grofe, Ferde
Britt, Horace	Guizar, Tito
Brownie, Franklyn	Harty, Sir Hamilton
Bryant, Willie	Haumes, Joe
Bullock, Chick	Hayton, Lennie
Burnet, Earl, Estate	Henderson, Fletcher
Busse, Henry	Hertz, Alfred
Cameron, Basil	Holman, Virginia and Betty
Campo, Del	Holmes, Floyd (Salty)
Cannon, Gus	Hoopii, Sol, Jr.
Cantor, Eddie	Hopkins, Claude
Cartwright Brothers	Hoyos, Rudolfo
Castilians, The	Hurt, Charles (Chick)
Cehanovsky, George	Iona, Andy
Chaliapin, Feodor	Iturbi, Jose
Chapman, Frank	Jackson, Marlan
Coakley, Tom	Jagel, Frederick
Coburn, Jolly	Jepson, Helen
Coleman, Emil	Jeritza, Maria
Continental, The	Johnson, Edward
Coppola, Piero	Johnson, James P.
Crawford, Jesse	Jolson, Al
Crooks, Richard	Kaley, Charles
Crumit, Frank	Kahn, Roger Wolf
Coward, Noel	Kappel, Gertrude
Cozzi, Mario	Kardos, Gene
Cummins, Bernie	Karns, Virginia
Dalhart, Vernon	Kassel, Art
Dantzig, Eli	Katzman, Louis
Davis, Jimmie	Kaufman, Irving
Davis, Meyer	Keene, Hank
Davis, Walter	Kelly, Cuthbert
De Gogorza, Emilio	Kemp, Hal
De Leath, Vaughn	Kincald, Bradley
Denny, Jack	Kindler, Dr. Hans
Diaz Rafaelo	Kline, Olive
Dickinson, Bob	Kurenko, Maria

Langford, Frances
Lashanska, Hulda
La Velle, Kay
Lee, Carol
Lehmann, Lotte
Lewis, Mary
Lewis, Ted
Lewis, Welcome
Lhevinne, Josef
Lillie, Beatrice
Ljungberg, Gota
Little Jack Little
Lopez, Vincent
Los Floridians
Lucas, Nick
Luther, Frank
MacDonald, Jeanette
McCormack, John
McKenzie, Wm. (red)
Magnante, Charles
Mann Brothers
Mannone, Joe (Wingy)
Mario, Queena
Marsh, Lucy
Martini, Nino
Martin, Freddie
Mason, Edity
Matzenaur, Margaret
Medrano, Luis
Melchior, Lauritz
Melton, James
Memphis Jug Band
Menendez Nilo
Minneapolis Symphony Orch.
Mojica, Jose
Monteuse, Dr. Pierre
Moore, Grace
Morgan, Helen
Morgana, Nine
Murphy, Lambert
Nelson, Ozzie
Nieto, Raquel
Oakie, Jack
Olsen, George
Olszewska, Maria
O'Noian, Shaun
Orchestre Symphonique de Parie
Ormandy, Eugene
Osborne, Verna
Paige, Raymond
Paris Symphony Orchestra
Peabody, Eddie
Parker, Frank
Pattison, Lee
Piatigorsky, Gregor
Pinza, Ezio
Powell, Dick
Prairie Ramblers
Rethberg, Elisabeth
Richards, Lewis

Ricci, Ruggiero
Richardson, Florence
Robbins, Sam
Roberti, Lyda
Robertson, Dick
Robeson, Paul
Robison, Willard
Rodgers, Jimmie, Estate
Rodgers, Judy
Rogers, Chas. (Buddy)
Rogers, Ginger
Rogers, Rob
Rollins, Todd
Rosenthal, Harry
Ross, Lanny
Sale, Charles (Chic)
Salmond, Felix
Salomons, Jacqueline
Salter, Harry
Salzedo, Carlos
Samaroff, Olga
Schelling, Ernest
Schipa, Tito
Schorr, Friedrich
Schumann Heink, Ernestine
Seidel, Toscha
Sevitsky, Fabian
Shade, Will
Shilkret, Nathaniel
Shuk, Lajos
Shutta, Ethel
Silver, Monroe
Smeck, Roy
Sons of the Pioneers
Spalding, Albert
Spielman, Milton
Stamp's Quartet
Stannard, William
Stenross, Chas.
Stone, Mildred
Sullivan, Joe
Swarthout, Gladys
Talley, Marion
Taylor, Jack
Thibault, Conrad
Thomas, John Charles
Thomas, Mostyn
Trini, Anthony
Tomlin, Truman (Pinky)
Upson, Dean R.
U. S. Marine Band
Van, Vera
Van Gordon, Cyrena
Webb, Chick
Webster, Dick
Weems, Ted
West, Mae
Williams, Frances
Windheim, Marek
Young, Victor

