

current performances would ultimately fade, because no more satisfactory plan than that in use could be found.

The publishers, who had taken no public stand, suddenly found themselves confronted in early 1952 with a crisis of their own, which threatened to overturn their distribution plan: 55 percent for performances, 30 for availability, and 15 for seniority. Ralph Peer was the first publisher to take advantage of the appeal machinery insisted upon by Timberg and his staff. He sent a representative to appeal before a newly organized classification arbitration panel on behalf of the major ASCAP holding, Southern Music. The committee—an ASCAP publisher, an ASCAP writer, and an outside expert—found for Peer, raising Southern's availability from 250 to 450 points, a position among the society's forty leading publishers. It also recommended a broad revision of the availability ratings of all publisher members, with an eye to evolving a new formula for computing their standings. The decision and the recommendation revived a proposal that many of the large firms had long advocated, a straight 100 percent performance payoff, or at least an increase of the performance factor to the 60 percent level of the writer system. With appeals to the arbitration panel piling up, and the seventeen-year publisher distribution scheme apparently falling apart, ASCAP's executive committee and legal department, under the direction of Herman Finkelstein, worked to prepare a new system that would be acceptable to the younger publishers.

As anticipated, there was no serious disruption of the status quo. The new system, devised to measure the important publisher availability factor, became effective with the October 1952 distribution. It rated the availability of every song more than two years old, by the use of IBM machines, on the basis of its radio and television performances during the previous five years, or eight quarters. This was hailed as a milestone of the society's history. For the first time, the value of each work was reckoned in terms publishers understood. Performance, availability, and seniority were retained. Any impact from a change in measuring seniority was cushioned by a guarantee that income could not fall below 80 percent the first year, 70 the second, and 60 the third. Under the new plan, whose major emphasis remained on old copyrights, the powerhouse firms—Harms, with the highest previous availability rating, 11,000 points, MGM's Big Three, and Max Dreyfus's Chappell group—continued to take the lion's share of distribution. Middle-sized firms viewed the new system as an opportunity to grow by securing more air play. Only the standard-music houses and new small companies suffered. Without a 100 percent current performance payoff that recognized recent hits, the latter could not increase their availability ratings or their ASCAP earnings until their copyrights went beyond the eight-quarter limitation.

Damaged by distribution that effectively allocated 85 percent of all pay-

ments on the basis of broadcast performances, which their music houses had difficulty in securing, the standard-music publishers had two options. They could fight for an increase in the value of performances of classical, standard, and art music by broadcasters, as well as in public concerts, or they could form BMI-affiliated companies. Many of their best-known younger composers, among them William Schuman, Norman Dello Joio, Roger Sessions, and Walter Piston, had moved to BMI, where Carl Haverlin was ready to give financial support to modern concert music and those who created it. During the war Aaron Copland resigned to join ASCAP, but the American Composers Alliance had moved back to BMI after a short association with ASCAP. When ACA's contract had come up for renewal in 1950, Haverlin proved to its negotiating committee that he was, in the words of Otto Luening, who was one of them, a man who "knew the difference between long-term projects and speculation with short-term results. He understood that time was needed to launch and to make accessible and popular certain kinds of music and he gave us all the support that he could get out of his board of directors throughout the years of his office." BMI took over all performance licensing on behalf of ACA and paid its members, as well as other modern composers, advance guarantees against earnings, generally out of all proportion to actual collections. The ACA library of manuscript scores and parts and its Composers Facsimile Editions were moved to the BMI premises. Tapes and recordings of ACA members' works were sent to radio stations and the conductors of symphony orchestras. Recordings of ACA and other BMI-licensed music were subsidized, as were live performances, including the first public concert in the United States of taped music. Conducted by Leopold Stokowski, it was held at the Museum of Modern Art on October 28, 1952, and inspired *Time* to observe that "the twentieth-century instrument is the record machine—a phonograph or tape recorder." These projects all served to assist Haverlin in his campaign to secure an improved national public image for BMI, through increased involvement in and support of minority music.

In pursuing that ambition, and because of the competition engendered for the services of composers of "serious" American music, higher income could be expected. But as ASCAP's collections from symphony orchestras and concert-hall managers and local impresarios demonstrated, there was so little profit in licensing them that any figures reported publicly were highly exaggerated. The society collected directly from the country's symphony orchestras for blanket access to its music on a descending scale, beginning at \$1,000 a year, down to inconsequential fees from lesser-known organizations. The two major concert-artist management corporations, one owned by CBS, and many of the other's artists under contract to NBC before the FCC ordered their divestiture, collected a fee of 1 percent on behalf of ASCAP from performers and local entrepreneurs. Using their best

efforts, together they did not realize more than \$12,000 for the 1951-52 season. BMI did not yet license either symphony orchestras or concert halls.

With so small a return, few performances of large-scale works on radio, and none on television, ASCAP attempted to subsidize its serious composers, who in 1943 had represented one out of every four writer members, by dipping into the availability fund to compensate for the "cultural importance" of their music. When 85 percent of distribution was measured by performance, under the first revised plan in 1950, and the value of works between thirty-six and forty minutes in length was fixed at sixteen points, the society's serious composers found their checks smaller than ever. In October 1952, the value of such "unique and prestigious" works was raised to forty-four points, the total distribution available to them was fixed at \$35,000 a quarter. When the annual guarantees offered by BMI to several ASCAP members surpassed the society's fixed budget, few resisted BMI's blandishments. The raiding proceeded with certain success, and Starr and Dreyfus were asked to intervene and promise any potential defectors substantial guarantees against all income, including their ASCAP checks, in order to keep remaining eminent composers in the society. A large number of ASCAP publishers shared the attitude of an unidentified Tin Pan Alleyite who was quoted in *Billboard*: "We must encourage American composers of the type of Leroy Anderson and the late George Gershwin, etc., but to hell with those longhairs who write compositions for the oboe."

The second modified ASCAP writer-payment plan was accepted by the Justice Department in June 1952 with its usual "we do not disapprove" statement. The proposal was the handiwork of a committee headed by Stanley Adams, with suggestions from several perennial stormy petrels, one of them Hans Lengsfelder, a Viennese composer who had joined the society in 1942. After winning success with a few popular hits, some of which he published in part himself, he became a leading spokesman for the small publisher and new authors and composers in the society.

The Adams committee plan changed the 60-20-20 three-fund allocation to a four-fund formula. The 60 percent performance factor was split into equal parts, a sustaining fund and an availability fund. The remaining 40 percent was divided equally into current performance and accumulated earnings funds. Writers had the option of either a ten- or a five-year-basis for the sustained performance rating, and availability was cushioned against a drop in income, remaining fixed for five years, which in effect placed major emphasis on old music.

With at least half the membership expected to receive higher payments under the new play—those in the lowest classifications to gain the most on a percentage basis—ASCAP authors and composers on both coasts approved the scheme without opposition. Irving Berlin was hailed for accepting an annual reduction of \$5,000 from the \$72,000 he had been receiving

each year since October 1950, "as a contribution to the general welfare of ASCAP."

Rather than reduce the income of the special top writers, and some in the AA group, the new distribution method actually increased their take beyond expectation. Berlin received \$87,000 for 1952, during only one quarter of which the revised plan was in effect. Cole Porter was immediately behind him with \$78,000. Four estates, those of Jerome Kern, George Gershwin, Gus Kahn, and Lorenz Hart, and Rodgers, Hammerstein, Harry Warren, and Ira Gershwin received between \$40,000 and \$44,000 each. Johnny Mercer, Jimmy Van Heusen, Dorothy Fields, Jimmy McHugh, Johnny Burke, Arthur Schwartz, Frank Loesser, Jule Styne, Leo Robin, Harold Arlen, the estates of Walter Donaldson and Sigmund Romberg, and a few others were paid between \$23,000 and \$26,000 for 1952.

