society hailed a contract that was expected to bring in at least three times the 1931 collections from broadcasting in purely "sustaining fees."

What Klauber achieved with Mills's cooperation was an agreement that eliminated the network's gross income from licensing fees and focused instead on proceeds collected directly by the radio stations. It was generally anticipated that the chains would receive around $40 million in 1933, the first year the new contracts would be in force, and the other broadcasters an additional $35 million. However, the networks' $40 million was immediately reduced by $6 million because the affiliates were paid only 15 percent of all time sales from sponsors for network programs. For example, a half hour on NBC's basic Blue Network, fourteen stations, was sold for $2,556. Instead of three percent of that, the ASCAP fees would be three percent of $350, or fourteen times the twenty-five dollars each Blue Network station was credited with by NBC.

As for the remaining $41 million, on which the society's expectations were based—$6 million paid to stations, plus the $35 million earned by local stations on their own—that figure was reduced to $25,840,000 after approved exemptions, deductions, and discounts amounting to more than 40 percent, which included the cost of station representatives and advertising-agency commissions, cash-payment discounts, and political and other music-license-free programs. Three percent of this remaining figure was $775,000, to which there was then added approximately $660,000 in sustaining fees, a grand estimated total of $1,435,000.

Within a few weeks, *Variety* said that the music business had been "outsmarted by broadcasters," and some network affiliates complained that they had "been exploited" by CBS and NBC. NBC affiliates among the latter were charging from $150 to more than $550 for an hour of locally sponsored time for, generally, electrically transcribed programs. When they were connected to the network, however, they received no more than $50 an hour. No option on their time was paid for by NBC, and when sponsors wished to include NBC affiliates in specific markets or regions along the network, separate agreements had to be made to ensure the coverage, the advertising sponsor being billed for any difference. Because of William Paley's determination to create a network that would rank one day above both NBC chains, the situation was different at CBS. It offered sustaining programing without charge of all affiliates (those of NBC paid $50 an hour for such feeds) in return for a confirmed option on any part of an affiliate's time on the air. All income from CBS network broadcasts was shared with the participating stations after expenses had been subtracted, based on a schedule that varied from station to station but in every case left the major portion of income to the network.

By 1940, according to the Mutual Broadcasting System's *White Paper* of May 23, 1941, twilight-zone income, "that portion of network receipts

which is not paid over to affiliate stations or credited to the network's own stations, but is retained by the networks,'' represented about $34 million out of an estimated total of slightly more than $60.8 million of net network time sales, and of slightly less than $129 million of the entire industry's total net time sales.

ASCAP's public image was deemed to be so poor during the early 1930s, even by the society's own directors, that negotiations were held to secure the services of John D. Rockefeller's public-relations expert, Ivy Lee. Rather than complicate his position by such formidible competition, Claude Mills recommended the acceptance of a suggestion made by a newspaper-owned station manager that his owner and other press lords might be inclined to treat the society better on their pages if they were offered more advantageous contracts than other broadcasters. The most-favored-nation agreement prepared for newspaper stations provided Oscar Schuette and the NAB with yet another opportunity to point out publicly ASCAP's traditional discriminatory practices. Nevertheless, nearly 250 stations had signed with ASCAP, accepting the various terms offered, by Christmas of 1932.

Heavy drains on ASCAP reserves, made in the third quarter of 1932 by publishers and writers who applied for relief, had brought the society to a desperate point. The finance committee, made up of men of substantial wealth, among them Jerome Kern, Otto Harbach, and Louis Bernstein, who handled the society's investment portfolio of more than a million dollars invested in blue-chip securities, had themselves suffered a dramatic decline in their fortunes and were reluctant to recommend that ASCAP sell at a loss, but conditions indicated it should.

Surprisingly, even after *Variety* made public their error in accepting the networks' exclusion of their own time-sales income, the ASCAP directors did not blame Mills for the blunder. He was put in charge of streamlining the society's operating systems and methods, which absorbed thirty-two cents of every dollar taken in. A committee studying reclassification, made up only of Class AA and A publishers, recommended that income from radio be set aside in a separate fund to be divided among writers and publishers only on the basis of performances. The proposal was immediately adopted by the very same men who had made it and stood to gain the most from it.

After months of planning, in the summer of 1932 the thirteen leading music publishers, who brought out 60 percent of all new songs (Shapiro, Bernstein; Irving Berlin; Remick; Donaldson; Douglas & Gumble; Leo Feist; De Sylva, Brown & Henderson; Harms; Witmark; Santley, Ager, Yellen & Bornstein, Famous; Mills Music), banned together to merge their distribution and bookkeeping departments into a single cooperative entity, the Music Dealers Service. They hoped to save what they regarded as a fast-sinking business by controlling distribution, fixing prices, and acting in restraint of trade, even as their forgotten ancestors, the Board of Music Trade, had

done throughout half of the nineteenth century. Many of them believed that the middleman-jobber had outlived his usefulness, and considered methods to freeze him out of handling printed popular, standard, and production music by servicing the retailer directly, at the jobber's prices. Some important wholesalers, who were also music publishers, would be eliminated—Lyon & Healy in Chicago, Sherman, Clay of San Francisco, and the Jenkins Company of Kansas City—all of whom had been responsible for extending the lines of distribution for Tin Pan Alley throughout the country, from its earliest days. So, too, would be Richmond, Mayer Music Supply and the Plaza Music Company, New York's most important wholesalers, who distributed hit songs only in order to sell their own publications of reprinted noncopyright music.

Each member firm invested $1,000 in the MDS, but for the time being it was expected to operate on the proceeds from a penny added to wholesale prices. A twenty-five-cent was printed on all copies of popular, two-page songs. The wholesale price was fixed at fifteen cents, providing a uniform 40 percent margin of profit to retailers. Harms's production songs and imported stage music went for thirty-five cents at retail, the price the company had always demanded, as did similar publications by other houses. Fifty-cent orchestrations were sold wholesale for 37½ cents, and the new "prestige" seventy-five-cent arrangements for forty-five cents. A ticket for a vacation in Florida was given to any large retailer who agreed to deal only with the MDS. To remove any doubt about its future, Maurice Richmond, of Richmond, Mayer, was brought in as general manager.

No increase in sheet-music sales was immediately evident, but in less than ninety days Richmond's former partner, Max Mayer, filed a $1.125-million antitrust action against the MDS and the twenty-two publishing firms it represented, charging that they had combined and conspired unlawfully to control the sheet-music business, and had sought to eliminate him as a competitor. Troubling already muddied waters at the MPPA, John Paine, Mills's successor as chairman of the board, was also named a defendant, described as the organizer, representative, and agent for the MDS.

Immediately after *Mayer* v. *MDS et al.* finally went to trial, in March 1934, attorneys for the Warner firms and Irving Berlin's company approached Mayer with an offer to settle the matter in his favor in return for a cash payment and the promise to dissolve the MDS and restore the jobber-publisher relationship to its former state. Stunned by this unexpected development, other firms scurried to join them, offering an average settlement of $7,500 each. On the ninth day of the trial, only three publishers, representing less than 10 percent of the MDS's business, remained to fight the action. The jury was released, and both sides agreed that the judge's decision would be binding, without any chance of appeal. His ruling came as the trial's second surprise, giving MDS only a tainted bill of health. The judge found the uniformity of wholesale prices disturbing, tending to support the

belief that some form of understanding existed, but the plaintiff had not produced proof of its actual existence. Though he lost the suit, Mayer was victorious in hastening the dissolution of the MDS. Richmond immediately began organizing his own jobbing business to take over MDS's functions.

In 1933, ASCAP was forced to cancel the annual dinner instituted in 1914, and rented a large hotel room for an open meeting, putting the $4,000 to $5,000 saved into the fund for relief loans to members. Writer and publisher checks for the first quarter were higher than they had been a year earlier, though only with a supplementary disbursement. They were smaller, however, than for the last quarter of 1932, a year when $1.8 million was collected, half of it from radio, but $100,000 less than for 1931. Broadcasters' right by contract to delay payments for forty-five days was cited as a reason for the smaller checks. Not until the end of 1933 did a 10 to 15 percent increase become evident.

At the annual meeting, it was suggested by newcomers to ASCAP that the organization change its name to the American Society of Publishers, because of their self-perpetuating control. Writers who had recently joined flayed their own classification committee for the way in which it determined ratings, always giving preference to the no-longer-productive old-timers. The constant stream of complaint led finally to the creation, late in 1933, of a writer review board, elected by popular vote. Many now believed that the SPA could do a better job of representing songwriters than the society. Sigmund Romberg and his fellow officers were to pursue the introduction of an amendment to the copyright law that would permit splitting a copyright and assigning of individual rights.

Hard times were getting harder. A number of the syndicate stores on which the publishers depended for large sales were forced to shut down. Record royalties were at the lowest point ever, but synchronization fees turned out to be higher, due to the $825,000 settlement of the "bootleg seat" tax against ERPI, which had omitted to account for their number as screen theaters proliferated before the Depression.

Looking for a more prosaic and homey song to suit the times, the public was making hits of "Goodnight, Little Girl," "Just a Little Street Where Old Friends Meet," and "The Valley of the Moon," all of which sold more than 350,000 copies, rivaling the sale of the best song written in the past ten years—"Stormy Weather"—and a hillbilly song, "The Last Roundup," which went over the half-million mark. But the sale of 5,000 copies a day was not required for Class AA publishers to break even, and their guaranteed $35,000 ASCAP income could not stop drastic reductions of personnel and expenses.

Under the new system, predicated on the number of performances, ASCAP found the foreign societies clamoring for money. Accustomed to a total census of all music performed by licensees, and not just that by radio, the

French society, for example, wanted a 500 percent increase from the $20,000 a year it was receiving, a sum ASCAP could not afford.

