

ried to an extreme contrary to the public interest.

From this summary of the discussions bearing upon broadcasting it will be seen that the convention recognised the sovereignty of each country to determine the copyright law as between the individual owner and the interests of the public. That is the position that has arisen in New Zealand, and that is the stand taken by the Legislature in its amendment to protect public interest.

The Methods Employed.

IT will be noticed that the discussion at Rome mentioned the methods of some of the performing rights associations. This fitly leads to consideration of the detailed trouble that has arisen between the New Zealand Broadcasting Company and the Australasian Performing Rights Association. A full outline of the difficulties that have been experienced by the Broadcasting Company in its negotiations regarding copyright is impossible, owing to the limitations of space. It is, however, safe to say that listeners can have no conception of the amount of trouble that has been occasioned and the detail work inflicted upon the company by reason of copyright restrictions, which were unthought of at the time when the company entered into its agreement with the Government. All listeners have naturally desired the performance of that special music in which they were interested. The fact that such music was not given them has frequently been the subject of criticism. That criticism should be directed, not against the Broadcasting Company, but against the copyright restrictions which prevented the company from fully meeting the popular demand.

In March last, following on the decision of the Broadcasting Company to withhold payment of copyright fees pending the negotiation of a satisfactory second agreement and the fulfilment of the terms of the first agreement, the Broadcasting Company wrote a very full letter to the association in Sydney, outlining the difficulties experienced by the company in the transaction of its business. This letter set out that the position in New Zealand "is rapidly becoming impossible," and outlined in considerable detail the difficulties experienced by the company. Finally it was advised that payment would be withheld until reasonable explanation was given as to the non-fulfilment of essential clauses in the first agreement.

How Much is Controlled?

IN the first agreement it was set out that the association controlled 98 per cent. of the world's musical copyright; but in the second agreement proposed to be negotiated the association desired this clause to be removed as "You will understand that we cannot guarantee that we control exactly 98 per cent. of the world copyright music."

In reply to this, the company intimated that it was not agreeable to this clause being waived: that both personally and in correspondence the association had maintained that it did in fact control 98 per cent. of the world's musical copyright; and in those circumstances the company, while admitting that the contention had proved in fact to be of little value, maintained that it should be inserted in the agreement.

The company went on to point out that, although the arrangement be-

tween the association and the company had been in operation for eighteen months, and although repeated demands for a catalogue of the works controlled by the association had been made, such definite information had so far not been supplied.

Under the agreement it was provided that the company should render to the association records of the musical numbers broadcast by it, and the association undertook that it would then return to the company a certified copy of each such list, with the works marked on it in respect of which payment was claimed. The company pointed out that, in spite of repeated demands being made for the return of such certified lists, not one had ever been returned, but various excuses had been advanced for failures to do so, the culminating point being, after eighteen months agitation, that the association demanded the provision of carbon copies of these lists, although no such demand had ever previously been made. "Under the circumstances," the letter said, "we do not think you can blame us for feeling that the suggestion is simply a further excuse for delaying the supply of information that one would imagine your association would be only too happy to furnish if, in fact, it possessed copyright to anything like the extent of its representations."

Outline of Difficulties.

AFTER discussing in detail various amendments, the letter, which was written for the company by its solicitor, went on as follows:—

"I. One of the principal sources of trouble as between your association and our client company is the position of certain operas and musical comedies.

"In the course of the correspondence some of these operas were referred to, and in your letter to our clients of the 31st October last you claimed that 95 per cent. of the works mentioned were free for performance, the performing rights of these works being vested in your association.

"These free performances, however, apparently referred only to detached instrumental numbers of the operas concerned, and on procuring the scores our clients found on one score the following notice printed on the cover by the publishers:—

"All performing rights in this opera are reserved. Certain detached numbers may be sung at concerts, no more than two at one concert, but they must be given without stage costume or action. In no case must such performance be announced as a "selection" from the opera. Application for right of performing the above opera must be made to Mr. George Edwards, Daly's Theatre, London."

"On another score is printed the following:—

"All rights of reproduction, translation, and performance of this opera are reserved. Certain detached numbers may be sung at concerts, but without action or costume, and such performance must not be announced as a selection from the opera. All applications with regard to the performing rights in this opera should be addressed to the publishers."