In October 1952, speaking to the West Coast membership in the third term of his presidency, a tiring Harbach predicted that the society's income for 1952 would reach an all-time high of about \$15 million, four of that from television, and would certainly make forthcoming writer and publisher checks larger. In spite of his wish to retire, or probably because of an expressed desire for a younger man by the same important writers who had voted Ahlert out and him in, which irked Harbach, he agreed to accept a third one-year term. Regarded by most of the membership as indispensable, particularly because the society had not yet found a successor to John Paine as general manager, Harbach was considered the best man to present a persuasive case on behalf of ASCAP in Washington, where hearings were being held to change the law so that the operators of jukeboxes would pay for the music they used. Only Stanley Adams and Oscar Hammerstein II had been considered to succeed Harbach, but Dreyfus was still not persuaded that Adams was the man. On the crest of a wave of success in his collaboration with Richard Rodgers, which had already produced *Oklahoma!*, *Carousel*, *South Pacific*, and *The King and I*, the veteran lyricist and librettist Hammerstein was not ready to give up writing.

During copyright hearings in connection with a revision of the law in 1909, music publishers had shown little interest in having the coin-operated phonograph business made liable for payment when it used recorded copyrighted music, unless admission was charged. Committee reports, accompanying the completed legislation, made reference to statements by some publishers that the machines were a chief means for promoting their music and should not be touched. The coin-operated music industry was enjoying a boom that had begun in the early 1890s. The precursor of the modern jukebox could then be found in greatest number in the nation's penny vaudevilles, where the latest musical cylinders were offered. The first of these emporiums, with nearly 100 ear-tube-equipped Edison Penny Coin Slot Machines, was opened on Union Square in New York, operated by a corporation capitalized at \$500,000, which eventually built up a chain of thirteen

additional locations around the country. On a single holiday, an estimated 200,000 people crowded into these fourteen vaudevilles and spent at least ten cents apiece. Any city of more than 10,000 inhabitants could support such a business, and it spread rapidly, yielding substantial profits to the owners. The automatic-phonograph industry did not use disks until 1908, when the first automatic coin players went on sale, but by that time the nickel-in-the-slot Peerless Player Piano was beginning to replace recorded music with that of the paper music roll. Within a year or two, the end came for the coin-slot automatic-phonograph business, but it returned in the early 1930s, when desperate economic times brought back the poor man's concert hall.

Spearheaded by ASCAP, the popular-music business waged an unrelenting campaign to change the 1909 copyright law in several particulars, chiefly compulsory licensing and the two-cent record royalty. Beginning in 1926, these matters got out of various Congressional committees only twice, reaching the House floor in 1930 and that of the Senate in 1935, only to be tabled. In 1940, ASCAP was active in support of a pending bill that was expected to yield a fee of five dollars a month from every jukebox in America. The struggling BMI promptly offered its music to all coin-machine operators without charge and urged their cooperation in fighting the society's "practical monopoly of popular music." For years after, a friendly relationship continued between the coin operators' trade association, the Music Operators of America, and BMI.

During the 80th Congress, Representative Hugh Scott, of Pennsylvania, made a strenuous but unsuccessful try to end the jukebox exemption and obtain passage of his "Interpretation Bill," which proposed copyrighting of recorded versions of previously copyrighted musical works. During the same session, another Pennsylvania legislator, Congressman Carroll Kearns, tried, without success, to have phonograph records labeled either "For Commercial Use" or "For Home Use Only."

In the 1951-52 Congress, Scott again introduced a bill removing the jukebox exemption, only to have its place on the agenda taken away by the Kefauver-Bryson bill, which exempted the owner of a single jukebox, but required all others to obtain a license and pay a weekly penny royalty on every copyrighted work inserted into their machines. The MOA spokesmen suggested that "it was false and misleading to assert that jukeboxes do not pay for the music they use." Coin operators were, in fact, the largest single users of phonograph records, purchasing about 15 percent, or 50 million disks, annually. The top twenty-two songs of the period December 1950 to September 1951 had sold 53, 535, 551 records and received \$1.003 million in royalties. The best-selling "Tennessee Waltz" sold 4,225,000 disks and received \$79,580 in copyright fees. "Mule Train," with 2,663,303 records sold, received \$53,183 in royalties, and "Some Enchanted Evening," sold 2,565,514 records and got \$51,205 in royalties.

Testifying on behalf of the record manufacturers against the bill in a written statement, Mitch Miller incurred even greater enmity from old-line music companies by telling the committee that the coin-machine operators were chiefly responsible for making those songs into hits. His bold assertion that "some of the most successful" songwriters by-passed the music companies and went directly to the record companies to place their material negated much of the MPPA's testimony regarding the important role of the music publisher.

Despite appearances by a formidable group of ASCAP supporters, testimony by and about the music business was so contradictory that the committee reached no conclusion. Bryson filed only a minority report recommending the legislation, which died in late 1952.

With Otto Harbach ineligible and unwilling to serve for another term, in April 1953 a younger man took his place as ASCAP president: Stanley Adams, forty-five, an attorney before he became a working songwriter in the early 1930s. As a writer-director since 1944, he had built a reputation as a dedicated committee worker, ready to take on the most onerous chores, and a shrewd negotiator. His participation in the 1941 antitrust lawsuit and his activity in organizing the still-shadowy Songwriters of America, put him in the forefront of the reformers. The most powerful publisher members of the ASCAP board, Starr and Dreyfus, had switched their support to Adams in time for him to be voted in by unanimous acclamation. In a further reshuffling of the board, Louis Bernstein, a major MPPA official, was named vice-president, sharing the office with Fred Ahlert.

Ahlert, who had become a familiar figure to Washington legislators during previous copyright hearings, was put in charge of the presentation to the Senate Sub-Committee on Copyrights, to which the battle against the coin-machine business had shifted. In July, while music-business proponents were testifying on behalf of a bill similar to Kefauver-Bryson, Sydney Kaye of BMI threw what *Variety* dubbed "a Kaye-bomb" into the proceedings by joining ASCAP in the copyright fight. This marked the first time since BMI's formation that it took an active stand in support of any ASCAP position, and it broke its long cooperative association with the MOA. No new bill emerged from the deliberations.

The sudden reversal of BMI's position on jukebox exemption was due to the equally dramatic reversal of BMI and ASCAP in their position on the nation's coin music machines. In a December issue of *Cash Box*, a trade paper originally intended for the coin operators, but becoming a successful competitor of both *Billboard* and *Variety* because of its increased music coverage, a poll of all subscribers put BMI music in an 81.8/18.2 percent position over the ASCAP repertory in the pop, country-and-western, and rhythm-and-blues categories currently most popular on America's jukeboxes.

Such an astonishing share of the market was first forecast in October

1951, when BMI-licensed music took the first three places on *Billboard's* "Honor Roll of Hits," as well as the sixth and ninth positions, its best showing since 1941. Most significant was the fact that four of the five were "legitimate pop songs," firm evidence, according to *Billboard*, that BMI publishers "could hustle and promote in the same league with top ASCAP publishers, particularly in view of the new position radio deejays play in the current pattern of exploitation." The number-one song, "Because of You," was a revival of a 1941 BMI copyright; in second place was Hill & Range Songs' "I Get Ideas," set to the music of the old Argentine tango "Adios, Muchachos"; Acuff-Rose's Hank Williams's country hit "Cold Cold Heart" was third, now a Mitch Miller triumph in Tony Bennett's version, which had already sold over a million records. The other two were the William Saroyan-Ross Bagdasarian (his nephew) "dirty old Armenian man" song urging all pretty young women to "Come On-A-My House," sung by Rosemary Clooney and produced by Miller, and "It Is No Sin," written by two Philadelphia writers and popularized by the local Four Aces quartet on a master they paid for themselves, which, in turn, was purchased by Decca. Since January, BMI had tasted the fruits of success with "The Tennessee Waltz," "The Thing," "The Rovin' Kind," "Goodnight, Irene," and "On Top of Old Smoky," the last four published by Howard Richmond.