In spite of *Variety*'s continued insistence that Mills, with his honey-toned drawl, to which, one wag had it, a person could waltz, was too much a hayseed for ASCAP's sophisticated customers, Ivy Lee's polished Wall Street public-relations techniques proved to be even more out of place. Mills was asked to take on more of the office operations and began to pay attention to the problems of the younger writer members. To placate those who complained, with justification, that they were discriminated against in favor of older members with permanent A, B, C, or D rank, a special fund of $12,500 was set aside each quarter. It was distributed among the writers of the ten most-played songs for that period, which first were listed on a regular weekly basis by *Variety* on September 5, 1933. Coincidentally, the West Coast radio bandleader Meredith Willson introduced a precursor to ''Your Hit Parade'' when he played *Variety*'s top ten songs on weekly broadcasts from San Francisco. Out-of-work songwriters and song pluggers were hired to monitor establishments that refused to take out an ASCAP license.

Mills's long and close relationship with some music publishers and his recent concern for songwriters did little to spare him their wrath when a report was completed on the society's first year under the contract he had predicted would bring in two million dollars. It showed only a $300,000 gain, and that the networks had paid on only 18 percent of time sales. His explanation, that the Depression was reducing radio income generally, was contested, and the board remembered that he had advised it to reject an early offer by broadcasters to guarantee $250,000 more than in the previous year, while maintaining a higher sustaining fee than in the new pact. Tempers were defused for a time by Mills's announcement of pending negotiations with A T & T to use its ERPI subsidiary, to do what it did for the MPPA, and collect from all radio stations. ERPI would perform the job for a 25 percent commission, less than the thirty-five cents out of every dollar currently spent. The proposition died when A T & T removed itself from consideration on the ground that such an association might conflict with other corporate interests. The music business, however, was reminded of Claude Mills's easy access to the business world, where rumors flew that a Justice Department probe of ASCAP was being instigated by Newton D. Baker, the new NAB counsel and a prominent figure in the Democratic Party, then in power.

Mills established amicable relations with Baker immediately and then with Baker's assistant and successor at the NAB. Both were apprised of Mills's bottom line, that ASCAP would dissolve itself if it had to, under government pressure, leaving the networks and broadcasters the inevitable chaos in copyright that would follow. In discussing the situation with NBC officials, who considered dissolution of ASCAP the last thing they wanted,

Mills was assured that they would not support the NAB's tax-free bureau, and might be amenable to maintaining a 5 percent rate throughout the decade, possibly with some taxation at the network source.

Along with other established businesses, Tin Pan Alley was required to submit a code governing their trade practices, wage scales, and other affairs, intended to eliminate unfair competition, a chore that was taken up by John Paine and the MPPA. A tentative covenant was sent to Washington, over the protests of member publishers who claimed that it went beyond the intention of the 1933 National Industrial Recovery Act and would "not only squeeze the business dry of all friendly intercourse with the exploiters of music but seriously hamper individual initiative," according to *Variety*. "Friendly intercourse" was presumably that involved in securing radio performances or in "greasing" sheet-music pluggers employed by the major chain stores and the largest retailers. Not even after the NRA and its blue eagle were declared unconstitutional could publishers agree on regulations that might control paying for plugs.

Of more immediate concern to Tin Pan Alley was the interest shown by the SPA and Hollywood-connected music houses in revising ASCAP's Articles of Association. Writers wanted an assurance written into them that they would share equally with the publishers in all music rights. Determined to get a new classification to ensure them a larger share of distributions, the Warner music group indicated that it might not renew with ASCAP in 1935, when the present affiliation agreements ended. It was felt in Hollywood that it might be cheaper to license all Warner music separately, or else buy time on the air to promote new film songs and screen musicals, than to operate expensive music companies under the present structure. Whatever the future, Warner would not countenance a change to the "tenants in common" language the SPA demanded.

During the winter of 1933–34, Sigmund Romberg wrote a long, confidential memorandum to the SPA officers and council, dealing with ASCAP's difficulties. He proposed a number of changes in the articles, in return for which SPA writers would sign renewals of membership to ensure survival of ASCAP for at least the next five years. Essentially, he wanted changes that would remove the restrictions imposed on the writer by the Copyright Act of 1909. As to who owned the small rights, the recognition of which first made it possible for ASCAP to exist and operate, he urged support of an amendment to the Copyright Act introduced by William Sirovich, of New York, which provided that "the author or composer may, to the extent of his ownership, license all or any part of the rights of such author or composer."

When the memorandum was offered to the ASCAP board, there was such opposition from publishers that any significant changes were postponed. A temporary palliative was offered by the institution of separate classification review boards, elected by popular vote, whose findings would be final.

The publisher of many of the best-known SPA members, Max Dreyfus was prominent among the financial backers of the lobby working to kill the Sirovich bill. Ironically, a tribute to him, written by Gene Buck, appeared in the SPA *Bulletin* in which Romberg's prescription for restoring ASCAP to good health first appeared in print. ''One of the most outstanding music publishers in the history of American music,'' Buck called him, ''primarily because he sensed the fundamental necessity of inspiring faith and confidence in the composer and author and realizing that his firm could only be as good as his writers.'' After the defeat of the Sirovich bill, the SPA council gave much thought to the possibility that ASCAP might be dissolved and they would have to step in and take over its licensing function on behalf of the writers. More than 500 authors and composers and most small music houses were ready to renew their ASCAP affiliation for five years, but the large publishing firms, chiefly the Warner group, held out, fearing the vague promises in the agreement to effect changes in ASCAP's distribution process and the compromise in the small-rights impasse being urged on them by their own most successful authors and composers.

Meantime, the eighteen-year-old war conducted by the MPPA over the payment of gratuities to performers went on. John Paine was given the power of attorney to act for MPPA members and immediately to levy a fine of $1,000 on the first occasion a publisher was found giving payments or free orchestrations to bandleaders. A $200 fine was exacted for each succeeding offense. One third of the money collected went to the informant; the remainder was for the operation of the association. The large movie-connected houses found little in the MPPA to warrant their participation and continued to remain outside the group. A new point system was introduced at ASCAP, removing the AAA classification enjoyed only by Harms, and the AA for the other major publishers. A performance on NBC or CBS was credited with one point; every use in a major motion picture, with one quarter. In the third quarter of 1934, Harms topped the list, with 681 points; Berlin was second, with 610. Jerome Kern, majority owner of the Warner firm that published his music, agreed to unlimited use of the songs from his latest Broadway production. For years he had insisted on the restriction of all new music for six months, but, having observed how the widespread plugging of his ''Smoke Gets in Your Eyes'' made a hit of *Roberta* despite unfavorable notices, he had become an avid reader of *Variety*'s most-played list. The song was seventh on the year's recapitulation of network plugs, and ninth of the ten songs that received one tenth of all performances on NBC and CBS and were published by houses owned or associated with Hollywood.

When the *Mayer* v. *MDS* lawsuit was settled, the plaintiff, Max Mayer, had turned over to the Federal Trade Commission the evidence purporting to prove the interlocking interests of ASCAP, the MPPA, and the MDS. The split between the networks and their affiliates and the majority of the

business, initially springing from economic differences, now extended to fixed opposing positions on music licensing. The chains feared dissolution of ASCAP, though each felt the society was in technical violation of the law, but most members of the NAB wanted it put out of business. In response to countless complaints from broadcasters, the Justice Department's antitrust division engaged in an investigation of ASCAP that began in 1933.

On August 31, 1934, a formal complaint was filed in the New York District Court, charging ASCAP, all its 778 writers and 102 publishers, the MPPA, and the MDS with having interlocking directorates and agreements in a conspiracy to monopolize the music business. A perpetual injunction was sought to terminate agreements between the defendants and also with record companies and broadcasters. The MPPA board resigned immediately, but was replaced by other officers of the dominant member firms who remained on the ASCAP board.

The rush to trial was attributed by Tin Pan Alley and its lawyers to the approaching NAB convention, at which, as always, ASCAP would be the principal topic of discussion, and a possible conflicting action by the 15,000 motion-picture owners just before the expiration of their ASCAP contracts. After having postponed it several times, to keep the board united, ASCAP offered a new seat-tax agreement for the first time since 1917, which was expected to bring in as much as an additional four million dollars.

The first effect of the government suit was the hasty compromise with the theater operators, arranged by Buck and Mills, which called for only a 50 percent increase in fees and much less in actual income. This was followed by a forty-two page reply to charges. Just before New Year's Day 1935, the society's veteran legal adviser, Nathan Burkan, went on a vacation, leaving behind an ASCAP management and board confident of the successful outcome of the trial, though faced with mounting problems on the Warner front.

After a game of golf with William Paley of CBS, Harry Warner, the operating head of the giant film company built by him and his brothers, was determined to make at least a million-dollar annual profit from the music business. Commenting of CBS's most recent balance sheet, Paley had attributed much of its profits to musical programs like that he had created starring Bing Crosby. The task of increasing Warner's ASCAP income was given to Herman Starr, Warner Brothers treasurer, who came to the business in 1920 as an accountant and, when the company was incorporated in 1923, was elected a director and assistant treasurer. Three years later, he organized the first Warner companies in Europe. In 1926, he moved to First National Pictures, as president and director, but when it was merged with Warner four years later, he became a vice-president of the combined firms. He was made president of the recording, radio-set manufacturing, and music division of Brunswick, Balke, Collender when it was acquired in 1930. Starr put Jack Kapp in charge of recording activities. After Herbert Yates's

purchase of the entire Brunswick record business, he was elected president of the remaining Brunswick Radio Corporation, a Warner subsidiary until 1942, when it was sold to Kapp. It is doubtful that Kapp would have been able to build the new Decca Record Company without Starr's support and the access he provided to Brunswick's rusting pressing equipment, old-fashioned though it was. A testy, domineering man, remembered by those surviving songwriters who dealt with him as possessing a long memory where enemies were concerned, Starr instructed Warner representatives on the ASCAP board, among them Buddy Morris, the operating head of the Music Publishers Holding Corp., that they should proceed on the assumption that Warner would pull out of the society at the end of 1935 unless its share of publisher distributions was greatly increased.