NOTE: Accounting and payment at this time is not demanded for any member whose name does not appear on this list.

RESOLUTION

At a meeting of the Board of Directors of the American Society of Recording Artists, Inc., duly and regularly held this 1st day of February, 1936, the following Resolution was duly and regularly passed and spread upon the minutes of the Society:

BE IT RESOLVED:

THAT WHEREAS, the Society did on or about April 1, 1935, forward to all broadcasting stations throughout the United States and its possessions, an invitation to join the structure of its organization in an advisory capacity by applying to it for "License Membership" under which each such station would be licensed under conditions named to use of the talents of "artist members" of the Society thru the medium of recordings on payment of certain royalties then designated, and

WHEREAS, at that time the Society directed the attention of the broadcasting stations to an existing condition whereby broadcasters were using such talents of artists for radio broadcasting without

authority from or compensation to the artists therefor, and that such practise was wholly inequitable and unfair to the artists, and

WHEREAS, certain stations failed and neglected or refused to reply to said invitation to correct the said wrong or inquired thru their attorneys for case law on the subject, failing and refusing to co-operate with the Society or otherwise in adjusting this inequitable and unjust situation, and

WHEREAS, the Board of Directors of the Society has now completed its investigation of the facts and circumstances surrounding this condition and has heretofore authorized its general counsel to proceed to take legal action to enforce the rights of its "artist members," and a court decision now exists in the premises; and

WHEREAS, in the interest of enforcing such rights and incident thereto, the "artist members" of the Society have assigned it to all such rights to their talents for use for broadcasting or commercial purposes thru the medium of recordings.

NOW, BE IT RESOLVED: That a further letter be addressed to each radio station in the United States and its possessions that has failed or refused to account for such use of the talents of its "artist members" for broadcasting purposes; that such letter contain a demand for an accounting and payment therefor in accordance with the schedule of the Society, namely:

"Payable on the 5th day of the month following such broadcasting, by remittance addressed to the Society at Los Angeles, California, broadcasting stations shall pay to the Society for the broadcasting of the talents of its "artist members" thru the medium of recordings and for a license to use the same as follows:

Class A stations, 1000 watts and up, shall pay 15 cents per usage.

Class B stations, 500 watts to 999 watts, shall pay 10 cents per usage.

Class C stations, 499 watts or less, shall pay 5 cents per usage.

An uninterrupted use of talent broadcast thru the medium of the use of either side of a 10-inch, double-faced 78 R.P.M. record where the playing time is not more than 3 minutes and 45 seconds, will constitute one usage, or of a 12-inch, double-faced 78 R.P.M. record where the playing time or recorded portion thereof does not exceed 5½ minutes, shall constitute two usages; or from either side of a 10-inch, double-faced 33½ R.P.M. record where the playing time does not exceed 6 minutes, shall constitute two usages; or from either side of a 12-inch double-faced 33½ R.P.M. record where the playing time does not exceed 9 minutes, shall constitute three usages. Single-faced records shall come under the various classifications in proportion to the actual recorded or playing time on the record, but in no event at the rate of less than one usage; partial or interrupted use of broadcasting of said talent thru the medium of a record or recorded program for broadcasting purposes, constitute one usage, provided such partial usage does not exceed at any time a period greater than three minutes of actual playing time, subsequent usage to be charged for at the rate noted."