In the annual letter to stockholders, Haverlin noted that the company had paid \$2.6 million in performing rights, from an income of \$4.8 million, representing an increase in payments to publishers of \$400,000 over the previous year. BMI had also made one of its annual rebates to all broadcast licensees, a 25 percent reduction during the last three months of the fiscal year. The strong relation with broadcaster customers was due in great part, Haverlin wrote, to the nationwide program clinics that had begun in the mid-1940s with demonstration in New York of a model music library, conceived by the company's station-relations staff as an educational service to station managers. In 1947, soon after he joined the company, Haverlin changed the emphasis of this promotional activity to programing and programers, with BMI-subsidized meetings in some major markets. Following invitations from many state broadcaster associations, some created for the occasion by Haverlin's friends in radio, BMI covered thirty-five states annually, with a road company of four specialist speakers, including a BMI executive, which joined local panels to discuss the latest developments in programing and strategy to cope with the looming specter of television, before an audience of local broadcasters. Taking over a natural function that the National Association of Radio and Television Broadcasters (the NAB brought into the television age) had overlooked, the clinics proved so popular and effective that Haverlin was offered, but finally declined, a better-paying position as president of the NARTB.

ASCAP executives and its board looked with suspicion on the clinics, muttering darkly that they were gatherings where broadcasters, determined

to destroy the society, plotted together to push BMI music into popularity and ASCAP music into oblivion. ASCAP, too, had continued to ignore that large and vocal body of grass-roots broadcasters whose programming held up the mirror to changing American musical tastes. Throughout 1951, the society's problems were numerous and proliferating. Hollywood appeared determined to let the blanket licensing of motion pictures hang until ASCAP accepted a token payment. Authors and composers were arraying themselves on separate sides over the issue of equitable distribution, and the SPA was making its bold bid to take over the role of spokesman for songwriters. In the face of an ongoing mysterious government investigation of the music business, whose true goal was uncertain, the ruling block of motion-picture-owned publishers feared that the studios might be forced to divest themselves of their music interests, as they had been of their theater chains. The All-Industry Television Committee had dug in its heels, refusing to accept the most recent ASCAP per-program proposal, and, as provided in the consent decree, asked the district court in New York to set a fair fee. The annual membership gatherings and every ASCAP board meeting were interrupted by complaints about the foothold BMI and its publishers were getting on the leading music trade-paper charts. Since 1949, there had been few weeks when a BMI song was not among the top ten hits, and recently its share had jumped to a steady three out of ten.

Two efforts by ASCAP's membership to correct at least some of the society's problems were taking shape. The first was an offshoot of the short-lived Forum for Songwriters, in 1941, and the action by fourteen songwriters against the networks, BMI, and the NAB, charging them with conspiracy to destroy ASCAP. Stanley Adams had been at the head of this militant group of young ASCAP writers. It was at the insistence of leading publishers, who had promised to dispose of the action as part of the price for an end to the ASCAP-radio war, that Adams, Paul Cunningham, and other leaders of the plaintiffs agreed to accept \$15,000 toward legal fees.

The music business first became aware in the late spring of 1951 of activity by Adams and other former plaintiffs in the 1941 action to do something about BMI. First identifying their organization as the Guild, or League, of American Songwriters, later the Songwriters of America, a steering committee, whose members preferred to remain unknown for the time being, solicited contributions to a \$250,000 fund from the 100 ASCAP writers whose income from the society aggregated one million dollars. The money was to be used to fight not only BMI but also the "unfair treatment by publishers, record company domination of the song business, payola, artist favoritism, moving picture company power in the music industry, and the closing of avenues for the display and performance of a song." Publishers were not asked to support the organization, because "a canoe with both writers and publishers is sure to rock." The group's attorney was Robert Daru, who, as chief counsel to a Senate committee in the early 1930s, had

conducted an investigation into underworld activity in American business, and had represented the plaintiffs in their 1941 suit against BMI.

Spokesmen for the organization were quick to point out that the fund was being collected to defray legal expenses, including any for an appearance before the Supreme Court, and that neither ASCAP nor the SPA was involved, though known to be sympathetic. By October, the fund had grown to \$300,000, helped by a checkoff contribution of 5 percent of ASCAP writer royalties, and Daru had been displaced by John Schulman. With most of its anticipated funding in hand, in late 1951 the group announced that action would await the outcome of a complaint against BMI filed with the Justice Department during the summer.

That petition was made in connection with an appearance by ASCAP, in August 1951, before the New York district court, responding to a demand by the All-Industry Television Committee for a fair rate from the society. ASCAP asked Judge Henry W. Goddard to approve the terms it had offered in March to the committee, which represented fifty-six stations, or about half of those in the industry. ASCAP had already stopped accepting interim payments from the litigants, a move agreed upon in a pact made early in 1950, which called for eventual payments retroactive to January 1, 1949. In the meantime, a lump sum, based on each station's income, was being put into escrow each month.

Simultaneously with its plea, ASCAP filed a 100-page document, known as the Harbach Affidavit, asking for new language in the amended order of 1950. It argued that broadcasters would "skim off" the society's "gems" and devote the remainder of their programming to the BMI repertory. If the plea was granted, the society could refuse a per-program license to any radio or television station that had a blanket BMI license. The claim was made that otherwise BMI had an unfair competitive advantage. Remembering that the society had been told in early 1941 that "when BMI became big enough to hurt ASCAP" the government would step in and change things, legal counsel and the board anticipated an early favorable action.

The Harbach Affidavit was passed to the Justice Department, and a lengthy investigative process began, which eventually produced a lengthy request for information on eighty-six points. Disturbed by the inaction, in March 1952 ASCAP reminded the public and the press of its plea for relief by filing a formal request for an investigation of the charges incorporated in the affidavit, essentially that BMI operated as a combination in restraint of trade through its relations with the broadcasting industry, which made BMI, in effect, its creature. Paul Ackerman of *Billboard*, who had been covering the BMI-ASCAP situation since its genesis, wrote in April that while ASCAP "has endeavored to set itself up solidly in TV, and while it has been fighting to re-establish itself in films, it has been constantly losing ground on another front—promotion . . . it has steadfastly refused to promote itself to music users. The result has been that BMI . . . has run the

latter a very fast race. BMI, of course, is a wholly-owned corporation, the structure of which permits money to be freely expended for promotion. ASCAP has always taken the position that such funds as are collected must be distributed to the membership.”

Rising economic stakes and the changing balance of power in the electronic entertainment business were major factors in the continuing strained relations between broadcasters and ASCAP throughout this period. Almost overnight, the value of television as a source of income to the society had grown to undreamed-of proportions. In early 1946, television had not yet become a big business, and ASCAP was content with its dollar-a-year arrangements with stations. Anybody with the modest sum of \$272,500 could buy all the equipment needed to go into television, according to a promotion pamphlet designed by Dumont Laboratories’ sales department to sell the Paramount subsidiary’s transmitting technology. In thirty months, the sales pitch continued, the station owner would make a net operating profit before taxes of \$47,983.97, or 17.6 percent of his capital investment. Critics argued that profits should run even higher, because advertising time rates had been increased. The constantly rising valuation placed on the Blue Network, after the Supreme Court upheld an FCC order to RCA to divest itself of its second network, dramatically illustrated the profits being made in broadcasting.

To comply with the court’s ruling, NBC had formed a separate corporation, the Blue Network, Inc., which owned WJZ, New York, WENR, Chicago, and KCO, San Francisco, and then sold it to the Life Saver King, Edward Noble. The sale was finally approved in the fall of 1942, provided Noble disposed of radio station WMCA in New York, which he had acquired for \$850,000 but which was now worth over \$1.5 million. During the protracted negotiations, the Blue Network not only showed no loss for the first time, but also made a million-dollar profit, which went to Noble. He changed the network’s name to the American Broadcasting Company after recouping a fifth of his investment in the first year of operation. Because of the boom in building new radio stations after the government lifted its wartime freeze on new construction, ABC grew from 195 affiliates in 1945 to 282 five years later. One reason for its success was the presence on the schedule of Bing Crosby, who had helped to build CBS into a major network before moving to NBC in the early 1930s; he now became ABC’s most important personality and introduced the taped radio program to broadcasting. Taping resulted in considerable savings for ABC, which otherwise would have paid overtime to talent and engineers for repeat broadcasts to the West Coast. With tape simplifying recorded broadcasts, ABC was the first network to adopt disk-jockey programming on a national basis, in 1947, followed reluctantly by CBS and NBC.