An intensive drive was launched to obtain at least part of the renewal rights of songs written in the years 1910 through 1913, so that Warner could claim their performing rights, and an employee was settled in Washington to comb the copyright registration files. To increase the use of Warner musical comedies and operettas, fees for radio use were substantially reduced. This use fell under Warner's grand rights, never yet defined by the courts, though the music business claimed that the performance of three or more selections from a stage work, with some of the dialogue and narration tying the songs together constituted a grand right. This was not covered by any ASCAP license or agreement. Without any variation, the same principle was applied in licensing electrical transcriptions—the twenty-five cents for four minutes of radio use.

Mills, Buck, and a majority of the ASCAP board members made strenuous efforts to keep the Warner firms, offering to compromise on the renewal contract, removing Mills as the sole and final arbitrator of differences over publisher-distribution values, and conveying their belief that the SPA would eventually be brought into the fold on the "tenants in common" argument. Starr would not budge, and because they believed that ASCAP might be dissolved should he prevail, most publishers signed the five-year renewals. The film publishers did not, even though all television rights were excluded, because they insisted that grand, and not small, rights were involved. Starr's resolve was strengthened by a sound defeat at the annual meeting of an amendment to the by-laws instituting elections by popular vote. It was sponsored by the Warner firms and supported by Hollywood songwriters, many of whom had what appeared to them to be a permanent B rating.

Mills and Buck then went to Los Angeles to placate the writers and lure back Jerome Kern, who had resigned from the ASCAP board to protest the defeat. While there, the pair met with Harry Warner, who told them that he would leave the society unless ASCAP distributions were based completely on performances, as was done by the British society. It was evident that the die had already been cast. To obtain the million dollars a year he

wanted, Warner required $2.5 million annually: $1 million for writers, $250,000 for collection expenses, and the balance for profit, clearly more than the entire $2 million being collected for 1935, of which Warner would get $360,000, with an additional $40,000 from the MPPA for electrical transcriptions. The movie magnate did not mention that he was also talking to Paley about a sale to CBS of all Warner's music houses. There was substance to rumors from Washington that Warner lawyers were seeking a separate consent decree for the company in the antitrust suit against ASCAP, in order to begin separate music licensing. To that end, negotiations were instituted with the two major networks to license the Warner catalogue, which represented 40 percent of the ASCAP repertory and 80 percent of all Broadway musicals written in the last several decades. Starr made clear that there would be no last-minute reconciliation without a victory, when he took over from Morris on the ASCAP board and immediately demanded an accounting of all income, expenses, and royalty distributions since 1925, down to Mills's expense accounts.

At the semiannual membership meeting in October, Burkan warned that, in his opinion, 70 percent of the writers on Hollywood payrolls had contracts that signed away all rights, including that of public performance. Only Berlin, Kern, Romberg, and Youmans were in a position to reserve both grand and small rights. Although a standard clause in producer-songwriter contracts recognized that the performance right was subject to an agreement with ASCAP, Burkan said, when the present affiliation agreement expired, producers could regain ownership of the right and add it to the mechanical rights they already controlled. The issue had not been tested in an American court, but in a single case in England the court found for the writer. The Hollywood contracts were subject to the publishers' membership in ASCAP, an advantage on which Starr based his right to withdraw.

While Mills was conferring with the NAB about a new contract to begin in 1936, he was also negotiating with the networks. The revelation of their decision to renew with ASCAP, at a steady 5 percent for five more years, came as a bombshell to most broadcasters. The sudden recess of the government suit after only nine days made it clear that the case was on shaky ground, and that it was only a matter of time before it would be dropped. With only Warner as an alternative, and succumbing to pressures from the IRNA, many broadcasters signed, reluctantly. Diehards, however, took advantage of the ninety-day provisional contract offer by Warner, and began to exclude ASCAP music, in order to force Mills to come up with an acceptable per-piece arrangement.

The entire Warner group resigned officially in early December, leaving other film publishers in a quandary about their own future action. A final olive branch was held out to them by ASCAP with the installation of a new

method of payment: a 50 percent distribution based on performances, and the balance based on availability-seniority. The holdout firms were told privately that without them the society would have to turn over everything to the songwriters and the SPA. That possibility was too dreadful to contemplate, and a united writer and publisher front existed on New Year's Day. Despite his earlier judgment, Burkan was ready to defend the networks in case of infringement suits, now proceeding on the theory that Warner's music was licensed by ASCAP through the songwriters.

Pay for air play was taking its dreadful toll in 1936 of publishers and songwriters. Not new to the business, of either classical or vernacular music, payola was omnipresent and international. In England, a standard price of two pounds prevailed for the introductory performance of a song on the BBC, and one pound for each subsequent playing. It was customary, too, for a publisher to pay all musical and talent costs when his music was recorded. In the United States, neither the MPPA, the FTC, nor organized contact men—once known as ''song pluggers''—were able to halt its pervasion of Tin Pan Alley. It cost at least $1,000 to start a song on its way to the top of the *Variety* list, or to the number-one spot on ''Your Hit Parade.'' The star vocalists on radio and the big bandleaders with commercial shows had their own private arrangements with the music houses—being cut in on songs as co-writers and getting free baseball or football tickets or lavish gifts of clothing, liquor, women, and, always, free orchestrations. When the New York musicians' union levied a charge of three dollars per man for remote broadcasts, the tab was usually picked up by a publisher with music to peddle. A special arrangement cost twenty-five dollars, only five of which went to the man who did the work; the leader pocketed the difference. Song pluggers, whose stock in trade traditionally was the good will, personality, and (often synthetic) enthusiasm they brought to their work, became singers on predinnertime sustaining popular-music programs, or got out of the business, or served as messengers, carrying professional copies, orchestrations, and money to bandleaders. Fearful they might be replaced by envelopes, in late 1935 175 working pluggers banded together for mutual support and solace. They were careful to explain to their employers that Professional Music Men was a fraternal organization, with no trade-union implications.

The hysteria extended to Hollywood, where film producers and songwriters imported from the Broadway theater and Tin Pan Alley poured over the latest *Variety* lists, and, when not satisfied, belabored their New York outlets with complaints about the poor showings. They told everyone that overplugging killed songs, but the best songwriters began to place high-stake wagers on the progress up the chart of competing songs, using *Variety* as the sole arbiter of the success, if not the quality, of their music. Under that publication's scoring system in 1936, even a recognizable strain of a

song was reckoned as a complete plug, and scheming music firms paid a bandleader to feature a number of songs in a "medley," which added the same number of points to their weekly score.

Starr fired all his song pluggers at the end of December and resorted to the use of mailed requests to his 167 licensed customers, asking them to play songs from new Warner Brothers musicals whenever convenient. To take advantage of the absence of these MPHC pluggers, a new wave of extraordinarily expanded song plugging began, reducing the possibility of complaints from radio listeners about the music-licensing situation. The rush to get on *Variety*'s lists produced an overnight hit, smacking of the days in 1923 when "Yes We Have No Bananas" was king, for Santley, Joy, Select, the music house in which Bing Crosby had an interest, and which got all the songs from his movie musicals. After only two weeks, orders for 300,000 copies of "The Music Goes 'Round and 'Round" poured in, and, after sales jumped over the 600,000-copy mark, three motion-picture companies bought it for forthcoming musicals.

When Starr announced a reduction from the twenty-five- and fifty-cent fees per radio use of transcribed songs to two cents only for mechanical rights, some advertising agencies and music libraries concentrated on his music. There was immediate panic among publishers, because the practice of charging for both performing and mechanical rights in connection with transcriptions might be declared illegal. Matters became even more complicated when, in a suit defending against alleged infringement of Warner copyrights, CBS followed Burkan's lead and questioned the total ownership of all privileges of copyright by music publishers, including that of public performance. Warner's return to ASCAP was made a major priority.

The vast majority of independent stations had held back from renewing ASCAP contracts. Hoping to change their minds, the society floated several rumors: ASCAP was about to go out of business and turn its affairs over to the SPA; it was providing the money for some large music houses to buy Warner Brothers out of the music business; Claude Mills was moving over to NBC to take charge of music-rights acquisition. Things were not going well for Starr, who was able to collect only $25,000 a month from NAB stations and those commercial broadcasters who had taken out licenses for fear of copyright suits. He did manage to eke out several thousand dollars of profit monthly from sheet-music sales and recording royalties paid on old songs. Warner's $170,000 share of the record $935,000 taken in by ASCAP for the first quarter of 1936 was divided among loyal publishers, but most Warner writers turned their checks over to the ASCAP relief fund.

Maintaining the policy of genial cooperation Burkan recommended, ASCAP opened its files for the first time, to employees of the NAB, who compiled the first title index to ASCAP music, preparatory to building an-

other tax-free library. The certainty of Warner's return and the death of Nathan Burkan marked the end of ASCAP's conciliatory policy.

