

Comprehensive Review of the Copyright Position.

One of the many problems which have confronted the Radio Broadcasting Company in organising to give service to listeners has been the copyright problem. Some involved negotiations have been necessary in this connection to protect listeners.

The facts embodied in the following comprehensive review will come as a surprise to both the listening and general public. In brief, the position is that to-day the owners of copyright can demand any fee desired, or prohibit the broadcasting of any copyrighted work. This creates a possible danger from which only legislation can guard the listener—legislation to fix a statutory royalty in the case of necessity. Manufacturers of mechanical music (gramophones and pianolas) have such protection—why not the broadcaster?

The term "copyright" connotes the proprietary interest of an author in any literary, dramatic, musical, or artistic work composed or produced by himself. Originally copyright included the sole and exclusive liberty of printing or otherwise reproducing copies of an original work or composition. With the development of the dramatic and musical arts the expression, however, has come to include another and analogous right namely, the sole and exclusive right of performing the work in public. It is in connection with this right of public performance that the art of radio broadcasting comes into contact with the copyright laws.

WHAT IS THE LAW?

The law relating to copyright in this Dominion is contained in the Copyright Act, 1913. This Dominion Act is substantially a reproduction of the English Copyright Act of 1911, a consolidating and amending Act introduced in England at that date.

Under the provision of the New Zealand Act the term for which copyright subsists in a work is for the lifetime of the author and 50 years thereafter. These rights include the right of performance in public just referred to.

It is doubtful whether, in 1911, the art of radio broadcasting had reached the point where it was necessary to consider its relationship to the copyright laws. This surmise would seem to be true in view of the fact that in other countries litigation has taken place on the question as to whether or not the propagation by wireless of a musical copyright work is an infringement of the copyright therein. It would appear to be clear, however, that in this country, at any rate, the reproduction of musical copyright works by means of radio is an infringement of the copyright in such works, save where the broadcasting has been undertaken with the permission of the author or assignee of the composition.

A FIXED ROYALTY TO PROTECT REPRODUCTION.

During the consolidation of 1911 of the English enactments relating to copyright, the question arose as to the rights of persons to manufacture and vend mechanical contrivances for the reproduction of musical works. Copyright owners contended "that no industry ought to be permitted to flourish on the methods of the highwayman." On the other hand those persons interested in the reproduction of musical works by mechanical means, whilst recognising that some remuneration was due to the composers whose works were adapted to mechanical reproduction, nevertheless feared that, if composers were allowed unlimited

powers to either permit or prohibit reproduction of their works, a monopoly prejudicial to them would be created in the most popular works. In 1909 there had been introduced in the United States copyright Act a right of compulsorily acquiring licenses to reproduce musical works by mechanical means upon payment of a fixed royalty.

As the outcome of this controversy a clause was inserted in the English Act compelling a musical composer, in the event of his having granted a license to one person to reproduce his work mechanically, to grant to any other person a like license to reproduce the same work upon payment to the composer of a stipulated royalty. A provision to the same effect appears in the New Zealand Act, namely Section 25. This provision, although modifying the rights of the author, nevertheless recompensed him for such modification and at the same time established an equitable relationship between him and the manufacturer of mechanical contrivances. It will presently be shown that these modifications of the copyright laws have a distinct relevancy to the present relationship between the author or assignee of musical copyright and the broadcaster.

REGISTRATION NOT NECESSARY.

It should be noted at this juncture that no formality of any kind such as registration is necessary in order to bring musical works within the scope of the Act. As has been already stated, copyright in a work subsists for the lifetime of the author and 50 years thereafter. It will thus be seen that it would be a matter of extreme difficulty, if not of actual impracticability, for a person in New Zealand to discriminate between copyright and non-copyright musical works. By international arrangements practically the whole of the modern musical works introduced into this country acquire the protection of our copyright laws. From this it will be gathered that a broadcaster must necessarily use musical works which are the subject matter of copyright.

THESE ARE THE FACTS.

The foregoing observations may be briefly summed up under three headings:—

First, that the broadcasting of copyright musical works is an infringement of the copyright therein.

Secondly, that the author or assignee of such copyright works has the sole right to permit or prohibit their performance in public.