AND BE IT FURTHER RESOLVED: That a printed excerpt from the decision against Station WDAS, Philadelphia, printed in "Variety" of Wednesday, January 22, 1936, be inclosed with such letter;

AND BE IT FURTHER RESOLVED: That the Society shall notify each such broadcasting station the name of each "artist member" for whom the Society requires such payment and accounting until further notice;

AND BE IT FURTHER RESOLVED: That the Society shall report to its general counsel unauthorized usages by broadcasting stations of such talent of any such "artist members" for which accounting and compensation has thus been demanded and accounting and/or payment refused, or not received, with instructions to proceed to enforce the rights of the Society and its "artist members" in the premises.

Attest:

(Signed) ARTHUR W. LEVY,
Secretary.

Wednesday, January 22, 1936.

Variety 55

WARING DECISION

Following are pertinent excerpts from the decision handed down last week by Judge McDevitt in the Court of Common Pleas, Philadelphia, upholding Fred Waring's right to restrain WDAS,

Philly outlet, from using a Waring phonograph recording for broadcasting or other commercial purposes:

In the instant case the defendant has appropriated without purchase or legal claim the creation of material produced by the complainant's intellectual effort and application of his unique talents. His creation represents production by organization, by the expenditure of labor, skill and money. His creative genius has perfected something peculiarly his own, stamped with his personality and as inseparable from him without injury as one of his limbs. His unique talents have fashioned something as distinct and original as the product fashioned publication. Communication and dedication are as dissimilar as are performance and publication.

Ownership suggests possession and proprietorship, and sale represents the conveyance of a right of any kind. At the same time, however, one may sell his corporeal and still save his incorporeal right. Undoubtedly the contract or covenant follows the chattel, and only a false legal doctrine could separate the same, which would be equivalent to putting the stamp of approval upon unfair competition.

The complainant is, therefore, entitled to the redress that he seeks.

Let the injunction issue.

Conclusions of Law

1. The creator of a unique and personal interpretation of a musical and/or literary composition possesses a common law property right in the same, and has a right to control and limit its use.

2. The individuality, personality and unusual talents of such an artistic interpreter identify his production, creation or performance in such a manner as to make it different, and consequently, per se, a special value with pecuniary worth.

3. The interpretive talent of the complainant is creative and vests in him an incorporeal property right, just as firmly as though it were corporeal property.

4. Such incorporeal property is entitled to protection.

5. A creation or interpretation that may be captured or transcribed by mechanical means, and then capable of reproduction at the will of the possessor, makes such an interpretation or creation, property.

6. The integrity of one's art is entitled to protection, and the law gives such artist a right to command a return for any commercial utilization of his talent.

7. The talents, creations and interpretations of a performing artist, may only be used or exploited under the terms and conditions imposed by the creator. Any other use is an infringement of his property right, and an injury to his name and commercial worth.

8. The law will follow science and arts in throwing the necessary protection about property rights, both corporeal and incorporeal, tangible and intangible.

9. The making of a phonograph record or the sale of the same, under such conditions as were imposed in the suit at issue, does not constitute a publication.

10. The respondent's purchase of said records vested in him a possession and ownership, subject, however, to the special property right of the complainant.

11. Such a use of a phonograph record as has been made by the respondent in this matter, is a commercial use for profit.

12. The complainant and the RCA-Victor Company were within their legal rights in producing said records for sale and limited use.

13. The respondent's use of said records violated the express restriction stamped thereon, and was an unlawful interference with complainant's right. The respondent's use of said records is an interference with the complainant's contractual relations with the international company, with which he has a contract for his exclusive broadcasting services.

14. The limitation of use or restriction stamped upon the face of the records was a condition or servitude inseparable from the records.

15. The restriction stamped upon the records is not an interference with the purchaser of said records to use them for the purpose intended, it is not an unreasonable condition, its enforcement would not be in restraint of trade, and its enforcement does not create a monopoly. It is a protection of the property right vested in the complainant and enforceable in equity.

16. Such use of said records, as the use made by the respondent, creates unfair competition.

EXHIBIT 10

AMERICAN SOCIETY OF RECORDING ARTISTS

INCORPORATED

Southern California Division
Suite 403, Bank of America Building
9470 Santa Monica Boulevard
Beverly Hills, California
WOodbury 62608
Al Jolson, President

NOTICE

It is reported to the Society by its Bureau of Investigation that the recorded talents of its artist-members have been broadcast for commercial purposes in your place of business without the authority of the Society.