The society's first and, thus far, only chief legal counsel, Burkan had begun practice in music copyright law for his first client, Victor Herbert, and then for the composer's publishers, the Witmarks. His clientele eventually extended into all branches of show business and included Charlie Chaplin, Florenz Ziegfeld, Mae West, Al Jolson, United Artists, Columbia, Paramount, MGM, and the MPPA, as well as ASCAP. He was, in addition, a member of the council for the notorious Tammany Democratic political club in New York City, where he served as a power behind the throne and had access to Congress and the White House. He succeeded in controlling the various factions that arose within ASCAP and the MPPA as no man other than Mills, on occasion, was able to do. A quarter of a century after his death, his portrait that hung on the walls of ASCAP's New York headquarters and the old-fashioned furniture from his office there were sent to the Songwriters' Hall of Fame in New York City.

Mills dangled revision of the ASCAP network contract as bait for Starr, whose vacant place on the board was not yet filled, interrupting the Warner music head's sudden renewal of negotiations with NBC and CBS for a ten-year contract recognizing payment at the source. This panic-inspired move by the networks was stimulated by a concern, now that Burkan was gone, that they would have to shoulder responsibility for all legal costs and a possible two-million-dollar judgment against them for copyright violations. By signing with Warner, they would have an effective hedge against any future ASCAP increases, know exactly what their expenses would be during a time of accelerated technological development and union demands, and repair, in time for the next NAB convention, the rift within the radio industry. Simultaneously, CBS and its law firm, Rosenberg, Goldmark and Colin, with which Sydney Kaye was associated, were pulling out of a group called the American Grand Rights Association. It had proposed to license the Russian music catalogue Arthur Judson had acquired from Amtorg, the Soviet trading group, and other non-ASCAP European music.

With backing from Gene Buck and at the suggestion of Max Dreyfus, Mills secretly went over Starr's head and sent Sigmund Romberg and Jerome Kern to Harry Warner to promote a network contract with a 10 percent share of all commercial income at the source, predicated on a reunited ASCAP. Publisher distribution had jumped 25 percent in a single quarter, and writers were clamoring for change. Many in classes AA and A could not hear their old songs on the networks, and their new ones suffered from slipshod exploitation. On being told, Starr was furious, and developed the deep personal hatred of Mills that eventually led to the latter's ouster from ASCAP's inner circles. There was also great pressure on Warner from his producers, who told him either to get back into ASCAP or give up making

film musicals. Many songwriters on the lot refused to remain, and Gershwin, Porter, Kern, Rodgers and Hart, Oscar Hammerstein II, and Otto Harbach were switching to the Chappell Company, Max and Louis Dreyfus's chief interest now that Warner's option on it had expired.

On August 4, Warner's music was back on the networks. All seven of its companies were restored to membership in ASCAP, with the loss of only one year's seniority, and began major drives to get their songs to the top of the most-played list. Infringement suits against the networks and other stations, asking for four million dollars in damages, were withdrawn immediately. Before making the move, Warner attorneys secured approval by the Justice Department, to preclude its being used as grounds for a resumption of the recessed federal suit. The government's acquiescence surprised many music-business lawyers, who felt that peace within ASCAP only added strength to charges of monopoly. There was considerable joy in September after the government prosecutor refused to speculate when the trial would be resumed. Kaye, CBS's outside counsel for copyright affairs, began to travel again to Washington on behalf of the NAB to press the Justice Department for relief.

Warner started a frenzied drive to get on the *Variety* lists and those of two newcomers: the semiofficial *Accurate Report,* which was used by ASCAP bookkeepers; and the regular Sunday feature in the *New York Enquirer,* a show-business newspaper and racing form owned by the Annenberg family, which placed a new focus on Tin Pan Alley's chief preoccupation, landing plugs. The first was put out by the Accurate Recording Service, the property of the chief sheet-music buyer for the Music Dealers Service and her brothers. It tabulated in detail daily performances on radio stations in New York and Chicago. It was sold on a monthly subscription basis only to music-business insiders, and on it were based battle plans in the war for plugs. The *Enquirer* listed the previous week's ''action,'' in numerical order of plugs, accompanied by a column, garlanded with racetrack jargon, that detailed the efforts of New York's contact crew. Until wisdom and the memory of the MDS fiasco prevailed, for several months the MPPA pondered a proposal to put the *Accurate Report* out of business in order to restrict its confidential material to the association's thirty members. Further control was planned by extended coverage of stations in such important cities as Cincinnati, Kansas City, and Los Angeles, using local branch-office employees to gather information that would be made public only when and if the publishers desired.

ASCAP's new point system, with its heavy concentration on radio plugs, was proving to be an economic boon to writers and publishers in the top brackets. Payments to Class AA writers jumped by 25 percent in the last quarter of 1936. The large publishers looked forward to as much as $200,000 each a year, out of an anticipated $2.5-million annual distribution, offsetting the inroads made on sheet-music sales, which had declined by 70 per-

cent since 1927. Music publishers were reluctant to make public any information about their business that they could not control, chiefly because music dealers might use it as a basis for placing sheet-music orders. Lucky Strike's "Your Hit Parade" was regarded as particularly damaging. A sudden drop in a song's rating usually brought a rush of order cancellations, and dealers were wary of the rush to the top brought on by a "drive week," when there was an increased concentration of work on a song that they and the wholesalers firmly believed would be a "dog," or unsalable. Protests were regularly made to the show's producers, who made a series of grudging compromises, beginning with ratings for only the top three songs, playing the remaining twelve leaders without any comment on their status. A running war between the MPPA and Lucky Strike went on for years, always over the effect "Your Hit Parade" ratings had on sheet-music sales. From time to time, the basic criteria were modified, but the emphasis was always on sheet-music sales, record sales, network performances, and requests to bandleaders. Knowing well, from their own experience with radio plugs and sales figures, how manipulable the criteria were, the music publishers were never completely happy with the program, even when it went their way, as it usually did. If song ratings had to be made, they preferred *Variety*'s lists. Though not amenable to an MPPA demand that it drop the Most Played on Radio list, the publication instituted a 15 Best Sheet Music Sellers list, based on information supplied by the publishers themselves.

Johnny O'Connor, the *Variety* advertising salesman who had been so instrumental in the formation of the MPPA, was the manager of Fred Waring's orchestra and music business during World War I, as well as head of the new Words & Music publishing firm. It had been formed with an initial investment of $25,000 each by Waring, Paul Whiteman, and Guy Lombardo, and other bandleaders were being asked to participate in its ownership. O'Connor negotiated the purchase, for $22,000, of an ASCAP music house in order to get its Class B rating, which he intended to push several grades higher by a fairer treatment of songwriters than generally prevailed. When he offered to share all rights equally with his writers, some in the trade pointed to the unfair competition inherent in the very nature of Words & Music's ownership. Waring, Whiteman, and Lombardo were on nighttime radio thirty times a week and, with the cooperation of other leaders who might invest in the company, could become a new and formidable force in song plugging that would disrupt the existing balance. However, O'Connor's special stature among music men as a founder of the MPPA won him the presidency of the organization in his first year as a publisher himself.

Throughout 1937, praiseworthy but ineffective attempts were made to change what was publicly branded Tin Pan Alley's "unhealthy condition." It was recognized that most problems sprang from the performance-right distribution system introduced in January 1936 in order to keep the society

united after Warner's departure. In removing the authority to determine how much each publisher would receive from the self-perpetuating publisher half of the ASCAP board, the society had, in effect, turned it over to the most free-spending music firms and the radio bandleaders. Radio's position was solidified as the only vehicle that could bring a song to a mass public with sufficient performances to make or break it, a development that soon worked against the society's interest. To guarantee that distributions were made on a mathematical basis, the determination of the performance and seniority factors on which 70 percent of them were based now rested in the hands of ASCAP bookkeepers, who rated all broadcast performances equally, whether a complete three-minute interpretation of words and music or one of the eighteen works whose melodies only were played on some fifteen-minute remote dance-band pickup late at night.

The repeal of Prohibition and a slowly rising economy were creating a dance-band business estimated by *Variety,* in December 1937, to represent $40 million in bookings alone in that year, made through thirty licensed booking agencies in New York and Chicago. Across America, 18,000 musicians regularly traveled, playing in drinking places and for dancing. As always, most bandleaders were shrewd businessmen, with an eye for the dollar, and the music business was big business for those at the top. Along with the major music firms that could afford the expenses, the chief beneficiaries of ASCAP's changed system were those generally small and recently purchased new publishing houses that established close personal relations with, or were owned by, bandleaders. Words & Music stood alone among the bandleader-owned firms, showing no evidence of logrolling among its owners by way of reciprocal plugs, a lapse credited by many for the firm's weaker showing than O'Connor had expected. There were at least twenty orchestra leaders on the air who had some interest in or financial involvement with a publishing house. The "give and take" business extended to late-afternoon sustaining programs featuring vocalists, on the network payrolls for twenty-five dollars a week, whose performances were as important to music publishers as those on expensive coast-to-coast programs. Many of their singing coaches and the station-employed musicians who accompanied them had private understandings with music firms, another element in the industrywide practice that *Variety* began to call "payola" in late 1938. The networks sought to curb it by reducing the number of times a song might be played between 5:00 P.M. and 1:00 A.M., only to learn that they had little control over the remote shows. Now that others were treading on once-private turf, and with the promise of strengthened antibribery provisions in a proposed new MPPA code of practices, two of the three dominant ASCAP publishers—Warner's and Max Dreyfus's firms—finally joined the organization, leaving only MGM outside. Contact men jumped into the situation and organized an association of professional men, threatening to resign their jobs if their employers subsidized performances.