Thirdly, that the fact that registration of a musical work is unnecessary in order to confer copyright thereon renders it impractic-

able to discriminate between copyright and non-copyright works.

It is clear, then, that the broadcaster cannot, without infringing the law, use copyright works unless he has secured the permission of the author or his assignee and that the author or his assignee can prevent the broadcasting of their works altogether or permit the broadcasting thereof subject to such conditions as they may impose.

ONE BODY CONTROLS COPYRIGHT

Practically the whole of the musical copyright works introduced into New Zealand are controlled directly or indirectly by one corporate body. Consideration of the copyright question requires consideration also of the situation created by the vesting of practically all musical copyright of importance in this one entity.

In the month of January, 1926, there was registered in Australia a company under the name of the Australasian Performing Right Association, Ltd. The objects inter alia for which this corporation was established included that of "protecting and enforcing the rights of authors, composers and publishers of music and literary and dramatic works and the owners, holders and licensees of copyright and performing rights for any such works and of restraining and preventing by legal process or otherwise unauthorised use of the same." The original signatories to the memorandum of association of the corporation were the following:—

J. Albert and Son, Music Importers, Sydney; Allan and Co., Proprietary Ltd., Music Importers, Melbourne; Chappell and Co., Ltd., Music Publishers, Sydney; E. W. Cole, Music Importer, Melbourne; L. F. Collin Proprietary Ltd., Music Importers, Melbourne; D. Davis and Co. Ltd., Music Importers, Sydney; Sam Fox Publishing Co. (Australia) Proprietary Ltd., Music Importers, Melbourne; Nicholson and Co. Ltd., Music Importers, Sydney; W. H. Paling and Co. Ltd., Music Importers, Sydney.

WHO ARE THE MEMBERS?

The definition of a member is given in the Articles of Association of the company, namely:—

"The Performing Right Society Ltd. England and any association, company, firm or person associated, affiliated or connected therewith and any composer, author, publisher or proprietor of any musical, literary or dramatic work (but no other person) shall be eligible as a member of the company and may on application by him be admitted a member thereof by the board at its discretion, but the board shall have full and unrestricted power to refuse any such application for membership without assigning any reason for such refusal."

INTERNATIONALLY AFFILIATED.

The business communications of this association show it as being affiliated with the Performing Right Society Ltd. (England), Societe des Auteurs Compositeurs et Editeurs de Musique (France), Societa Italiana degli Autori (Italy), Sociedad de Autores Espanoles (Spain), Foreningens Svenska Tonsettares Internationala Musikerna (Sweden), a group apparently having similar and as extensive interests in their respective countries as the Aus-

tralian association has in Australia and New Zealand.

Pursuant to the association's Articles of Association each member—

"Undertakes during the period of his membership to assign to the company in accordance with the rules for the time being in force his interests whether present or future in the right to perform any musical or dramatic work which has been or shall hereinafter be published by him and until such assignment and so far as it may not extend every such member by virtue of his election invests the company for and during the period of his membership with the right in their or in his name to institute and prosecute proceedings against all persons performing such works without having obtained the consent and authorisation of the owner of the copyright or his agent in that behalf and to defend and oppose any proceedings taken against any member in respect of such works and to compound, compromise, refer to arbitration or submit to judgment in any such proceedings and generally to represent the member in all matters concerning his works notified to the company in pursuance of the rules."

INDIVIDUAL RIGHTS CENTRALISED.

In addition—"Every member by virtue of his election also invests the company for and during the period of his membership with the sole right so far as it is or shall be or become vested in him—

- To authorise or forbid the public performance of all or any of the works published or to be published by him or in which he holds or shall hold the copyright.
- To grant licenses for the public performance of any or all of the said works.
- To collect fees and subscriptions and other moneys whether for the performance of any of the said works or by way of damages or compensation for unauthorised performances thereof.
- To protect generally his interests in the said works.

From these extracts it will be seen that this association is widespread and is enabled by reason of its membership and the powers conferred on it by its members to exercise a powerful influence in the musical copyright field.