In 1950, with a television network of thirteen stations, ABC ran a poor fourth to its rivals, NBC, CBS, and Dumont, the last of which had a net-

work of fifty-two affiliates, making it second to NBC. However, ABC had become, and remained, a target of vital importance for motion-picture companies that wanted to get into the new picture-and-sound medium. In late 1948, 20th Century-Fox offered \$15 million for the ABC radio and television networks, the latter including owned-and-operated facilities in New York, Chicago, Detroit, Los Angeles, and San Francisco. The deal fell through only because the film company would not meet Noble's asking price of \$21 million. CBS began negotiations in the spring of 1951 to acquire the ABC network for \$26 million, so that it could add the Chicago, Detroit, and San Francisco television stations to the only two video facilities it actually owned, New York's WCBS-TV and KNXT-TV in San Francisco, the cornerstones of its operation. William Paley intended to sell off the ABC radio network, now with about \$35 million in billings, and its New York and Los Angeles television stations, to parties unknown, for \$20 million. Because of its complexity, the CBS-ABC transaction broke down, but offers followed at once, from United Paramount Theaters and International Telephone and Telegraph, to purchase Noble's holdings. The ITT offer was withdrawn. The Paramount negotiation terminated when Noble insisted that he receive sufficient UPT common stock to give him a major controlling interest.

UPT officials, principally Leonard H. Goldenson, did not want to let ABC get away. A graduate of Harvard Law School, who joined Paramount soon after receiving his degree, Goldenson became head of its theater chain in 1938, at the age of thirty-two. The Supreme Court ruling in *U.S. v. Paramount et al.*, which ended the control of Hollywood by the Big Five and their satellites convinced Goldenson that the film industry's future lay with television. Historically, Paramount had been the earliest of the studios to turn an eye on the technology in which Vladimir Zworykin pioneered. It lent money to Paley in 1928 to swing his purchase of CBS, but only in order to gain a foothold in the broadcasting business. When *U.S. v. Paramount* was filed in late 1945, Paramount was already well on its way to building a vast empire. It had a 50 percent interest in the Dumont Laboratories, owned television stations in Chicago and Los Angeles, had already filed applications for other stations on behalf of a wholly owned subsidiary, and owned a major interest in British theater-television patents. The consent decree had put an end to block booking and severed the film companies from ownership of vast theater-chain monopolies, with which they had stifled all competition. Remaining were their production facilities.

Long before the January 1, 1950, deadline for disencumbering itself of all theater holdings, Paramount Pictures split into two distinct corporate entities—Paramount Pictures Corporation and United Paramount Theaters—which Goldenson continued to head. Paramount films were sold to its former outlets through a theater-by-theater arrangement. Any question as to UPT's right to acquire television facilities was cleared with the FCC im-

mediately after the Supreme Court ruling, and Goldenson prepared to buy ABC. Within three years of the separation, he had bought and sold theatrical real estate worth \$50 million, in order to raise the \$25 million asked by Noble for a merger of UPT and ABC, as American Broadcasting-Paramount Theaters, which was consummated in 1953, with Goldenson as president.

During the years preceding the union, the television business had gone from a loss of \$25 million in its first big year, 1949, with total revenues of \$34 million, to a \$41.6-million profit in 1951. Serving only sixty-three markets through 108 stations, television was doing half the business of AM radio, which had 1,200 markets served by more than 2,000 stations. The profits in television, however, were going to the local stations, and not to the networks. In 1951, NBC and CBS just managed to get into the black, and in 1952 they showed their first profit from video, a net of one million for NBC, slightly less for CBS. A single independent station, either NBC's affiliate WTMJ-TV, in Milwaukee, or the Paramount-owned WBKB-TV, the CBS affiliate in Chicago, showed profits the same year matching those of the entire NBC and CBS television operations. Ninety-four of the 108 television stations telecasting in 1952 reported profits, and, of them, seventeen, mostly network-owned and operated, averaged a one-million-dollar gain. None of the forty stations in a single market suffered a loss, profits averaging \$654,000. Although the four networks' profits were relatively small, \$9.9 million in all, they and their owned-and-operated stations accounted for 55 percent of total time sales, or \$180 million. ASCAP's collections from television in 1952 came chiefly from the networks, fees from the independent stations still being put into escrow. The networks collected at least half their ASCAP fees from affiliates, who, because of complicated bookkeeping practices, were not yet aware of the extent of that contribution of its existence.

Income from television more than made up ASCAP's loss of \$1.3 million in theater-seat collections, part of which was also recouped by the payment of about \$600,000 a year by the studios for at-the-source licensing. The producer-distributors were learning not only how to live with television, but also that this potential enemy was a medium to which Hollywood could make a lucrative contribution. A tentative collaboration began in late 1952 when Paramount, Columbia, and United Artists activated their television subsidiaries and began making half-hour filmed series. Four years earlier, when the picture business were suffering from a postwar recession and the video-station business beginning its climb, Columbia had formed Screen Gems, to make filmed commercials for national television sponsors. After more than 200 were made during the next two years, Screen Gems in 1951 sold its first made-for-video package, to Du Pont: seven half-hour historical dramas for *Cavalcade of America*. In the spring of 1952, Screen Gems

introduced feature-motion-picture budgeting to television and agreed to sell a thirty-minute anthology package, featuring film stars who had not yet been seen on the video screen, to Ford for \$20,000 a unit, a one-third reduction of its production costs. As the studios had been doing for years, Columbia expected to get back the other \$10,000 and more from rerun distribution. The success of the *Ford Theatre* put Screen Gems in the forefront of TV film production and syndication, with packaged shows that continued to be sold around the world for years.

In July 1952, *Variety* reported that the production of films for video, ranging from commercials to package shows, had become a \$100-million enterprise. Twenty-two percent of all network shows were now on film, and informed thinking was that the figure would grow to 75 percent for the same reasons that a majority of radio programs had been forced to go on tape or electrical transcription.

Three percent of that \$100-million business was for libraries of three-minute musical programs, designed for the television disk jockey. The largest libraries, United Television Programs, with 1,300 filmed musical subjects, and Official Films, which had 1,200 subjects in its *Music Hall Varieties* series, charged a minimum of \$300 a month to stations for a basic library of about 400 three-minute features. A small New York firm filmed young Broadway and night-club performers to be lip-synched with the latest popular record releases.

Hollywood producer-distributors watched and waited after Herbert Yates's Republic Pictures, the first of them to take the jump, leased a library of 104 Western action features to major-market stations. WCBS-TV paid \$200,000 to show the movies exclusively in the New York market, and others followed that lead. The impact of Westerns had already been demonstrated, when, in 1948, William Boyd bought back control of his *Hopalong Cassidy* movies and sold them to NBC. Cut from their original feature length, they served as hour and half-hour programs, making Boyd so independently wealthy, from the sale of subsidiary rights to clothing, gadgets, and gimmicks spawned by the character, that he financed a new package of fifty-two half-hour Cassidy pictures for local syndication.

Fearful that movie exhibitors would immediately boycott all products of the first major studio to cooperate with television, the top eight studios sat on their treasures. The negatives for 4,057 full-length movies and 6,000 one- and two-reel shorts made between 1935 and 1945 represented a potential quarter-billion-dollar income from television. Walt Disney, whose new releases were bid for with reckless abandon, turned down a million-dollar offer for television rights to a package of cartoon shorts. Most Disney movies were in color, and his caution was correct in view of the ceaseless competition going on between RCA and CBS to introduce the first successful color-television programs. Time was on the side of the studios. Six

hundred hours of new feature movies filled up only one tenth of a vast empty belly that was eating up more entertainment than any other medium ever known to man.

Years of failure to placate Hollywood's background-music writers and their Screen Composers Association with enough financial recognition of their contributions to ASCAP's repertory were crucial to BMI's success in gaining an early advantage in the control of music used on video film. ASCAP's revised payment system credited the performance of music written expressly as background with 1/1,000th of a point, whereas a popular song, ordered expressly for the film or selected from past standards, got full credit. With its flexible payment structure, and free of Justice Department supervision, BMI was in a position to offer attractive guarantees to film composers and producers for television rights. At the urging of Robert Burton's office, BMI publishers began to secure the rights to music on such highly popular shows as *Kukla, Fran and Ollie*, *This Is Your Life*, and *Howdy Doody*. Several important cue and bridge libraries opened BMI houses, and many leading video production companies formed "file-cabinet" music firms, into which all rights to background music were placed, secured from their composers on a work-for-hire basis. BMI compensated these composers by guaranteeing a flat annual fee until machinery could be set up to gauge the value and count the use of background music on video films and feature movies used on television.