The Accurate Reporting Service refused to count any but full vocal and instrumental choruses, ending those "eight bars at a time" renditions. *Variety* introduced a new Breakdown of Network Plugs chart, indicating how many were on commercial broadcasts and how many were vocal interpretations. In 1938, this became a complete tabulation, Network Plugs, 8 A.M. to 1 P.M. and offered advance information, on which forthcoming ASCAP royalties could be anticipated. To keep cheating orchestra leaders out, requirements for admission were tightened by ASCAP, and works offered for registration in the society's catalogue were scrutinized to avoid cut ins.

There was no way, however, to bring the advertising agencies into line. The insistence of these "program makers," who controlled all prime-time commercial programs, on using only those songs at the top of the list removed any incentive for radio artists to seek out new or special material, and a relative handful of songs dominated time on the air and the music heard by most Americans. George Washington Hill was made the scapegoat for this. "Your Hit Parade," *Variety* observed in April 1938, had made "the weekly breakdown of network plugs the absolute and dominating fetish that it is today." The tobacco man's music-format control had been refined since the program's introduction, but his insistence on "numbers full of rhythm, full of shoulder shake, full of dance," remained in full force. Hollywood's concentration on songs that could be played only in slow tempo moved Hill to give the program's musical director instructions to play shorter versions and to give almost half of program time to the "specials," Hill's kind of music, which rarely got to the top of *Variety*'s lists.

At a meeting of publishers in the spring of 1938, with a wider representation of members than in the past, Gene Buck was directed for the second time that year to appoint a committee to find ways and means to improve the distribution guidelines. For one thing, 84 percent of the crucial availability points went to publishers represented on the board, as did 70 percent of the seniority factor. At year-end, the new publisher reclassification committee, whose members had leaked the news that it was prepared to administer drastic cuts in ratings, collapsed under great pressure from the film-owned houses and avoided any meaningful changes, leaving them to the next committee charged with that responsibility.

With little hope, under current circumstances in Washington, for a successful outcome of the government suit (which a few broadcasters recognized as a valuable asset, though only as long as it remained a sword dangling over the society's head), the independents-dominated NAB was not ready again to be forced by the networks and the IRNA into a compromise of the music-licensing problem with ASCAP. At its prodding, anti-ASCAP activity at the state legislative level grew to its highest in a decade, culminating in bills in thirty-four states by 1939. Freed of managerial duties, and now chairman without vote of a special all-publisher administrative com-

mittee, Claude Mills was on the road, lending his slick "good old boy" image to lobbyists and lawyers who needed it to persuade Middle American skeptics of ASCAP's probity and respectable Wasp management. He was replaced by his successor at the MPPA, John Paine, who modernized the collection procedures and instituted an auditing department whose representatives were empowered under terms of the standard ASCAP contracts to inspect the books of delinquent customers or those suspected of being such. As the second former MPPA head to hold the office, Paine was viewed with only slightly less suspicion by songwriters among ASCAP's founding members.

Under Paine's direction the examination of radio broadcasts was increased toward an eventual goal of 25,000 live programs on the networks and their affiliates. Despite this and a number of other relatively minor changes, 64 percent of publisher distribution continued to go to the 13 houses affiliated with Hollywood interests.

Having twice benefited from division among broadcaster groups, ASCAP was determined to avoid or postpone dissension in its own ranks. Until a new ten-year contract with radio, at higher rates, was in effect, little more than lip service was paid to the drastic reforms advocated by a voluble minority of writers and publishers, most of them without any Hollywood connection. Every effort was made to force compromises. Believing, after intimations from Washington, that the government might shelve the suit, and with its collection and distribution systems, though not without fault, working to the satisfaction of most members, ASCAP was able to produce a dramatic show of approval in the renewal of membership affiliation agreements, which were to run for ten years, beginning January 1, 1941. The grant of television rights was again excluded out of deference to the film-music publishers, whose owners insisted. Officers and the board handled the business of a new SPA standard writers agreement with exemplary circumspection, forcing a compromise whenever necessary to enforce the feeling of good will they wished to maintain. The new SPA contract called for no less than a minimum equal distribution of mechanical, synchronization, and foreign receipts. The touchy question raised by Sigmund Romberg in the blueprint for reform of ASCAP remained unanswered, and the "tenants in common" language was skillfully evaded. Songwriters were given more voice in merchandising their music: bulk deals could not be made without their consent; their approval was needed to license television performances, the use of a song title, and certain synchronization uses; and the publisher was required to issue statements on a quarterly basis, on pain of cancellation by the writer.

Only Claude Mills mentioned BMI, and then in passing, at the annual ASCAP dinner on April 21, 1940, marking the society's twenty-sixth year. The verbal brickbats *Variety* delighted in reporting were missing from this gathering of 600 authors, composers, and publishers, a record turnout. In a

two-hour speech, Buck hailed the recent rapprochement between the SPA and the MPPA, after years of bickering, as a symbol of the united front "that eliminates any strife in the ranks of capital and labor in the industry," striking a note of solidarity against radio that ran throughout the evening. No one present, nor most music-business veterans, took seriously the broadcasters' latest attempt to build an alternative pool of music. To many, it was only another of countless similar unsuccessful ventures. The genesis of the first viable tax-free non-ASCAP library, during World War I, offered by publishers now prominent in the society to hotels, night clubs, and vaudeville theaters in order to bring the songwriters in ASCAP to heel, had generally been forgotten. As yet unperceived, blunders in strategy and misplays of tactics eventually brought defeat for the society, and with it the seeds of a revolution in the entire music-business structure.

Tin Pan Alley had enjoyed its best year in a decade, and an even better one lay ahead. Sheet-music sales had gone over the 15-million-copy mark, an increase in 25 percent in a single year. Annual record sales neared the 70-million-unit mark, with more than $750,000 distributed by the MPPA for 1939's mechanical royalties. With all the professional songwriters and music publishers already in ASCAP's ranks, it was difficult to believe that Broadcast Music Incorporated could compete.

When Neville Miller, the reorganized-NAB's president, met with John Paine in April 1939, it was to inform the latter that he wanted two things. Claude Mills had already informed the industry in conciliatory speeches that the society did not wish to live with radio "like bulldogs," but it did want more money. A trial balloon sent up by him a month earlier at an NAB district meeting in Florida had reminded his listeners that they were not reluctant to pay a 15 percent commission to advertising agencies, and he asked why such a sum should not also be paid to the people who wrote the music on which the business depended. Miller's requests to Paine were for a per-piece license and at-the-source collection from NBC and CBS that would provide a reduction in music fees to all other levels. There was no response for months. ASCAP publisher board members were opposed to the per-piece concept, having been soured on such an arrangement for radio by Mills's similar arrangement, on behalf of the MPPA, with the talking-picture business in the late 1920s. Although it did meet, in part, Miller's request for collection at the source, the first document introduced at the aborted March 21, 1940, conference in ASCAP's New York headquarters, actually stiffened recently growing industrywide determination. The in-house auditing and collection service introduced by Paine had taken a toll, because of fancied or real "imperious" demands on many stations by representatives in the field. Now that they were convinced that ASCAP would not again compromise in their favor on the at-the-source collection, the networks, too, were ready for a fight to the finish.

The domineering presence of Herman Starr on the ASCAP board for a

second time and his appointment by Buck as chairman of the Radio Negotiating Committee were the keys to the unyielding behavior of that group. Starr made no secret of his "embittering" recollections of the first six months of 1936, when he sought to get Columbia and NBC to accept a Warner music license. The revenge for Mills's call on Harry Warner in April 1936, which by-passed Starr, came after a meeting of the society's Radio Negotiating Committee, prior to the March 21 conference. Mills was shown, for the first time, the new at-the-source network-licensing provision, which had none of the deductions customarily allowed to radio stations. After a quick mental calculation, Mills said that he did not believe that NBC or CBS would pay the approximately six million dollars asked, particularly with after-tax income of three and two and a half million respectively in 1939. After he said, according to his later statement, that the broadcasters would reject the proposal and "stand by their rejection to the bitter end," he was removed from any further participation in the radio negotiations. Shortly after, his resignation was requested, as of December 31, 1940, and granted.

The society did not enjoy the benefits Claude Mills had expected when he made the special deal with newspaper-owned stations. Only their competitors, usually papers with smaller circulation and less local prestige, played up the ASCAP cause. The decision to take the issue to the public was a mistake, all in all, with such staged incidents as the burning of radios in the streets to symbolize public protest. The public had little interest in a battle over millions between two groups, foreign to it, one a well-off songwriters' union, as the possibility grew of America's involvement in the European war, in which radio listeners might be asked to stake their lives and that of their children.

A grandiose scheme was moving toward fruition under the direction of attorney Julian Abeles. MGM intended either to realize a five-million-dollar net profit from the $75,000 it had lent Jack Robbins at interest years before for a majority share in Robbins Music, through a sale to BMI, or to obtain from ASCAP in increased royalties the $500,000 it cost each year to operate the Big Three. The only one of the society's most important publishers to withhold the renewal of its affiliation, MGM played a cat-and-mouse game with ASCAP. It had started in 1939, and continued, to represent the constant threat of the society's dissolution, possibly at the end of 1940. When BMI opened its doors, Abeles began negotiating on behalf of the Big Three with Sydney Kaye for their sale for seven million dollars. This was whittled down to $3.35 million, which William Paley agreed to advance on behalf of CBS, but he backed away when MGM would not guarantee indemnification for all copyright infringement, coincidentally with the government's renewed antitrust suit against ASCAP. For a brief period, MGM considered licensing the entire scores for new films on a grand-right basis, a plan that was dropped when it appeared that BMI itself might raise the $3.35 million.

