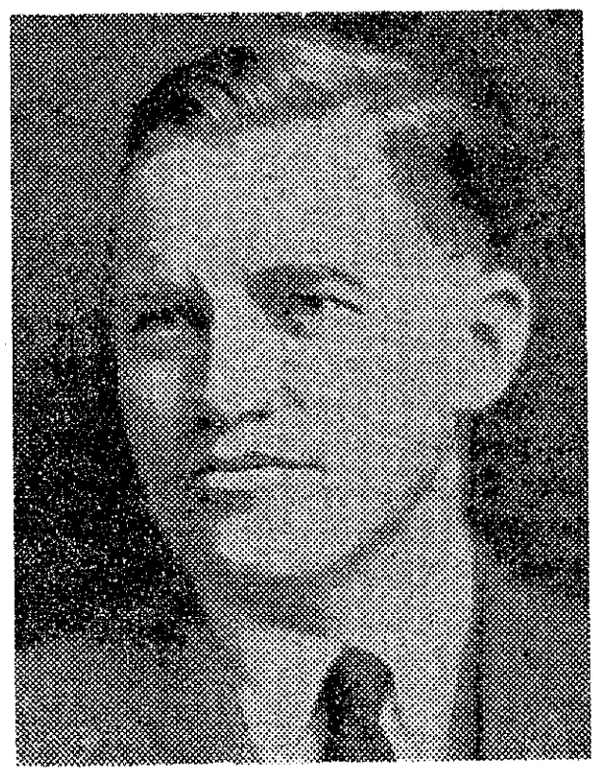
Copyright Issue.—Contd.

The Company, however, had not begun operating at all before notice was served upon it that a body, calling itself the Musical Copyright Broadcasting Administration claimed copyright in respect of 99 per cent. of the world's copyright musical numbers, and intimated that, failing compliance with its demands, it would call for an injunction through the Courts of New Zealand to prohibit the Broadcasting Company from performing any of the numbers in respect of which it claimed copyright. As under the existing law the onus would lie upon the Broadcasting Company in any dispute, to prove that no copyright was held in respect of the particular number or numbers claimed, the company was forced by stress of circumstances to enter into an agreement in August of 1926 to pay the Australasian Performing Rights Association (as it had now become entitled) the fee demanded, namely 4 per cent of its gross revenue from the first 10,000 receiving licenses, and 8 per cent. on all subsequent licenses, plus a ten per cent. increase for every 1500 items above a given number. This agreement was to extend to August of 1927, and under it the association agreed to make available to the Broadcasting Company (1) a list of the works desired to be reserved from performance, being not more than five per cent. of its total, and (2) a list of non-copyright works. Because of non-compliance with these clauses in the original agreement, difficulties arose in the negotiations of a second agreement to follow the first. In the proposed second agreement the association claimed 6 per cent. of the gross revenue received from listeners for the first 45,000 copyright items, plus an increase of ten per cent. for every additional 15,000 items used or repeated. In an effort to enforce fulfilment of conditions agreed to and undertakings given, the Broadcasting Company, as from February last has withheld the payments it formerly made to the association. This retention of moneys had the ultimate effect of causing the association to apply to the Supreme Court for an injunction restraining the Broadcasting Company from broadcasting musical numbers in respect of which it claimed copyright. This injunction was set down for hearing on October 9, and under the law as it stood the Supreme Court may have been compelled to grant that injunction. Listeners will therefore see that, had Parliament not acted, there might have been a sudden cessation of the broadcasting service.

Review of Copyright.

IN the issue of the "Radio Record" for July 29, 1927, there was published a very comprehensive review of the copyright position. That summary detailed the history of the copyright law, and set out how its original purpose of protecting the author in its rights of ownership had been modified in respect of the rights to mechanically reproduce music (such as by gramophones and pianolas), in order to protect the public from an undue deprivation of musical and artistic numbers. This modification of the then law was effected in 1911, to meet the position which at that time arose in relation to gramophones and pianolas. The owners of copyright rightly contended that their work should not be used without reward. On the other hand, those interested in the reproduction of musical works by mechanical means, whilst recognising that some remuneration was due to the composers whose work was so used, nevertheless contended that if composers were allowed to use unlimited powers to either permit or prohibit reproduction of their works, a monopoly prejudicial to them and the public would be created in the most popular works.

Accordingly in 1909 there had been introduced in the United States a provision giving the right of compulsorily acquiring licenses to reproduce musical works by mechanical means upon payment of a fixed royalty. Following on this controversy, a clause was inserted in the English Act providing that a musical composer, in the event of his having granted a license to one person to reproduce his work mechanically, should be compelled to grant to any other person a like license for reproduction upon the payment of a stipulated royalty. This provision was extended to New Zealand in the amendment of the Copyright law which was made in 1913. Unfortunately, at that



Mr. A. R. HARRIS,
General Manager of the B.B.C., the subject of an application for injunction against broadcasting copyright music.

time broadcasting was not on the public horizon; consequently, in the amendment of the law to protect gramophones and pianolas no provision was made for any further development in such a field as broadcasting.

