

formance of these works in whole or in part.

"In each case we would, if possible, like to know in whom the control of these works is vested, if it is not vested in your association, and as to what is the position with regard to these works in Australia as compared with New Zealand.

#### Different Editions.

"We should be grateful if you would at the same time let us know what is the position with regard to different editions of the same opera. Our clients are under the impression that the copyright of the original edition of an opera may be vested in your association, but this might not be the case with regard to a revised edition by another publisher who has, perhaps, made slight alterations, and the question is, therefore, whether the copyright applies with equal force to all publications.

"You are probably aware of the fact that occasions have not infrequently arisen where our clients, having in contemplation the performance of some musical work, have endeavoured to obtain from your association an early reply as to whether or not such work is under your control, but such information has in some cases been unduly delayed, and in other cases has not proved to be entirely accurate. You will, of course, readily recognise that such a state of affairs makes the proper working of our clients' operations extremely difficult.

"We must apologise if we have been guilty of a certain amount of repetition, but, without desiring to be in any way offensive, we sincerely trust that this letter will have the effect of dispersing the air of mystery which ap-

pears to surround the rights which your association claims to possess."

#### Too Heavy a Fee Demanded.

IT is contended by the company that the payment of 6 per cent. of its total revenue from listeners for copyright purposes is an unwarranted imposition on listeners—that it is exacting too big a payment for too small a service. A fairer basis, it is contended, would be assessment of a proportion of the money spent in respect of entertainment, not upon the gross revenue of the company. The greater part of the company's revenue is necessarily spent in providing equipment to put music on the air. The actual performance itself does not involve the major expenditure. Assessment on this basis would, it is contended, be fully equitable to the owners of copyright, and be more in accord with the value received by broadcasting and listeners from such performances.

IN America the position is much simpler than in New Zealand. It is understood that the commercial broadcasting stations there compromise with the owners of copyright on the basis of a lump annual sum, without the detail work involved in the New Zealand system. This is definitely much more equitable and economic than the system established by the Australasian Performing Rights' Association.

In the meantime the legislation outlined has saved any break in the broadcasting service, and it remains to be seen just what amendments are proposed in 1929. The guiding principle must be, we think, the conservation of the public interest. That copyright should be preserved, and that the author should be protected, is only fair and equitable. No one wishes to transgress upon those individual rights, but those individual rights must be preserved and operated with some regard to the public good, and broadcasting definitely is a case for treatment on a basis similar to that given to manufacturers of gramophones and pianolas. They are entitled to the copyright of any music by payment on a royalty basis upon 5 per cent. of the retail value of the goods. They supply a definite concrete article to the public: broadcasting supplies a service. It seems unfair that broadcasting should be mulcted of a sum vastly greater in copyright fees than that paid in respect of gramophone records, which can be repeated indefinitely for the one payment.

#### Position in Australia.

The Royal Commission on Wireless, which sat in Australia recently, dealt with the copyright question in the following manner:—

#### Copyright and Performing Rights.

IN this investigation we have confined our attention solely to the law of copyright so far as it affects broadcasting by radio.

Although the validity of copyright as applied to broadcasting has been questioned in evidence tendered to this Commission, we deem such questions outside the scope of the terms of reference entrusted to us by His Excellency the Governor-General, and have, therefore, assumed its validity. It is also assumed, for the purposes of this report, that under the present law the owners of copyright works are entitled to payment of royalties from per-

sons broadcasting such copyright works.

Evidence has been given by representatives of the Australasian Performing Right Association, Limited, which association claims to control 80 per cent. to 90 per cent. of modern musical publications. Evidence has also been given by representatives of the various broadcasting stations throughout Australia, who deposed to the amounts paid by "A" and "B" class broadcasting station to the Australasian Performing Right Association, Limited, in respect of royalties on copyright publications alleged to belong to the said association.

THE Australasian Performing Right Association, Limited, is associated by agreement with a number of similar bodies in other parts of the world, and the procedure adopted by the Australasian Association resembles, more or less closely, that pursued in other countries.