The Society makes available only to licensee-members of the Society permission to so broadcast the talents of its artist-members.

If you intend to continue such broadcasting of such talents of the Society's artist-members, a list of whose names is herewith presented, the Society will give you a license therefor, upon proper application for it.

Notice is hereby given you that the Society will hold you liable for any and all unauthorized usages of the talents of its artist-members and hereby makes demands upon you for payment of damages for all unlicensed usages in the past.

Application for license is attached herewith.

AMERICAN SOCIETY OF RECORDING ARTISTS, INC.

Board of Governors

L. E. BEHYMER, <i>Honorary Chairman.</i>	Ernie Golden
GENE AUSTIN, <i>Chairman.</i>	Jimmy Grier
Fred Astaire	Al Jolson
Ben Bernie	Roger Wolfe Kahn
Don Bestor	Ted Lewis
Henry Busse	Little Jack Little
Eddie Cantor	Vincent Lopez
Noel Coward	Freddy Martin
Jesse Crawford	Jeanette MacDonald
Frank Crumit	Helen Morgan
Eli Dantzig	George Olsen
Jack Denny	Raymond Paige
Morton Downey	Eddie Peabody
Jimmy Durante	Dick Powell
Ted Fio Rito	Buddy Rogers
Jan Garber	Lanny Ross
	Nathaniel Shilkret
	Frances Williams
	Victor Young

Concert-Opera Division

Georges Barrere	John McCormack
Lucrezia Bori	Jose Mojica
Richard Crooks	Grace Moore
Mischa Elman	Elisabeth Rethberg
Ossip Gabrilowitsch	Felix Salmond
Mary Garden	Carlos Salzedo
John Goss	Tito Schipa
Alfred Hertz	Toscha Seidel
Jose Iturbi	Babian Sevitzyk
Maria Jeritza	Marion Talley
Dr. Hans Kindler	John Charles Thomas
Josef Lhevinne	

Committees

EXECUTIVE	CONCERT
AL JOLSON, <i>Chairman.</i>	MARY GARDEN, <i>Chairman.</i>
OPERA	ORCHESTRA
LUCREZIA BORI, <i>Chairman.</i>	NATHANIEL SHILKRET, <i>Chairman.</i>

"THE LAW GIVES SUCH ARTIST A RIGHT TO COMMAND
A RETURN FOR ANY COMMERCIAL UTILIZATION
OF HIS TALENT"

(Opinion Judge McDevitt, *Waring v. WDAS*, Philadelphia, C. P.
January, 1936)

Excerpts from Decision Against Radio Station WDAS:

"1. A creation or interpretation that may be captured or transcribed BY MECHANICAL MEANS, and then capable of repro-

duction at the will of the possessor, MAKES SUCH AN INTERPRETATION OR CREATION, PROPERTY.

2. The INTEGRITY OF ONE'S ART IS ENTITLED TO PROTECTION, and the law gives such artist a right to command a return for any commercial utilization of his talent.

3. *The creator of a unique and personal interpretation of a musical and/or literary composition possesses a common law property right in the same, and has a right to control and limit its use.*

4. The talents, creations and interpretations of a performing artist, MAY ONLY BE USED OR EXPLOITED UNDER THE TERMS AND CONDITIONS IMPOSED BY THE CREATOR. AND OTHER USE IS AN INFRINGEMENT OF HIS PROPERTY RIGHT, and an injury to his name and commercial worth.

5. * * * The reproduction by virtual theft of his performance * * * is just as much an invasion of his privacy as would be the tapping of the wires of one broadcasting station featuring complainant for the purpose of sending out through another station that rendition * * * or performance * * *

Excerpt from Musical Performers' Protection Act of 1925, Eng., 15 and 16 Geo. V. CH. 46, 31st July, 1935:

(An Act to Prevent Unauthorized Reproduction of Dramatic and Musical Performances)

"1. If any person knowingly * * * (c) uses for the purpose of public performance any record made IN CONTRAVENTION OF THIS ACT, he shall be guilty of an offense under this ACT, and shall be liable, on summary conviction, to a fine * * * for each record * * *

Excerpt from Shafter: Musical Copyright, Page 274:

"To return to the artist: his voice is his property. He should have the right to prevent any exploitation that will decrease the value of his talent."