On the initiation of broadcasting, no concern was expressed regarding copyright for some time; but eventually the question did arise as to the copyright position in relation to musical numbers broadcast. On this point it is well to bear in mind that the law requires no formal procedure prior to the granting of copyright. No registration of a musical work, art work, or document is necessary. This is designed to protect people of poor means, and extend to them the rights of ownership in such distinctly personal property. From the broadcaster's point of view, therefore, the position arises that there is no central office or organisation established by law from which he can ascertain what number is or is not copyright. The law provides that copyright obtains for the lifetime of the author and for 50 years after his death.

State of the Law.

ON the question arising in New Zealand through the approaches of the Australasian Performing Rights Association, Limited, and investigation being made, it was found that the law indicated:—

> (1) The broadcasting of copyright musical works is an infringement of the copyright therein; (2) That the author or assignee of such copyright works has the absolute right to permit or prohibit their performance in public; (3) That registration is unnecessary to confer copyright, thus making it impracticable to discriminate between copyright and non-copyright works.

From the practical point of view, therefore, the Broadcasting Company was faced with the position that to carry on its business it had to broadcast musical numbers, and in doing so would seem to have to break the law.

What is the Association?

In those circumstances the demands of the Australasian Performing Rights Association, claiming to possess in its own right and by association, the copyright of 98 per cent. of the musical numbers of the world, had to be met. The history of the association is that it was formed in January, 1926, and embodied originally the leading musical publishers of Sydney and Melbourne. It became affiliated with similar societies or organisations with different titles in England, France, Italy, Spain, Sweden, and other countries. The rights of each member are centralised by the rules of the organisation.

The association claimed 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 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 all Australian and New Zealand publishing agents is 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 Dominions' musical copyright published or to be published; so that in effect it controlled 98 per cent. of the world's copyright music.

Failing amendment to the law, the Broadcasting Company was thus bound to yield to the demands of the association, or else cease for all practicable purposes to transmit musical copyright matter. Under the law as it stood, the association was entitled to demand what it liked from the Broadcasting Company, and failing compliance, could apply to and secure from the Courts of the land an injunction prohibiting the broadcasting of copyright music controlled by the association.

Need For Amendment.

THE contrast between this position and that established in 1911 for the protection of the then new industries of the gramophone and pianola will be apparent to listeners. The common-sense procedure obviously would be to alter the law somewhat on the lines of granting the same protection to broadcasting as was extended to the manufacturers of mechanical music.

The question of such amending legislation was discussed with the Government in 1926, and substantially the same measure as is now before the House was drawn up and discussed then. As it happened, however, an International Convention on the question of copyright had been arranged to be held in Rome from May 7 till June 2 of 1928. The Government therefore deemed it wise in the interests of the public to withhold action in 1926 and 1927, pending the decisions of this International Convention, at which it was hoped unanimity of action would be determined upon in relation to a number of questions. A delegate from New Zealand was arranged for in the person of Mr. S. G. Raymond, K.C., A report from him has been received, and it is understood that he is now, or shortly will be, on his way to New Zealand, bringing with him certain recommendations for the amendment of the existing law in this country. It is for that reason that legislation was not introduced earlier than it has been.

The Rome Conference and Broadcasting.

FROM a newspaper review of the proceedings of the conference, it is understood that an important new article, drafted and agreed to, recognises that

> **authors have the exclusive right to authorise the radio diffusion of their work, but that it is the duty of the national legislature of the different countries belonging to the Copyright Union to determine the conditions under which that right should be exercised.**

It is suggested that, failing that friendly agreement, a just remuneration should be determined by a competent authority.

The subject of broadcasting, it is understood, aroused a considerable amount of discussion. The British delegates adopted a strong attitude, and emphasised the importance of the conference taking a definite stand in regard to broadcasting. One of the rules of the convention, however, is that unanimity must be reached before radical alterations are made in the convention. Consequently, in the absence of such unanimity, no amendment was actually made, but it appeared to be generally accepted that there was an inherent right in the Legislature of each country to carry measures to reconcile the exclusive rights of an author with the public interest. It was expressed that, while it might not be a matter of public importance if any individual author withheld the broadcasting rights of his work, anything in the nature of a general boycott by authors linked together would be opposed to public interest.

Substantially the same considerations were advanced in the discussion upon performing rights. In most countries, it was outlined, these rights are looked after by one society for the purposes of collecting fees, and the methods of some of these societies provoked a certain amount of criticsm. It was reported that difficulties had arisen owing to the concentration of these performing rights in the hands of individual bodies. While the performing rights of composers and authors were recognised, it was agreed that countries had the right to legislate in the public interest, if they were of opinion that the exercise of rights given to authors in accordance with the convention was being car-