The E. B. Marks deal with BMI, also arranged through Abeles, brought to an end MGM's expectation of being the first film company to have the advantage of exploitation by radio's own music pool. The veteran music man Marks, too, made his decision to leave ASCAP on the anticipation of "BMI's power to make hits with the cooperation of broadcasters." Marks Music collected around $85,000 from the society annually, which paid all business expenses and left a profit to the family partners. Under the BMI contract, which guaranteed $225,000 annually ($25,000 to Abeles), there was no need for Marks to spend money for promotion, and the firm's income would increase several fold. Bookkeeping expenses were cut down because BMI agreed to set up a special royalty accounting system to take care of Marks's writers, most of whose music was owned outright, or through the general work-for-hire arrangement that was currently being tested in the New York courts. Most of Marks's songwriters had given him their music before being accepted for membership in ASCAP. A total of 15,000 copyrights were involved, embracing the music of twenty-eight subsidiaries, many of them belonging to Mexican, Cuban, and Argentine performing-rights societies, with which BMI had, or soon would have, agreements for broadcast use as their arrangements with ASCAP expired. Because BMI was eager to provide the sort of music some important advertisers wanted, it gave up any indemnification against copyright infringement in the case of Marks, which had been partially responsible for the collapse of the MGM negotiations. NBC and CBS agreed to assume responsibility for the entire $1.7 million involved in the Marks transaction, sharing it on an aliquot basis with their owned-and-operated stations.

Only after the Marks negotiations were concluded did Abeles begin to dicker with the ASCAP board for its best counteroffer to his demand for a guaranteed $500,000 each year to Robbins, Feist & Miller. The board had already rejected an additional $15,000 to Marks annually, on which the retention of that catalogue depended, and now looked to other Hollywood studios to put pressure on MGM. It came from the industry's songwriters and film-musical screenwriters, who threatened a sit-down strike that hastened MGM's return at the last minute. However, the society had to make one compromise, an agreement to return television rights in the Robbins, Feist & Miller catalogues to Loew's.

The intra-industry rift, on which the ASCAP Radio Negotiating Committee counted to break a solidly united front at the last minute, did not happen. As *Variety* cautioned ASCAP, a general feeling of ill will toward it pervaded all levels of broadcasting in 1939, which became more intense once the society introduced the new contracts. The field work done by Miller, Kaye, and their staff, particularly Carl Haverlin, in selling BMI was responsible for an industry united behind the new organization. A sophisticated and learned man, though not formally educated, Haverlin presented an image of one whom radio people could trust. The adroitness of his ar-

guments on behalf of the creation of a successful BMI and his tenacity in beating the backwoods to bring in reluctant stock buyer–licenses were crucial to the solidarity against ASCAP when the contract in force expired at the stroke of midnight, December 31, 1940.

Of more serious effect on the established music business was the government's renewed activity, beginning in 1939 under Thurmond Arnold, which eventually legitimatized ASCAP, with internal reforms, and ensured its existence by curbing the monopolistic and discriminatory practices that threatened its survival. On joining the Justice Department, after teaching at the Yale Law School, and determined to activate the government's trust-busting activities, Arnold became interested in the suit against ASCAP after members of Congress showed great interest, responding to the urging of constituent radio-station owners. Anti-ASCAP legislation existed in most states. The networks, who had never favored the suit, had changed their minds when they realized that ASCAP was intransigent in the matter of payment at the source, and were agitating for a renewal of government interest, pressing the cause through their Washington representatives and friends. In May 1939, at Arnold's direction, a move to dismiss *United States* v. *ASCAP* was dropped.

With newspaper coverage of the issue growing, and opinions rendered in several appeal courts that ASCAP was a "price-fixing monopoly," Arnold, now head of the antitrust division, moved toward a settlement by consent decree, in order to remove the matter from the path of important antitrust cases with which he was more concerned. A dissenting opinion by Supreme Court Justice Hugo L. Black found the society "a price-fixing combination . . . which wields the power of life and death on every business . . . dependent on copyrighted musical compositions for existence." In late May 1940, subpoenas were sought to permit access to hitherto-unexamined ASCAP files and records, orders that could be obtained only in a criminal action. The subpoenas were granted, over objection by ASCAP counsel Louis Frolich. Using lists so obtained of all members and the society's 33,000 customers, including radio stations, a set of twenty-five questions in connection with ASCAP practices and methods of operation was sent out over Arnold's signature. Washington insiders predicted that a grand jury would be impaneled in a few weeks to hear evidence against the society.

When it was suggested to Frolich shortly after Thanksgiving that a good deal could be worked out for ASCAP in a consent decree, Starr, in his capacity as head of the Radio Negotiating Committee, and with assent by Buck, the only one with whom Starr consulted, sent his personal attorney, Milton Diamond, to Washington to negotiate the terms. Frolich was omitted from any participation.

Variety reported that the compromise offered by Arnold embodied "an agreement to license performances on a per-piece basis, with abolition of the blanket fee, a different basis for splitting the ASCAP take so that new

members might receive fatter checks, limiting the organization to the function of police work in order to detect infringement, insuring the right of individual bargaining by writers and composers, lowering of the membership eligibility bars, and to a more democratic form of control.''

By bringing these quasi-voluntary reforms to ASCAP, the government felt that the broadcasters had no reason to refuse to deal with the society. If, however, they continued to use only BMI and non-ASCAP music, it would prove that radio was engaged in a conspiracy to restrain competition. Because ASCAP had violated the law, Arnold said, he did not intend to allow broadcasters to do the same thing. One monopoly would not be substituted for another.

Acting as semiofficial spokesman for the Hollywood-owned publishers, Starr shrugged off the prospect of admitting a criminal action on a nolo contendere plea by signing the consent decree on Arnold's terms. Accompanied by a partner, Charles Poletti, the lieutenant governor of New York State, Diamond completed ''the best deal possible for ASCAP'' with Arnold and his staff in Washington, who were proceeding on the belief that he and Poletti were empowered to act for ASCAP. Final papers were to be signed in New York on December 24, in the federal court. An open break followed between the anti-Hollywood faction and Starr and the major publishing houses. It was stimulated by Frolich, for one, who advised the board to have no part of the decree. The matter was left up to Gene Buck, who directed that word should be sent to Washington that ASCAP did not intend to sign the consent decree.

Arnold was preparing for the trip to New York when he got the news. On the day after Christmas, a press officer for the Justice Department announced that an action would be filed in Wisconsin, pressing eight criminal charges against ASCAP, BMI, CBS, NBC, and other parties to be named. Each one expressed its innocence while applauding the government's charges against opponents. There would be no temporary truce in the ASCAP v. radio music war.

CHAPTER 16

ASCAP and BMI Face the Reality of Television

It was evident to some ASCAP members that the time had come to take a good look at themselves and the society. Alden-Rochelle should never have been allowed to take place. The distressing decision in the case, the SPA's aggressive role, and other potentially serious developments were the result. As Abel Green wrote in *Variety* in December 1948, "The curious secrecy about some of the legal negotiations through the years have made every [ASCAP] faction's lawyers wonder what somebody might be getting—or getting away with. Thus, Judge Leibell has done one affirmative thing for ASCAPers. The talk about what 'they' did up at ASCAP has prompted the shirkers into workers."

Little public mention was made by ASCAP that it had paid $160,000 in damages to the plaintiffs for dropping a collateral action, together with $75,000 to their attorneys.

ASCAP's negotiations with the major film studios to recoup the $1.25 million in theater-licensing fees, cut off by the Leibell decision, began after March 1950, when a second, amended, consent decree was entered, ending the judge's freeze on such collections. The decree gave either ASCAP or individual copyright owners the right to be paid at the source by film companies. Since April 1948, the studios had continued to negotiate with publishers for synchronization licenses, coupling them with permission to perform the works publicly, payment for which would be made when a blanket license was negotiated by the society with the entire film industry. A sizable sum was already due, $150,000 from a single company, but though the consent decree cleared the way, and ASCAP could take the matter to a federal court for settlement, Hollywood continued to drag its heels.

ASCAP reportedly was asking for a half-million dollars annually from Warner, MGM, Paramount, and 20th Century-Fox, and the same sum from

all other companies and independent producers. Because the consent decree called for a resolution of the matter no later than March 4, 1952, the film industry was in no rush to make up for ASCAP's losses. So matters remained suspended through 1951. In the spring of that year, a new issue was raised when the studios suggested that a blanket license for public exhibition include television fed to theaters. Convinced that future income from commercial television would soon be larger than from radio (it was doubling over 1950's one million), the ASCAP negotiating committee rejected the proposal and disbanded. In September, less than six months from the deadline, ASCAP indicated that, without an agreement, it would be forced to divorce itself of all film-performance rights.

With the coaxial cable from New York to the West Coast nearing completion, there was a firm belief in the video business that at least 80 percent of all programs would, out of economic necessity, have to be on film for the near future, that it would become the electrical transcription or taped-network program of television. Only the twenty or thirty largest corporations could afford to sponsor programs featuring big-name stars, whose talent fees were between $50,000 and $60,000 an hour, and time rates that were expected to jump to $90,000 an hour when the networks were enlarged from coast to coast. As with network radio, advertisers willing to spend that kind of money wanted to reach families during evening prime time, which was subject to a three-hour time difference between New York and Los Angeles, and only programs on film could resolve that variance. Network affiliates would also prefer film, because their largest income came from "hitchhiking," the sale of local advertising before and after network broadcasts.

More to the point for Hollywood, big-screen television in movie houses was an immediate reality. Theatre Network Television, owned by the Theatre Operators' Association, was already offering sports events on closed circuit, and was attracting as many as 250,000 to a single telecast, transmitted to a chain of screen theaters. TNT was also ready to go into the production of special programs, from the stage of the Metropolitan Opera House, for example, and to television business and sales meetings and major fund-raising social occasions.