Excerpt from Savage vs. Hoffman, 159 Federal Rep. 584:

"* * * The manner, method and art of every performer is individual and his own property."

Excerpt from Phonotopia vs. Bradley, 171 Federal Rep. 951:

An injunction on the grounds of unfair competition aside from the grounds of infringement or deception of the public, should be granted in equity to restrain the wrongful appropriation of another's property.

Excerpt from Supreme Court of the United States Decision Delivered by Mr. Justice Holmes, January 22, 1917:

In *Herbert vs. The Shanley Company*, 242, U. S. 591.

"* * * They are a part of a total for which the public pays, and the fact that the price of the whole is attributed to a particular item in which those present are expected to order, is not important. It is true that the music is not the sole object, but neither is the food, which probably could be got cheaper elsewhere. The object is a repast in surroundings that to people having limited powers of conversation or disliking the rival noise give a luxurious pleasure not to be had from eating a silent meal. IF music DID not PAY

IT WOULD BE GIVEN UP. If it pays, it pays out of the public's pocket. Whether it pays or not, THE PURPOSE OF EMPLOYING IT IS PROFIT, AND THAT IS ENOUGH.

Excerpt from Judgment of Civ., Cham., 2nd Instance Buenos Aires, Oct. 28, 1930:

"The purchase of a phonograph record does not * * * convey the right to broadcast its contents."

Excerpt from Gramophone Co. & Tetrizzini vs. State Finance (1912) Tribunal Court, Milan:

"The artistic personality of the performer is reflected in the performance which becomes a distinct product having a special value not only artistic but also, pecuniary—so that the record incorporating this performance NECESSARILY BELONGS ALSO TO THE PERFORMER WHO HAS CREATED IT."

Excerpt from Remick vs. General Electric Co., 4 Fed. (2nd) 160:

"If a broadcaster procures an unauthorized performance * * * and for his own profit makes the same available to the public, served by receiving sets attuned to the station, it is the judgment of this court that he is an infringer, unless express permission is given or performance paid for according to price set by person owning right to performance * * *

Excerpt from Proposal 1st Int. Juridical Radio Congress:

"The radioelectrical transmission of the performance * * * or artistic work cannot be made without the consent of the interpreter."

COURT DECISIONS

Waring vs. UHR'S Roumanian Restaurant, Phila. C. P., 1936.

Waring vs. Studio Ballrooms, Inc., Phila. C. P., 1936.

Waring vs. Robinson Recording Laboratories, Phila. C. P., 1936.

Buck vs. Jewell-LaSalle Realty Co., 283 U. S. 191.

International News Service vs. Associated Press, 248 U. S. 215.

Board of Trade vs. Christie Co., 198 U. S. 236.

Howe vs. Wyckoff, 198 U. S. 118.

Associated Press vs. KVOs, Inc., 80 Fed. (2d) 575.

The Associated Press vs. Sioux Falls Broadcasting Ass'n, U. S. District Ct., South Dakota, Mar. 4, 1933.

Waterson Co. vs. Irving Trust Co., 48 Fed. (2d) 704.

Remick vs. General Electric, 16 Fed. (2d) 829.

Universal Film Co. vs. Copperman, 218 Fed. 577.

Werckmeister vs. American Lithographic Co., 134 Fed. 321.

Sperry & Hutchinson vs. Mechanics' Clothing Co., 128 Fed. 800.

Melvin vs. Reid, 112 Cal. App. 285.

Chaplin vs. Amador, 93 Cal. App. 358.

Binns vs. Vitagraph Co., 210 N. Y. 51.

Messenger vs. British Broadcasting Co., Ltd. (1927), 2 K. B. 543, and (1929) A. C. 151.

Abernathy vs. Hutchinson, 3 L. J. Chancery 209.

Sarpy vs. Holland, 2 Ch. 1908.

Savage vs. Hoffman, 159 Federal Rep. 584.

Phonotopia vs. Bradley, 171 Federal Rep. 951.