THE POWER OF THE ASSOCIATION

In answer to inquiries addressed to it from New Zealand, the Australasian Performing Right Association Ltd. tendered the following information touching on copyright controlled by it. First it intimated that the members of the association are the owners or agents for the owners of practically all the British copyright music published or to be published in Australia or the Dominion of New Zealand. Secondly, that the various foreign associations affiliated with it control practically the whole of the copyright music published in their respective countries, thirdly, that the copyright controlled by the Australian and New Zealand publishing agents are assigned to it; fourthly, that the members of the association are the owners in Australia and New Zealand or agents for practically all the American and British Dominion musical copyright published or to be published in Australia and New Zealand; fifthly, that in effect the association controls in Aus-

tralia and New Zealand 98 per cent. of the world's copyright music.

It may therefore be assumed from these facts that there is little copyright music of importance not within the control of the Australasian association.

EFFECT ON BROADCASTING.

In order to carry on a modern broadcasting service the broadcaster must obviously transmit musical copyright works. Such transmissions cannot, as has been pointed out, be legally undertaken without the consent or permission of the copyright proprietor.

The copyright law of the Dominion as it stands at present makes no provision enabling the broadcaster to use copyright works on payment of a fixed royalty as in the case of mechanical contrivances. The amount of the royalty which the broadcaster has to pay rests in the hands of the person or persons owning the copyright music.

It is not unreasonable to suppose that had the art of radio-broadcasting, as it exists to-day, been anticipated in 1913, the Legislature would have seen fit to regulate its relationship with the copyright proprietor in the same way as the relationship between the manufacturer and vendor of mechanical contrivances and the copyright owner was then regulated.

As the situation is at present the broadcaster is bound to yield to the demands of the Copyright Proprietor, in this case the Australasian Performing Right Association Ltd. or cease for all practicable purposes to transmit musical copyright matter. This one association has by reason of what may be called its monopoly in the commodity of musical copyright the power to require the New Zealand broadcaster to pay for the privilege of using the association's copyright works, such sum as the association may in its uncontrolled discretion think fit to demand.

This brief account of the copyright law and the broadcaster, and the copyright interests and the broadcaster, demonstrates that in New Zealand, as regards the broadcaster, there has arisen the very situation that in 1911 in England was anticipated by the Legislature in connection with the copyright proprietor and the manufacturer of mechanical contrivances for the reproduction of musical copyright works.

In these circumstances the broadcaster is of opinion that the Legislature should extend to him the rights similar to those already vested in the manufacturer of mechanical contrivances, or in other words that the broadcaster should be enabled to transmit musical copyright works on payment of a fixed statutory royalty.

As the position now stands, the broadcaster must in effect acquiesce in every requirement of the copyright owners irrespective of their being reasonable or unreasonable or else cease to carry on business.

A public service—an undertaking that makes music available to every home in the Dominion—should not, it is urged, be left in the invidious position disclosed by the foregoing facts.

The whole question, it would seem, is one for the early consideration of the Legislature.

A COMPARATIVE TEST OF "B" ELIMINATORS AND THEIR CHARACTERISTICS

LECTURE DELIVERED BY MR. E. W. MAHONEY

My lecture to-night consists of data relative to a series of tests of B battery eliminators. These tests were taken over a period of four weeks, using the one set all the time, so that they are fairly representative of reception conditions. To avoid fluctuation of the filament, amperite automatic controls were installed so that all variations of volume, etc., would be only derived from the B battery supply.

Four types of eliminators were tried, three being American and the fourth Dutch.

The Types Used.

Type one: Made and assembled in America. This eliminator had a fixed tapping for the plate supply and a variable control from zero to 45V for the detector. On test it was found that this eliminator was quite satisfactory for a five-valve set, there being absolutely no trace of hum. I might state here that the ordinary valves were used in most tests, but where it was found that the eliminators had stood up to the requirements of these tests, power valves of all grades were used in the last audio stage. With this eliminator volume was certainly increased, but the final tonal quality using all six valves was marred by the distinct hum that came through, although, as I said before, on five valves this was not noticeable. Owing to these

conditions, no further tests were taken with this one.

Type 2: This was an American B eliminator kit ready for building up locally. The guaranteed output of this type was 200 volts for the plate at 85 milliamperes. Variable rheostats for the detector and plate supply were incorporated in this unit and worked quite satisfactorily. Tests taken with a special voltmeter showed that the maximum output was 90V for the det and 220V for the plate supply. A series of tests held over a period of one week showed that this eliminator would not conform to the specifications laid down, and there experiments were stopped.