Faced with the prospect of such competition, the major film companies offered ASCAP token amounts totaling about half a million dollars. The sum represented less than .05 percent of motion-picture theaters' annual income of $1 billion in ticket admissions alone. Against this, ASCAP collected a combined fifty times more on the basis of dollar revenue from broadcasting that it was ready to accept from Hollywood. The society feared that radio and television broadcasters would raise the issue of discrimination over such a settlement and go to court for lower fees. It was effectively extricated from such a prospect when BMI, owned by the networks and radio stations, offered its music without charge to theater exhibitors.

Consequently, in early March 1952, in time to meet the Justice Department's order, ASCAP and the major studios forged the language of a blanket license settlement, representing about $500,000 annually, plus $1.4 million for retroactive performance fees covering the previous two years. Apparently, however, only Universal Pictures actually signed the agreement. In August 1952, ASCAP began billing theater exhibitors on a monthly basis for the use of recorded music during intermissions. Fees based on theater size ranged from fifteen to forty-eight dollars for an enclosed theater, and from thirty-six to sixty dollars for drive-in houses. BMI followed immediately, with fees considerably lower than those its rival charged.

Such scant collections from a major music user were of little interest to the songwriter and publisher associations, between whom a state of armed peace continued. Symptomatic of that were the extended negotiations that had taken place from mid-1946 to the summer of 1948 to frame a third new standard songwriters contract, and the resistance and maneuvering by some music houses to block any settlement. In September 1946, after eight months of work by an SPA committee, proposed terms for a document to replace the one that would expire at year-end were presented to the MPPA and to Herman Starr, who represented such powerful non-MPPA firms as his own Harms, Witmark, Remick, and the Paramount interests. It was generally understood that the provisions, which were kept from the press by all parties, called for a full half-share of the standard two-cent royalty on recordings, regardless of any compromise publishers might make with the record manufacturers. In addition, the SPA was understood to be asking for a sliding-scale sheet-music royalty. These and other proposals were rejected out of hand by the publishers, who announced they would offer a counter-agreement. Starr was quoted as saying, ''We'll work out what we think is fair terms, and the writers can take it or leave it.'' The possibility of strike by the songwriters was discounted. The publishers believed that those who were under contract to the studios would never walk out, for fear of being replaced by members of the aggressive new generation of songsmiths, who had not yet developed loyalties to either the SPA or ASCAP.

The existing contract was renewed on a monthly basis, and MPPA representatives met regularly to work out a mutually satisfactory new one. Several major sticking points were slowly overcome. For much of 1947, Tin Pan Alley witnessed the most serious slump in sheet-music sales in fifteen years, even though a handful of songs, among them ''Nature Boy,'' which had been recorded by Nat Cole, and the Australian ''Now Is the Hour,'' approached the million-copy mark. Name dance bands, the foundation stone of any record company's catalogue since before World War I, were being supplanted on disks and on the radio networks by romantic male singers—Sinatra, Dick Haymes, Cole, Perry Como, Frankie Laine, Vic Damone—whose hits were responsible in great measure for the recording industry's best year since 1921. All that a new song required to make its

mark was a good recording. The established practice of releasing a recording only after the publisher pronounced himself ready to work on the song was coming to an end. Scheduled release dates were consistently jumped by manufacturers, disrupting the music houses' plans. Younger songwriters had found an open door at the record companies, particularly to the most successful A & R men. With a release assured, they could make a better financial arrangement than had prevailed in the past, and could then publish the song themselves, using an established house to handle distribution of the sheet music.

Early in negotiations that came to an end in the summer of 1948, the SPA had won the option of a straight minimum three-cent royalty on all sheet sales or a sliding-scale payment, beginning with two and a half cents for the first 100,000 copies, going to a maximum of five cents for all copies in excess of 500,000. In addition, the publisher was required to pay a minimum royalty of 10 percent on any and all printed music, other than sheet copies, sold domestically. Gradually, other gains were made by the SPA. Within a year after he acquired a new work, the publisher was obliged to issue piano copies, and to secure a recording or issue a dance orchestration, or else return the copyright and pay a minimum penalty of $250. After the initial copyright period of twenty-eight years, all rights, including those abroad, were returned to the writer, all new contracts became valid only after approval by the SPA. As had been true since the early 1930s, only ASCAP was specifically designated as custodian of performing rights for SPA members, making it impossible for songwriters published through BMI publishers to join.

The SPA's success in achieving a new contract with publishers, to run for ten years, until 1957, emphasized its coming of age as a force in the music business and swelled its ranks to 1,800 members, 1,000 of them established ASCAP authors and composers, the balance young newcomers waiting to be accepted by the society. By the summer of 1950, 289 publishers had accepted the new terms, with only a few firms owned by Hollywood studios holding out until ASCAP's status was cleared by the amended consent decree that had stemmed from the Alden-Rochelle action. Of equal concern to the film companies were the protracted negotiations with network-affiliated television stations. Under the terms of the SPA contract, ASCAP could not license television rights until they were assigned to the society by the publishers, who had first to obtain permission to do so from composers and authors representing at least 80 percent of the total ASCAP distribution for 1947. Many of the major writers—Berlin, Kern, Porter, Romberg—with important Broadway musical productions to their credit seriously weighed the possibility of licensing their music themselves on a dramatic-use basis, rather than through ASCAP.

During the many months that ASCAP negotiated with an NAB committee for the resolution of a new television contract, the dollar-a-year fee

remained in effect, but stations had to clear every piece of music in advance with the society for every single performance. ASCAP retained the right to revoke this license on thirty days' notice any time a majority of its membership wished, or to impose restrictions on the use of ASCAP music in connection with dramatic shows. In October 1949, the ASCAP board decided that the time had come for television to begin paying for music just as radio was doing. Fred Ahlert, the fourth president in ASCAP's history, began the campaign with a letter to all members, asking for permission to negotiate a ten-year contract with the television industry. The progress of television within the past year, he wrote, could only be described as "in leaps and bounds," and therefore "in the interest of good customer and public relations it has become imperative for us to arrive at a license agreement with [television], commensurate with our contribution as quickly as we can." The medium's progress had truly been spectacular. Orders for new receivers were up 400 percent, equipping one million households with sets to view such new miracles of programing as the live *Your Show of Shows,* starring Sid Caesar and Imogene Coca.

The response from the membership was generally favorable, though the major production writers still maintained that their music was worth more than ASCAP could ever collect. That longtime holdout the MGM-Loew's group finally assented also. After nearly a year of bargaining, NBC, CBS, and ABC signed a five-year blanket license agreement, retroactive to January 1, 1948, on behalf of their fourteen owned-and-operated stations. The terms were roughly about 10 percent more than those for radio, or 2.75 percent of billings, less deductions, and 2.25 of the affiliates' gross. A new 25 percent deduction was added to subsidize the cost of the coaxial cable to the West Coast, which was to be reduced by small increments over the next five years.

Several problems remained for ASCAP and Ahlert, among them extension for an additional three years of the present licensing assignment by writers and publishers, and a per-program contract that would satisfy the vast majority of independent station owners who had refused to go along with the networks. They had found the costs too high, and invoked the Leibell decision, questioning whether ASCAP had the right to collect fees from them for the use of motion pictures. The networks had agreed to pay for movies, not wishing to upset the ASCAP structure, on the specific stipulation that copyright owners would not be paid "at the source," as a number of music firms were doing.

The All-Industry Television Committee, appointed by the NAB to deal with the situation, was funded by contributions from telecasters, who intended to take the matter to court. In March 1951, after finding itself unable to agree to satisfactory terms, ASCAP mailed all television stations a contract of its own making. It proposed an 8.5 percent commercial rate and a 2 percent sustaining charge for stations doing an annual business under

$150,000, and 9.5 percent and 2.5 percent for those with grosses of more than $300,000 annually. Because ASCAP based the fees on a one-time advertising-card rate, rather than on actual station income, which was subject to the customary discounts, the offer represented a 100 percent increase over the AM radio rate, with a 300 percent increase for those stations doing the most business. Simon Rifkind was retained by the committee to resolve the case under the terms of the amended ASCAP consent decree, which enabled music users to take their complaints to the New York court for resolution. Former judge Rifkind had ruled against ASCAP and CISAC in the case involving the international cartelization of music licensing, which led directly to the 1950 amended consent decree. Acting on behalf of all independent television stations, in July 1951, he asked the U.S. district court in New York to set a fair music rate. The matter lay dormant for the next two years, with all ASCAP television licenses in limbo, pending a unanimous expression that the agreements were fair and equitable by all television licensees.

The society's parallel discussions with the All-Industry Radio Committee foundered on the rocks of cooperative network programs, those that emanated from the networks as sustaining broadcasts, but on which affiliated stations sold time to local sponsors. ASCAP insisted that these programs were commercial shows, to be paid for by local stations at the higher network rate. The stations argued that they should be considered purely local commercial broadcasts. The NAB Radio Committee pursued the matter until May 1953, when ASCAP accepted its position and agreed to a 2.25 percent rate for cooperative programs over stations with a blanket license, and 8 percent for those using a per-program formula.

The amended consent decree that came out of months of meetings during 1950 covered far more than CISAC's international cartel, the ramifications of Judge Leibell's findings, and the continuous complaints from broadcasters. It tackled the ASCAP distribution system, grumblings about which were pouring in from members, particularly the group known as "the young Turks." They opposed any method that favored those highly rated old-guard writers whose songs had gone out of style and use. Most of the younger writers had entered the business with BMI-affiliated firms, because they could not get into ASCAP, and they wanted a formula that placed maximum emphasis on the current use of their music.