After much dissatisfaction had been expressed by the broadcasting companies with the demands made by the Australasian Performing Right Association, Limited, for copyright royalties, and after a series of adjustments of charges, the Commonwealth Government called a conference of representatives of interests concerned, which met on July 23, 1926. As a result of this conference an agreement was arrived at, the effect of which was, shortly, that the Copyright Association should receive 10 per cent. of the revenue of the broadcasting stations in respect of the first 100,000 licenses issued in Australia and 5 per cent. in respect of any licenses in excess of the 100,000 issued in Australia. The latest proposal submitted by this company is that the copyright royalty should be at the rate of 7½ per cent. of the total revenue, irrespective of the number of licenses issued.

FROM the latest returns available to the Commission the average yearly revenue of all the "A" Class broadcasting stations during the two years ended June 30, 1927, was £206,954 (approximately). Five per centum of this amount represents £10,347 (approximately). In the opinion of the Commission the revenue is likely to continue to increase.

With regard to "B" Class stations the position does not seem to be so definite. Apparently the Australasian Performing Right Association, Limited, has discriminated in its demands between those "B" Class stations which are deriving revenue by means of advertising from those "B" Class stations which receive no such revenue. The nature of the demands of this association may be illustrated by reference to the fact that in the case of one "B" Class station, the Australasian Performing Right Association, Limited, first demanded 3s. 6d. per copyright item broadcast. Gradually the claim was reduced to less than one-tenth of the original claim.

#### Demand Exorbitant.

In view of all the circumstances, the amount of the license fees which ultimately reached the hands of the Australasian Performing Right Association, Limited, is, in our opinion, out of proportion to the service rendered or value given by the association, or the author whom they represent, and is an advantage that in the majority of instances was never contemplated as likely to belong to either the

author or composer or the assignee of the copyright.

According to the latest figures in our possession relating to the practice in England, the proportion of total revenue paid by broadcasting stations in Australia is more than double that paid in the former country.

WE are of opinion that authors and composers derive considerable benefit from the broadcasting of their works, and the publicity so given broadly counterbalances any loss on sales of sheet music.


Evidence has been placed before the Commission showing that in the case of some firms which admittedly did not cater particularly for what is called "popular music," there had been a slight falling off over a series of years. We are not satisfied, however, that such falling off will be permanent, nor that it is occasioned by broadcasting. Further, the Commission endeavoured to secure evidence from firms who were vendors on a large scale of "popular music," but they intimated through counsel that there had not been any serious falling off in their sales.

YOUR Commissioners recommend, therefore:—

- (1) That persons broadcasting copyright musical works should be made liable to pay royalties to the owners of the copyright.
- (2) That the principles of section 19 of the British Copyright Act, 1911, Act 1 and 2, George V, Chapter 46, as expressed in the Schedule to the Commonwealth Copyright Act, 1912 (Appendix No. 1), should be extended to the broadcasting of copyright musical works by radio.
- (3) That, inasmuch as by section 19 of the British Copyright Act, 1911, the royalty allowed to be charged (or demanded) is based upon the ordinary retail selling price of the contrivance used in the publication, and this, of course, cannot be directly applied to broadcasting, some other basis must be adopted.
- (4) That the Commonwealth representative at the International Conference should advocate that, as far as the Commonwealth is concerned, a limitation be placed on the royalty chargeable for broadcasting copyright musical works as follows:—

- (a) In the case of broadcasting stations receiving revenue from license fees, five per centum of the gross revenue of the broadcasting station, or, alternatively, at the option of the owner of the copyright, fourpence per performance of each musical work.
- (b) In the case of broadcasting stations not receiving revenue from license fees, fourpence per performance of each musical work.
- (c) In both cases (a) and (b) no limitation should be placed on the number of copyright items which the Broadcasting Company may broadcast.

(For the purpose of sub-clause (a), gross revenue will, in the case of broadcasting stations within the Commonwealth, be deemed to include any proportion of license fees, otherwise due to the broadcasting stations, but which are for any reason withheld by the Postmaster-General.)



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