Type 3: This eliminator, assembled in America, was found quite satisfactory for a six-valve set. There was no trace of any hum coming through the loud speaker when the set was on full power. Two points were noticed, and they were, firstly, extra tapping for C battery voltages were incorporated in this type, of a range that was quite unsuitable for the average set, and, secondly, the price was fairly high. This was quite a very good type of eliminator, but the two items before mentioned were not quite satisfactory.

Type 4: This eliminator, made in Holland, was tried out and found quite satisfactory for the 6-valve set used. Two variable rheostats were used to control the output for detector and plate supply, the range for the det. being

from zero to 45 and for the plate supply from zero to 200 volts. Tests on this eliminator were fairly exhaustive, covering a period of nearly three weeks. Power valves of all makes and kinds were used, including the U.X.210, 112, Daven M.U.6 and Philips 605. In all cases the tonal output was quite clear, with no sign of hum or distortion due to the eliminator.

The Test.

Test A: The Daven M.U.6 was used in the last stage of audio. Very good tonal qualities resulted, and volume increased. Test B was taken, using the U.X.112 in the last audio stage, and



again the output was clarified and it was found possible to reduce the input voltage to 60 volts and still receive Australian stations at exceptional loud-speaker strength and without the

least sign of distortion. Using ear-phones it was found possible to still further reduce the voltage to 30 volts. This resulted in signals being heard with ample volume on the 'phones, any volume above this being more than the ear could bear with comfort. For instance, whilst listening to 4YA, Dunedin, a few nights ago, who were broadcasting a band relay, it was quite possible to hear people whistling around the band rotunda during intervals of music, and on another occasion when 2BL relayed from the Sydney Town Hall, two ladies in the audience were heard discussing matters regarding dress whilst waiting for the commencement of the programme. This, as I said before, was heard whilst using the 'phones, and an input of 30 volts on the eliminator.

Test C was obtained using Philips' 605 power valve, and the same reception conditions prevailed as in the previous tests. One point in connection with this test was noticed, and that was that the tonal output was clearer on this test than the previous one.

Test D.—The super power valve U.X.200 was used in the last stage for the following results. The tonal qualities of the set were vastly improved, and it was found possible to reduce the input of the eliminator under discussion to 50 volts, when Australian stations were heard quite distinctly, word for word, 40 feet or more away from the set, the volume being sufficient to fill a large ballroom for dancing purposes. This is only a brief summary of tests and results obtained, and I must now turn to the commercial side of the question and the relative cost and upkeep, and B eliminators versus dry cell B batteries.

Life of Batteries.

Using oversize B dry cell batteries and using the set for 4 hours a day, with a power valve in the last stage, the ap-

proximate life of these batteries is about six months. So that in one year it costs £3 for batteries alone. Not only that, the user must discard these when the voltage drops to 60 volts or only one-third used, and must suffer considerable annoyance from crackling and rustling noises as the voltage drops and the internal resistance of the batteries increases.

On the other hand, a B eliminator costs anything from approximately £9 10s. to £17, being three to five and a half times as much as the cost of a set of dry cells, which most of you will admit is a very serious item. Balanced against that, the first cost of an eliminator is practically the last, as it was found that by using the last eliminator the average drain, when using fully 100 volts, was only 8 watts, and that is allowing a very generous estimate. It would take actually 125 hours before one unit of light was consumed, costing approximately 5d., so that by using the set four hours a day it would only cost approximately 5d. a month for B battery supply. Over a period of 18 months the following points are noticed:—

	£ s. d.
Cost of dry B batteries	9 0 0
Total costs, dry cells	9 0 0
Cost of eliminator	9 10 0
Maintenance of B eliminator for 18 months at four hours per day	0 8 2

Totals costs, eliminator

So that it will be easily seen that after this period the B eliminator has nearly caught up with the expenditure on dry cell batteries, and will soon prove its cheapness as compared with the P batteries. Of course a comparison of the two as regards volume and freedom from internal noises is so obvious that it does not require stressing.