Early in the discussions, it became obvious to Sigmund Timberg, chief of the Justice Department's antitrust judgments enforcement section, and to his assistants, that the revision of ASCAP's writer classification and distribution system was a matter of first concern. The old system called for fourteen classes, ranging from AA to 4, and alloted less than 15 percent of total income for performances. Shortly after the radio-music war, the board had promised an improved formula, based on a plan proposed by Ahlert and Edgar Leslie, which would allow 20 percent for performances during

the first year, to be increased gradually. Unfortunately, though the veteran songwriters' proposal had been accepted, it was never implemented.

Timberg's staff found a suitable pattern for change in the current publishers' distribution plan, which had been functioning satisfactorily since the Depression. It alloted 55 percent for performances, 30 for availability, and 15 for seniority. The suggestion of such a division to authors and composers split the society into many warring camps, with about 250 charter members or their heirs, whose income had been fixed twenty years earlier, at one extreme and writers whose songs enjoyed current popularity at the other.

One of the directives in the amended consent decree curtailing ASCAP's scope and structure, which was filed by the Justice Department on March 14, 1950, and approved by the society soon after, required that future distribution be made "on a basis which gives primary consideration to the performance of the compositions of members as indicated by objective surveys of performances . . . periodically made by or for ASCAP." How this was to be accomplished was left to the society. Other provisions were more precise. Judge Leibell was upheld in every particular regarding motion-picture music licensing. BMI was provided with an open door to the international music-licensing world because ASCAP could no longer enter into exclusive contracts with foreign societies. Judge Pecora's decision in *Marks* v. *ASCAP* was validated. Although an ASCAP member could withdraw his catalogue on proper notice, he could not license his music until all existing ASCAP contracts with music users terminated. All groups of similarly situated music users were entitled to uniform rates, with the right to take any dispute to a federal court for final determination. In order properly to democratize ASCAP, the decree did away with the self-perpetuating board of twenty-four member-directors, eight of whom were elected annually on a rotating basis, by requiring election of the entire board every one or two years. Membership eligibility was liberalized so that songwriters who had had at least one work "regularly published," or a firm whose musical publications had been distributed for a year, could join the society on a "non-participating or otherwise" basis. All methods of classifying members for purposes of distributing license income were to be made known. In sum, while ASCAP's practices and activities might, taken together, represent restraint of trade or monopoly in violation of the Sherman Act, the decree permitted court regulation of those that appeared to be in the public interest.

The new writer distribution plan was unveiled at ASCAP's annual business meeting on April 25, 1950, and elaborated upon by Ahlert, whose term would expire the following day. He spoke after the formal presentation of the annual financial report, which revealed that, due to the loss of half a million dollars because of the Leibell decision, income for 1949 was $10.6 million, rather than the anticipated $11 million plus. The board was confident that the loss would be more than covered by direct licensing of the film studios, permitted by the decree, by licensing of screen theaters that

played live and recorded intermission music, and from railroad and airline terminals where ASCAP's repertory was used for background music. Waxing enthusiastic, Ahlert predicted that television's recent growth would mean an additional million dollars for 1950, though the medium had provided only a few thousand dollars two years earlier and $400,000 in 1949.

After the terms of the amended decree had been detailed, the new distribution plan was revealed. Quarterly payments would begin in October, calculated on three factors; the most important was a performance average for the years 1945 to 1949, which would account for 60 percent of the distribution. One fifth of this, or 12 percent of total writer money, was to be set aside for allocation to the composers of works in the standard- and concert-music fields, whose performances could not be measured by the society's logging operation. Twenty percent would be determined on the basis of current performances during the past year, and the final fifth by a combined seniority and availability factor. Ahlert promised there would be no radical changes in income, because the society's promising fiscal future would more than offset any drop to a lower category.

ASCAP's thirty-six-year-old classification system would be replaced by an IBM machine-calculated number formula, which would base 60 percent of the writers' money (30 percent of ASCAP disposable income) on five-year performance averaging that calculated writers' ratings. These would be graduated by increments of twenty-five points, from one for Class 4 writers to between 775 and 1,000 for those in AA. Promotion or demotion would be automatic, with safeguards against too rapid a fall. On the other hand, a writer with between 500 and 1,000 points could jump by 200 points at a time; one with between 100 and 500, by 100. A special category, ranging from 1,050 to 1,500 points, was established for a handful of the society's most illustrious writers—Berlin, Porter, Rodgers, Harbach, Hammerstein, and the Gershwin estate.

To augment the new system and satisfy provisions of the decree, as well as to compete with BMI's growing position in country, rhythm-and-blues, and other specialty music, the ASCAP board installed a new logging program. Network performances continued to receive most attention, but an effort was made to catch ASCAP music on stations that concentrated on recorded music, which had been lost in the previous mix. A group of independent stations in ten key markets were logged daily for three hours, on a rotating basis. ASCAP field men taped these stations, excised any identification, and sent the information to the society's New York headquarters for analysis. The additional information was expected to reduce the current performance point value, now between six and a half and seven cents, by only a fraction. Performances were evaluated on a point basis: one point for a network shot; one tenth of a point for theme songs and jingles. Only if a theme song was an established standard song did it receive a full credit. Concert works of more than five minutes and choral pieces of more than

thirty minutes received six points per performance. The Screen Composers Association had made frequent protestations to the Justice Department, asking for recognition of its members' contributions; as a result, background music used in motion pictures was credited with one tenth of a point for each performance.

The task of mollifying a majority of the writers, once their checks were received in late October, would fall to ASCAP's new president. The functions of that office had increased greatly because a new general manager had not yet been named. The publishers, headed by Herman Starr, Max Dreyfus, and Saul Bourne (formerly Bornstein), were happy with Ahlert and ready to vote him back into office for a third term, despite the recently adopted two-terms-only resolution. The songwriter half of the board was adamantly opposed, and insisted on anybody but Ahlert. A compromise was effected with the election of the seventy-seven-year-old Otto Harbach.

In that confused period following Judge Leibell's decision, the SPA—now nearly twenty years old and an important presence because 289 publishers were using its most recently revised basic contract—was growing more aggressive in the new role it had cast for itself: spokesman for all authors and composers. The SPA's chief attorney, John Schulman, was a familiar figure wherever issues regarding songwriters' rights were involved—in Washington, in courtrooms, and during the arbitration proceedings the SPA encouraged. In September 1950, the SPA attempted, without success, to introduce a new secondary standard renewal contract, with increased rates and guarantees, for songs entering the second twenty-eight years of copyright protection. Prior to the institution of the SPA uniform contract in 1932, the major old-line publishers had insisted on the right to renew all copyrights in their own names, with the prior consent of all writers involved. Acceding to SPA terms, most publishers were prepared to offer a renewal contract that raised the mechanical rate from the 1920s' one-third share to a half, and sheet-music royalties from the former standard two cents to four or five. However, in the case of such valuable standard song as "That Old Gang of Mine" (Billy Rose–Mort Dixon–Ray Henderson), the original publisher, Bourne Music, took advantage of the original contract and retained the copyright. Billy Rose, a founding member of the SPA, took the matter into his own hands and, with John Schulman as attorney, brought suit to recover the copyright, on the ground that the transfer of a right was not binding unless an adequate consideration had been given to secure it.

While the case was waiting for a place on the court calendar, the SPA prepared for the celebration of its anniversary and counseled its members on problems stemming from the most recent ASCAP checks they had received. Harbach, to whom most complaints were presented, had intended to stay in office as president for just one year, until all wrinkles in the new system were shaken out. Although the new plan was designed "to boost

the little fellow,'' it had succeeded only ''in lifting the big fellow into the stratosphere,'' as Harbach wrote to all members in late October. Nearly three out of every ten of ASCAP's 2,000-plus members had received a smaller check. The income of twenty AA writers, however, had doubled, rising well above the previous ceiling of $4,500 a quarter. Because they wrote both words and music, with which they were credited for the first time, Irving Berlin and Cole Porter headed the special new elite group in earnings. At 1,500 points, Berlin received three times his previous AA check, and Porter, just behind him, doubled his last quarter's earnings.

When the 60-20-20 plan had been submitted to the government, it was neither approved nor disapproved, but was, instead, subjected to a three-year test period. With no marked difference in the second new quarter distribution, the writer board members sought some means to cushion the drop in income, which most seriously affected the middle-rank ASCAP constituency. The young Turks, led by the comparatively junior songwriters Redd Evans and Pinky Herman, fought the proposed revision of seniority and availability suggested by some directors. They insisted on a change in an interpretation of the decree that placed undue emphasis on seniority, and an end to the cushioning of the special top class. They also demanded a reform of ASCAP in that section of the new decree calling for the open election of directors by all members. For years, the board had been a closed corporation, with directors consistently selected from among the society's top brackets and working only for the benefit of their peers. Given a voice in the process for the first time, and hoping to win at least a handful of new directors to represent them and the lower grades, the young Turks and their adherents concentrated on a write-in voting campaign, which proved fruitless. Except for one director who declined to run again, the election was a clean sweep for the incumbents. Harbach, the only candidate agreeable to all parties, was reelected president. His continuing problem, amelioration of the chaos following installation of the 60-20-20 plan, was not to be resolved until the Justice Department again intervened.

At the end of a year of dispute and dissension, it was plain that under the new system the 100 highest-rated ASCAP writers would continue to receive 56 percent of the income, the most serious result of the government's insistence that performances remain paramount in determining royalty payments. A number of alternate interpretations of the basic formula were considered by the classification committee, but with little hope that the government would approve any. Its intervention had brought writer distribution closer to the 55-30-15 formula used by the publishers since 1935, with the greatest emphasis on live prime-time commercial radio, and now television, air play. A growing sentiment took form among tiring rank-and-file members that the controversy between those who argued for the importance of their seniority in ASCAP and the supporters of concentration on