In June 1953, a new BMI office was opened in Hollywood to deal specifically with producers and screen composers. Some months before, 150 movie, radio, and television composers, most of them in ASCAP, had formed a rival Composers Guild of America. Plans were made by its founder, Leith Stevens, to form an eastern branch.

While license fees from television climbed, soon to overtake those from radio as both ASCAP's and BMI's major source of income, in spite of the medium's relatively small use of their catalogues, the fortunes of network radio were waning. The days of fortune and glory for the NBC, CBS, and ABC chains, whose profits subsidized the more glamorous and potentially more profitable world of television, slowly slipped away to local stations, whose major offering was recorded music. Network radio income began to erode, particularly in the markets where the 108 video facilities operated.

Meanwhile, new AM and FM stations were springing up, leading some to expect that FM broadcasting, with its more faithful reproduction of music, would capture most of the new audience being conditioned by disk jockeys to recorded musical entertainment. A ruling by the FCC in June 1945, when forty-six commercial FM stations were on the air and 430 FM applications waited for approval, moved frequency broadcasting into a higher-frequency band, for which neither transmitters nor receivers were available. Pent-up wartime demand for new AM receivers and sending equipment, plus RCA's concentration on black-and-white television sets for home use,

had put production of FM technology on the back burner. During this transitional period, FM stations already on the air had obtained temporary permission to operate on the lower band, in order to serve the "interest, convenience and necessity" of owners of equipment already in use. "Simulcasting" of AM programs by FM stations proved to be both felicitous and inexpensive for station owners, who no longer needed separate temporary transmitters while waiting for the completion of new facilities.

The initial breakthrough of FM-receiver manufacture in 1949, with 1.5 million sets produced, failed to meet the demand stimulated by new interest in high fidelity for the home. At least 7.5 million FM sets were in use by early 1951, but the shortage persisted. Commercial FM broadcasting appeared to stabilize at around 700 stations, few of them expected to survive the next five years, when 30 million television receivers would lure audiences away from sound-only listening.

Those daytime FM operations that shared in a \$1.5-million advertising gross in 1950 made their profits from investments in Transit Radio, which carried music and advertising on local transportation; Storecast, which beamed recorded music and advertising into supermarkets and large stores; and Muzak, or Functional Radio, which provided background music for factories, restaurants, hotels, and offices.

During radio's adolescence, advertisers had pushed their agencies to buy time on the air. Now, major advertisers were again doing the same on television. NBC-TV had become the largest single advertising medium in the country, grossing \$126 million for time charges and programs, more than *Life*, the most successful print publication, which did an annual business of \$94 million in space and production charges.

With only 108 stations offering time, every evening segment on the four television networks was sold before the 1951-52 season opened, and the chains had had the opportunity to select only those sponsors who were willing to pay for high-quality programing. Because network radio was the only place in broadcasting left for sponsors who could not find a place on the picture tube, vigorous competition to sell them time enforced drastic cuts in talent and production fees and major discounts in time rates, which hastened the death of a medium that offered only the same face as in the past. Rather than provide adequate replacements for the Jack Benny, Bob Hope, Edgar Bergen-Charlie McCarthy, Amos 'n' Andy, and Fibber McGee and Molly shows, the networks simply reduced their asking prices. There was a common feeling that network radio could no longer better what local stations were offering—certainly not the news and music that made them profitable. Wire services brought them news from around the world, and the successful introduction of LPs and 45s made all kinds of music available to even the lowliest 250-watter and its disk jockeys.

As troubled by the direction toward which America's record spinners appeared to be heading for the 1950s as ASCAP was by BMI's growing

share of the music, Tin Pan Alley's old-guard publishers found a ray of hope in television's need for better-quality music, now that its programming was acquiring more maturity. Disk-jockey broadcasts on 50,000-watt stations around the country, with their ceaseless repetition of a small number of new songs, had effectively destroyed the value of those late-night dance-band remote plugs that had once made songs into hits. With more network affiliates running disk-jockey shows and fewer picking up broadcasts from remote spots, ASCAP overhauled its after-11:00 P.M. payment schedule and reduced the value of a remote-band plug. Publishers now received ten cents per song per station, or between \$2.40 and \$4.50 for a twenty-four-to-forty-five-station network, pittance that could not possibly offset the cost of contacting bandleaders, let alone such payola as cut-ins.

The music business began to look to television for its salvation when comics who had started in vaudeville and were transforming that medium into the most popular video fare began digging into the past for the songs and the special material they had once offered at the Palace. Television producers, loath to use songs that had not already proven their audience appeal, were setting the most lavish production numbers on the high-rated Milton Berle, Perry Como, and Dinah Shore shows to great standards of the past. By the winter of 1950-51, all but twenty-three of the Music Publishers Contact Employees 550 members were gainfully employed at their craft. Almost overnight a television plug had become worth ten times a radio shot. The days of no deals, no returns on standards songs disappeared, and salesmen were given a free hand in arranging special discounts, depending on the size of an order. It still cost a few cents to print a piece of popular music, and the highest profits came from the fifty- to sixty-cent standards, even with the higher royalties that went to production writers. The old music being featured on television became the bread and butter of Tin Pan Alley. Except for "The Tennessee Waltz," few of the new popular hits were selling as they might have in the old days. "They Try to Tell Us We're Too Young," second only to Acuff-Rose's success, had trouble getting over the half-million mark. It was not that the retail outlets were not there. During the past ten years, there had been a 418 percent increase in music sales, to \$337 million for 1948, and the number of stores carrying printed music and phonograph records had doubled, according to the Census Bureau, even if they concentrated on the latter. California, New York, Illinois, Pennsylvania, and Michigan, areas with the most television coverage, led in music sales, accounting for almost half.

Warner Brothers, Max Dreyfus, the Big Three, and Paramount Music used television exploitation to create new markets. Soon they were doing a \$2.5-million gross business in a field that formerly had been monopolized by the standard classical music houses. With knowledgeable and accommodating field salesmen, and imaginative advertising in magazines directed at public-school educators, they changed the song material used in elemen-

tary schools from the Bach, Beethoven, and Brahms that Victor's Red Seal division had done so much to make acceptable, to the standard songs they were plugging on television, published in choral, band, and symphonic arrangements suitable for five-to-eighteen-year-olds.

Rumors of sheet-music price fixing by jobbers sparked the first government investigation into printed-music pricing in twenty years, bringing back memories of the Max Meyer-Music Dealers Service lawsuit of the early 1930s. Herman Starr and G. Schirmer had refused to do business with Jenkins Music, of Kansas City, a major jobber-retailer, because of its discounting policy. Information about similar discriminatory practices and accounts of price cutting by other jobbers followed the first indication of the Justice Department's interest. Within a few months, the focus of government attention appeared to have shifted to the connection between the film industry and the music business. The books of Paramount-Famous Music, the Big Three, and Shapiro, Bernstein, connected with Columbia Pictures and Decca Records in Mood Music, were examined by federal investigators without any clue as to the purpose of the inspections. Concurrently, the antitrust action that had been filed in March 1950 by E. H. "Buddy" Morris against Warner, Loew's, 20th Century-Fox, Paramount, Universal, and fourteen publishing companies was winding toward final settlement, which came in September 1952. Morris had asked for triple damages, amounting to six million dollars and an order restraining the defendants from monopolizing the publication of movie music and songs and conspiring to fix prices and limit competition. The complaint pointed out that by such conspiracy the defendants "succeeded in establishing control of at least 60% of all compositions" used in motion pictures. That control became possible once the five major film studios took over their "captive affiliates": Witmark, Remick, Harms, New World, and Atlas, owned entirely by Warner; Robbins, Feist, Miller, in which Loew's had a 51 percent interest, 20th Century-Fox holding the remainder; Harry Warren Music, 51 percent owned by Loew's, the balance by Warren; Shubert and Advanced Music, of which Warner owned half; Fox's Movietone Music, and some others.