"In view of these notices on the published editions of the operas, one appears to be justified in assuming that

the statement in your letter of the 31st October, that 'the performing right in these works is vested in the association,'

is not strictly correct, and that with regard to some at least of these works our client company is not receiving anything in return for the payment made by it to the association.

"II. Your association has up to the present done little, if anything, of real value towards carrying out its obligations with regard to the following matters, namely:

"(1) It has not supplied a list of non-copyright works.

"As you know, repeated requests have been made to your association to supply a catalogue of the works it controls. One would imagine that, where an association is collecting large sums of money from broadcasting companies on the ground that it controls 98 per cent. of the world's copyright, it would have no hesitation in supplying a list of its 'goods' to the persons from whom it was levying tribute.

"Notwithstanding repeated requests in this connection, your association has made it clear that it is unable to supply such a catalogue, making the excuse that such a catalogue would be of enormous proportions.

"Having regard to the fact that it is admitted that a great deal of music is not subject to copyright, such a contention does not entirely carry conviction.

"It, however, became abundantly clear to our client company that the chances of securing such a catalogue from your association in the near future were extremely remote. Your association then offered to supply a list of non-copyright works, which it was represented were not more than two per cent. of the world's copyright.

"The matter was pressed by us at the conference which we held with your representatives in October last, when the best undertaking we could obtain was that you would within three months from that date supply to our client company 'as far as is reasonably possible a list of non-copyright works.'

"So far, notwithstanding repeated requests, nothing further has eventuated, and the supplying of this list appears to be no nearer than it was when the matter was first mentioned during the currency of the previous agreement.

"(2) It has failed to supply a list of the reserved musical works.

"Both in the previous agreement and in the draft present agreement, your association undertook to supply to our client company a list of the musical works reserved by it which it was agreed should not exceed five per cent. of the total number of works under its control. No such list has ever been supplied, nor, as far as we can see, is it likely to be supplied.

"From time to time intimation has been received by our client company to the effect that certain specified works have been reserved, but no comprehensive statement on this matter has been made.

"(3) Your association has failed to return to our client company a

copy of the certified lists with the works in respect of which payment is claimed clearly marked under the hand of a responsible officer of your association.

"This matter was referred to by us when dealing with your suggested alterations. The information has never come to hand, and after pressing for it for months our clients met with the suggestion above-mentioned about carbon copies, which we think fully merits the comment we have previously made about it.

"Our clients find that with the number of concerts for which they are responsible during the year, they must maintain a large and up-to-date library. This in turn, means indenting their music. They have already taken steps to collect a library, but the position is becoming almost impossible, owing to the lack of information with respect to the music controlled by your association which they would be entitled to broadcast in terms of their agreement with your association.

"It has been found that a considerable amount of the music purchased is useless to our client company, as after purchase it is found that the right of the public performance has been reserved by the publishers under one condition or another."

"Impossible to Continue."

III. "It appears to us that matters have now arrived at the stage that

it is impossible to continue the business relationship with your association on satisfactory terms, unless your association at once makes a frank and clear statement as to the whole position.

"As above mentioned, your association has always represented that it held 98 per cent. of the world's copyright, and that it would not reserve from production more than five per cent. of this 98 per cent.

"If your association now finds that its claims have been grossly exaggerated, surely it should not hesitate to say so, but should act in a frank and businesslike way in disclosing to its licensees its actual position.

"We desire you to take this letter as a formal demand for the following information, namely:—

(1) A copy of your association's catalogue of the copyright works controlled by it.

If the compilation of a complete catalogue has never been attempted by your association, or is a task beyond its capacity, then we suggest that our clients should immediately receive a copy of such partial catalogue as is in your possession.

No doubt you have amongst your records a complete list showing the position of the copyright of all recent and new publications.

(2) A list of the works of which you hold the copyright, but which you desire to reserve.

(3) A list of non-copyright works.

"When supplying the above information, our clients desire in particular to have a full and clear statement as to the position of:—

(1) Operas.

(2) Comic operas.

(3) Musical comedies.

both with regard to the right of performing vocal and instrumental separate items, and as to the right of per-