Morris's out-of-court victory changed the process about which he had complained. The new arrangement, which ran for five years, enabled any publisher to bid for publication rights during a sixty-day period, provided the writer and producer had not already come to a publishing understanding. Under the old practice a studio preemptorily assigned all rights to one of its own affiliates. Few writers still had exclusive pacts with film companies, preferring to free-lance, but the settlement opened up the situation for small independent firms like Morris's, which had traditionally been Hollywood's victims.

The five major studios had already written off the importance of a music-publishing apparatus as a prime vehicle for building up box-office receipts. A Peatman survey of the most performed songs in the 1942-52 period

suggested a serious decline in the number of hit songs coming from films and the Broadway stage. Their place among top songs of the year had dropped from 80 percent of them in 1942 and 1943 to 70 percent the following year, and then to an average of 40 percent for the succeeding seven years. Tin Pan Alley blamed songwriters for this or attributed it to the changing whims of producers and directors. A song no longer was spotted several times in a feature movie, and at best received only a single full chorus treatment, hardly enough to boost it into a hit. Audiences no longer walked into screen theaters whistling the song that had brought them to the box office.

With the first copyright term of many compositions nearing expiration and the SPA fighting to overturn the traditional renewal process, in June 1951 Warner dickered for the sale of its music-holding operation, MPHC. The move was part of a program to raise cash in order to purchase company stock in the open market and maintain slipping per-share profits. Between three and a half and four million was being asked, but Warner insisted on retaining first-refusal synchronization rights to the entire catalogue. Among the bidders was the Allegheny Corporation, with which it was rumored Herman Starr had struck a secret understanding. When he found that most songwriters in the MPHC stable were ready to turn over their second-term renewal rights without protest, he advised his superiors to take the company off the market. With the final divorce of its screen theaters imminent, Loew's simplified the structure of its subsidiary music holdings by buying out all but one of the four remaining original partners in Robbins Music, paying a half-million dollars for their combined 17 percent share. Five years earlier, Loew's had paid Jack Robbins \$673,000, so that he could pay all federal and New York State taxes and still retain half a million dollars for his 26 percent interest in the entire Robbins, Feist & Miller catalogue. At the time, Tin Pan Alley estimated the worth at between eight and ten million dollars, and worried about the deflationary aspects of the transaction. Clearly, it had not affected the growing value of music companies.

The doubling of home record players between 1945 and 1950, half of the more than 25 million capable of playing all three speeds, was the final blow in toppling the old-time professional manager and his minions from their place in the exploitation process and in elevating A & R men to the seats of power. At their right hands were the most influential disk jockeys, who now were the first to be "romanced" by publishers. Once the deejays pushed a record and it was moving up on the charts, the publishers resorted to the second line of plugging, the live radio and television performers. Though they ruled the roost now, the A & R men had no better record of success than those whom they had displaced. In the first half of 1952, the six major manufacturers—Columbia, Capitol, Mercury, RCA Victor, Decca, MGM—released 788 recordings of copyrighted music, only 66 of which appeared on *Billboard's* best-seller charts. Mitch Miller, who chose all music for the

current industry leader, Columbia, was the most successful, with 12 percent of all hits. Ten publishers supplied 44 percent of all combined pop, country-and-western and rhythm-and-blues recorded material.

Because human instinct tends to seek out winners, these publishers scrambled for the attention and favor of the most successful A & R men, giving them the first look and a promise of exclusive first-release rights to all promising material. Often months passed before the promised disk came out, and then it might be by a slipping artist or an untried one. The day had passed when a top-rated songwriter demonstrated a song for the professional manager and walked out with an advance of \$1,000 or better because everybody was certain that it was a hit. Only major houses, with solid cash reserves, were now in a position to hand out \$200 advances on a large scale, hoping that the law of averages would work in their favor. Smaller firms had to be content with the leavings, and took new songs on a consignment basis, to peddle to the record companies before a modest advance was made. More sophisticated young writers went directly to their favorite A & R men, and when their material was taken, it often was on condition that it go to a publisher of the A & R man's choice, chosen either because of personal friendship or by the traditional under-the-desk arrangement that had been typical of the business since the 1920s and probably before.

Veteran music men chafed under a system that relegated them to the role of money men, responsible only for funding the new exploitation chain. Because their contracts with the MPCE union precluded them from employing record-promotion men and they needed songpluggers to work the television performers, they paid for promotion under the table or through the recording artist. After Martin Block and other disk jockeys had become so important that they needed personal treatment, independent promotion men emerged, often former press agents, such as Barney McDevitt, Mel Adams, Henry Okun, Jack Egan, and Jim McCarthy, who made certain that disks sent by artist or publisher would not be lost in the shuffle, but would get on the air.

The most successful graduate from the record-promotion men's ranks, Howard S. "Howie" Richmond, of the Richmond and Robbins music families, had worked for recording artists before he began to promote recordings of material he himself published. He was already the personal friend of a number of key deejays and maintained steady correspondence and telephone contact to keep them aware of his latest assignments. He had broken into the publishing business when he took a test pressing of Phil Harris's RCA Victor recording of "The Thing" to BMI and got enough expense and traveling money to put it on the charts in major cities. This almost instantaneous success as a publisher was not a unique occurrence, and would not have been possible without his disk-jockey friends. Though it took a few years, by 1953 such veterans as Starr were persuaded that the record-promotion man was, for purposes of boosting a recorded tune, superior to

the old-fashioned song plugger. "If you have a tune the public wants it soon shows up," he told *Variety* in September 1953. "If it's not in the groove, nothing will help, no matter how you knock yourself out and no matter how many plugs you land." Like Starr's, most major old-line music firms had already reduced their professional departments to a minimum and closed them down in the cities where vaudeville circuits once headquartered. Many of the old professional managers were now operating their own music companies, affiliated with BMI, or had left the business entirely.

The guaranteed-advance contract, keyed to securing recordings and local performances, that BMI continued to offer publishers had been regarded by ASCAP and Starr as a minor problem so long as the performances of BMI music were negligible and its showing on trade-paper charts insignificant. During its early years, BMI contracts offered to publishers with substantial catalogues were handled by Sydney Kaye or Merritt Tompkins, the company's first general manager and a veteran of the standard classical-music world. Several other employees handled arrangements with smaller firms dealing chiefly in recorded copyrights, and were assigned to the task on the basis of their particular expertise. Gradually, all primary responsibility for most new contracts with popular-music publishers was shifted to a young house counsel, Robert J. Burton, who joined BMI in January 1941. Born in 1914 in New York, he had received his degree from Columbia Law School in 1937 and then joined the law firm headed by Arthur Garfield Hays, who had been a lawyer, without compensation, for the SPA in its formative years. In 1943, Burton was named director of publisher relations for BMI, and the following year an assistant secretary to the board of directors.

No set criteria had yet been developed by BMI for handling advances of guarantees to new affiliates. Decisions were made by Burton on the basis of an applicant's past experience in the music business or his access to promising non-ASCAP songwriters. Most contracts were for five years, renewable only if BMI agreed, and all carried a sixty-day cancellation clause. Conservatism was enforced by the BMI board, a product of its anticipation that BMI might be mothballed at any moment, its activities terminated by a majority of its stockholders.

One of Carl Haverlin's initial acts as BMI president was to put Burton in charge of repertory accumulation, as vice-president for publisher relations. With Haverlin's full confidence, Burton immediately placed more emphasis in his negotiations on productivity than on activity, or number of copyrights. Failing to best ASCAP music men at their own game, he soon abandoned his unproductive strategy of paying forty-eight dollars for a network performance. Soon after *Variety* shifted from the Peatman survey, with its synthetic popularity based on prime-time network air play, to a full-page disk-jockey popularity chart, Burton sought out music men with access to the key record-spinners who worked on large stations in major

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cities. Their request programs more truly reflected changing public response to new music, as well as the growing importance of the BMI catalogue he was building. Small publishers were given contracts that focused on disk-jockey performances. They received as much as \$40,000 a year, larger ones up to and over \$100,000.

Following the annual stockholders' meeting in October 1952, Burton was put in charge of BMI's new combined publisher and writer activities, and the former director of publisher relations, Robert B. Sour, was elected a vice-president. A Princeton graduate, whose father had been a friend of Kaye's, he wrote popular music as a hobby while working on Wall Street, turning professional in the late 1920s, when he wrote the American words for "Body and Soul." His application for membership in ASCAP was rejected, despite seconding by Johnny Green, the composer of "Body and Soul." During the Depression, Sour was on the staff of the Federal Works Theater, which he left to join BMI in February 1940 as lyric editor and staff lyricist. BMI's first published song, "We Could Make Such Beautiful Music," was a Sour collaboration, as were "Practice Makes Perfect," "Walkin' By the River," and "I See a Million People," other early BMI hits. As director of writer relations in the late 1940s, Sour was an active proponent of a writer payment plan and was put in charge of the program when it was adopted in 1949. His assistant in the writer department was the veteran song plugger George Marlo, former president of the MPCE and a storied character in the music business.

With a larger and more able staff, which gave him opportunity to expand his activities, Burton took on a much more active role in the operation of BMI Canada, the subsidiary formed in conjunction with the Canadian Association of Broadcasters during the 1941 music war. He was made its general manager in 1947. His early education in France and his fluency in the language worked to BMI's advantage. Under his direction, BMI Canada had a roster of 120 affiliated composers and 27 publishers, and a catalogue of 5,000 works, one third of them in French.

BMI's own writer-affiliation program was similarly productive, with 115 composers and lyricists under contract in the winter of 1952. Not all affiliated writers at that time had yearly guarantees, but those who did received amounts varying between \$250 and \$3,000. During the past year, BMI contract writers had amassed 2.5 million performances, but their share of royalties was not yet in proportion to that paid publishers. The following year, for example, BMI paid only \$72,325 to its writers, but \$3.4 million to the publishers. There were, in addition, many songwriters who were under contract to BMI publishers on either an exclusive or a song-to-song basis. They received their performance fees, if at all, directly from the publishers, who racked up the majority of BMI performances and were responsible for a reported four to one performance advantage over ASCAP on independent stations. There, programing was predominantly recorded

music and regular news summaries, the latter usually taken from the wire-service ticker and read immediately. An increased portion of the music they played came from the independent record companies, whose copyright-owning subsidiaries affiliated with BMI as quickly as possible, for the four-cent-a-station royalty. The policy of paying for recorded air play, which was instituted in 1940, reaped dividends its designer, Sydney Kaye, had never envisioned. After analyzing a single *BMI Record Bulletin*, which was mailed each week to all stations, *Variety* found that 175 out of the 275 records listed were products of independent labels, and half of all titles were published by the desk-drawer copyright arms, created specifically to control the music they used as well as to collect performance money from BMI. Most independent record companies concentrated on the rhythm-and-blues field, a market that had recently shown renewed activity.

In many cases, part of a BMI publisher's advance or guarantee, which could be as much as \$100,000, went to prime the independents' pumps. Publishers used it to wheel and deal with the smaller labels. They paid for recording sessions, accepted reduced mechanical royalties, and picked up the tab for exploitation by disk-jockey or local-distributor payola, all with the expectation that the more local performances BMI logged, the surer one could be that his annual guarantee would be renewed.

When, for the first time since 1941, BMI songs captured the first five places on "Your Hit Parade," in March 1952, many young ASCAP publishers and songwriters, who felt they were not being paid what they ought to get even under the revised distribution scheme, took a new look at association with BMI. A number of publishers who had started out with ASCAP had been successful in the early 1940s had already opened BMI affiliates. Others followed, and by 1952 it was difficult to name a younger ASCAP publisher board member who had no sort of affiliation with the rival organization. One aspirant to the ASCAP directorate, Buddy Morris, had to purge himself of all connections with BMI in order to get on the board. Morris had been one of the first ASCAP music men to join BMI, having come into possession of one of its earliest country hits, "Pistol Packin' Mama," in 1943.

Under pressure from dissidents, ASCAP, in 1950, began expanded spot-check logging of independent stations. Its philosophy had always been to "follow the dollar," and because the vast proportion of its revenue came from major networks, the emphasis had remained on their programming. In early 1953, John Peatman, of the Audience Research Institute, was brought in to take charge of the society's logging operation. He added 170 local stations to the year-round logging of the networks made by the society from a complete recapitulation of all music played from sign-on to sign-off, provided by the chains. Performance credits of one point for each popular song were multiplied by the number of stations carrying each performance. Seventy local stations, scattered around the country and representing about

100,000 hours of programing each quarter, were logged regularly on a spot-check basis. The remaining hundred stations, from ten regional areas, were logged on a rotating basis for two and a half hours a day. Every performance on the seventy fixed stations received a full performance credit, and a song logged on one of the rotating sample received seven and a half credits. Television was logged on a similar principle—the four networks on a census basis, and three selected local stations each day, with a performance receiving three points.

The attraction of BMI's logging system, based entirely on broadcast performances, even to publisher members of ASCAP, was brought home in March 1953 with the consummation of a contract between the society's seventeenth-highest-rated music house—Santly, Joy—and BMI, in connection with a new BMI-affiliated publishing company. Joseph Csida, former editor of *Billboard* and once head of A & R for RCA Victor, was a principal in the new firm, Trinity Music, with George Joy and his son Eddie. Their new contract represented the latest thinking of BMI and Robert Burton on the matter of plugs: that forty performances on large stations, scattered around the country, represented more value than a network shot over forty affiliates. As Abel Green pointed out in *Variety*, BMI had come to this conclusion because "cut-ins, payola, and other angles could put some tune up in fallacious high brackets via a series of blanket network performances and it would still not achieve the desired saturation that comes from the multiplicity of local originations."

Trinity received a "unique incentive advance" of \$55,000 for the first year, to be paid off at premium performance rates, higher than BMI's basic four- and six-cent fees. The second year's advance would be exactly what had been earned in the first; the third, that earned in the second; and so on for five years. A series of performance plateaus was established, and as each was reached, the premium air-play rate dropped to a lower one.

The Santly, Joy deal put a new spotlight on BMI's logging operation, which except for rates had not changed since it was first put in place in 1940. One tenth of all stations in the United States, about 325, representing a cross-section of every type of broadcasting facility, were logged each quarter. The networks were logged, as by ASCAP, on a census basis, using the same material furnished by the chains to the society. Every network performance was credited with a minimum of seventy-five points, regardless of how many stations were hooked up, unless the number was higher, in which case an additional credit was added for each. Television logging covered all of the current stations every quarter, and performance payments were made on the same four- and six-cent basis as on radio. Because BMI logging picked up 150,000 performances on average for a hit song, an aggressive firm like Hill & Range could pile up two million performances in a year, producing a quarter-million-dollar payment from BMI. Early in 1953, ASCAP asked to examine the logs sent to BMI by local stations,

which listed every selection used regardless of licensing affiliation. After being refused, the society adopted the position that disk jockeys on local stations were directed by their employers to favor BMI music, or did so because BMI was "owned by the industry," having advertised for years, on all promotional material, "If it's BMI, it's your's."

BMI's consistently flamboyant broadcast customer-relations program, directed by Haverlin, was having a marked effect on ASCAP's controlling publisher group, which made belated efforts to catch up with the rival's gains. It was feared that such projects as the *TV Sketch Book*, containing short skits built around "Pin-Up Hits," informational material prepared expressly for disk jockeys, and a growing presence in the modern American concert-music world would have a serious effect in 1959 when contracts with radio and television expired.

However, a new fire was breaking out, one that the old guard would never extinguish and that changed the entire course of American music. The large ASCAP music houses had finally succeeded in breaking through the A & R men's "iron curtain," and were going directly to radio and TV live plugs to demonstrate the latest ballad or imported novelty song they had found. According to the Peatman survey of the most-played songs on radio and television in the year ending June 31, 1953, the new medium was crowding out network radio as a publisher's most effective plugging medium. The survey's top song, "I Believe," an ASCAP song, received 15,738 performance points on radio, but 18,601 on television. Radio was no longer responsible for the largest sheet sales. Thirteen of the year's best sellers did not appear among the thirty-five most-played songs. The steady decline in music sales had not abated. The day of the multimillion seller faded with the amazing success of "The Tennessee Waltz." A publisher had to be content with a half-million sale at best, after months of plugging on radio and television, and his \$20,000 from a million-record seller was shared with songwriters.

Both small and large music companies made drastic reductions in overhead and operating expenses. The retail price for a new popular song was increased from forty to fifty cents, long the regular price for a movie or production song, and from twenty-three to twenty-five cents for jobbers and thirty-five cents for dealers. Most publishers adopted a "no return" policy on new songs until they showed some activity on the trade-paper charts. Howard Richmond's firms issued about 100 songs in 1953, six of which attained a "return" privilege. The other ninety-four sold an average of 200 copies. Publishers saved money on arranging and engraving dance-band arrangements of current hits by buying the completed product from their overseas sub-publishers. The sale of orchestrations was still big business in England and Continental Europe, where publishers continued to concentrate on live performances by dance orchestras to promote their music. With that source of once-important income almost gone in the United States, Ameri-

can firms sold off foreign rights with the stipulation that they could import orchestrations at 60 percent off retail price. Smaller firms reduced overhead by lowering their sales and assigning selling rights to agents on a 10 to 15 percent basis, leaving themselves free to get new records and radio performances, which were becoming their chief source of income.

The first accurate estimate of printed music sales in the United States was commissioned in 1952 by the Music Publishers Association, to be submitted to a Congressional committee in connection with a requested reduction of postal rates. Sixteen percent of the \$30 million income from printed music sales, an estimated 15 percent of the record industry's total annual gross, came from popular sheet music. The remaining \$25.2 million was from standard classical, religious, and educational music. Twenty-one percent of all popular sheet sales were made in retail stores, the balance in syndicate stores or from racks and by mail. The five or six major firms operated on a fairly stable basis, led by the MPHC, with its pillow of \$1.2 million in ASCAP royalties, supplemented by an important share of the new millions it, Chappell, the Big Three, and Paramount reaped from educational folios, band instruction books, and choral and solo arrangements of their great standard songs.

At the major record companies, only Columbia's Mitch Miller still had complete control of pop music—what was cut, who recorded it, and when it was released. At most other companies authority was diffused, and many executives had the same uncertain perception of the future as Herman Starr and his peers. They were content to satisfy the demands of the "typical teen-age record buyer," a female who spent as much as fifteen dollars a week to buy every new release by Perry, Bing, Vaughan, Dinah, Eddie, Frankie, Nat.

Under the noses of the established music and record businesses, during 1953, \$15 million worth of rhythm-and-blues records was sold, equal to the industry's entire sales fifteen years earlier. It was the product of about seventy-five manufacturers, among them RCA Victor, Columbia, Decca, and Mercury, who covered the field with almost exact musical duplications of the real thing. Any legal barrier to the practice was removed by the courts in 1951 with a decision in the "Little Bird Told Me" case. The initial recorded version of the Harvey Brooks song was released in 1947 by "sepia" star Paula Watson on the Supreme label, and was covered by the white chanteuse Evelyn Knight on a Decca arrangement, copied Watson's phrasing exactly, and confused even musical experts. Supreme sued, but lost in a verdict that declared musical arrangements were not copyrighted property and therefore not subject to the law's protection.

For the original source, one looked to the products of the R & B independents—Atlantic, Savoy, Peacock, Duke, Alladin, Chess-Checker, Imperial, and Herald—whose best-selling releases featured the Earl Bostic band, the Dominos, Tiny Bradshaw, the Orioles, Ruth Brown, Dinah Washing-

ton, and every new artist who broke out on the national charts. Jukebox operators in locations that attracted a white teen-age trade were the first to notice their growing appetite for black R & B, and then local record retailers caught on, though at first they had difficulty in keeping up with the demand, because most companies went into that business for an all-black market only. Hitherto, only white pop-music disk jockeys, in the north responded to this latest expression of white-youth taste, by spotting R & B disks between those by white radio and television plugs and the cover versions of R & B hits. In the South, where black radio was a growing business, the white audience that eavesdropped represented between 20 and 30 percent of all listeners.

The tremendous potential white ticket-buying audience for live black rhythm-and-blues shows, which for many years had been confined to segregated theaters and night clubs, was first made known to white show business by a Cleveland disk jockey of Welsh-Lithuanian descent. A significant factor in his appeal was a hoarse voice, aggravated by complications following an operation for throat polyps and black-sounding enough to fool most listeners. After years as a classical-music and record-request disk jockey, in 1951 Alan Freed switched to rhythm and blues on the insistence of a new sponsor, a Cleveland record-store operator into whose shop young whites crowded to buy the latest R & B releases.

Freed and his associates in a new dance promotion scheme attracted national attention and almost spent some time in the city jail after a near-riot in connection with an R & B dance in March 1952, whose featured performers included some of the most popular and talented R & B artists in America—Charles Brown, the Dominos with Clyde McPhatter, the Orioles, the Moonglows, and the orchestras of Tiny Grimes and Jimmy Forrest. Eighteen thousand tickets had been sold to fans of Freed's "Rock 'n' Roll House Party" radio show, but the Cleveland Arena held only 10,000. Charges against Freed and his partners were dropped, but the national publicity attracted an audience to his radio show that grew larger and more devoted. Freed also brought this audience the genuine musical article in sold-out dances featuring the newest black stars, and packed regional dance halls with audiences that were never less than one third white.

This growing market was one reason for the 25 percent drop in the output of the six major manufacturers in 1953 to 2,190 popular releases, during a year when 59,371 musical compositions were copyrighted. Ninety popular records appeared on *Billboard's* best-seller charts in 1953, but only seventy-two were released by RCA Victor, Capitol, Mercury, Columbia, MGM, and Decca, in that order. The balance came from well-financed new independents, reach to compete with the leaders. Because of smaller output, the majors' success rate rose from 1952's 2.3 to 3.3, or one hit out of every thirty releases.

Network television's increasing emphasis on those familiar standing songs

that festooned the ASCAP catalogue persuaded the society's ruling hierarchy that there would be no complications in negotiating with the chains for a new contract, holding to the same figures for another four years, to the end of 1957. All members were asked for and assigned their video rights to run concurrently. Most of the rank-and-file membership took little notice of a situation that potentially was crucial to their future financial well-being. The per-program litigants remained adamant in their position not to accept the proffered new license, expecting Judge Goddard to rule in their favor once ASCAP's motion to amend the 1950 ASCAP consent decree was finally disposed of and pretrial examinations were begun.

To speed matters up and end hostilities between the society and the broadcasters, in the person of BMI, and to disengage itself from involvement in any private antitrust action against its rival, ASCAP, suddenly and surprisingly, withdrew the motions supported by the Harbach affidavit. However, the formal request for a Justice Department investigation of BMI, filed in March 1952, remained in effect.

The stratagem had little impact on the networks or on the independent plaintiff stations, whose number had increased to seventy-nine. The networks met with ASCAP and argued that the original television licenses had been drawn up when the medium was in an undeveloped state and broadcasters were unaware that the figures demanded could represent a \$10-million payment. They suggested a substantial reduction in the new agreement. By the end of the year, there was a possibility that the networks would again lock out ASCAP music and fill in the gap with the BMI repertory, or else would petition Goddard for a new, lower, rate, while continuing to use the society's music. In most foreign countries, music fees were higher than those in America, which shook the chains' resolve to leave the decision to a judge. Another possibility the networks found unacceptable was a proposal to change the base on which ASCAP fees were computed—to net income, instead of gross receipts. This would mean that financial records might become available to the competition, as well as to the affiliates, who, without their knowledge, were bearing most of the networks' ASCAP television load.

The new ASCAP president, Stanley Adams, found the same internal problems when he took office in April 1953. The young Turks complained, Hans Lengsfelder complained, and so did those songwriters whose music was used chiefly by disk jockeys on large independent stations, usually about the foundation stone of ASCAP distribution—the logging operation, with all its alleged inequities. The continuing attraction of BMI's logging practices, its gains in the concert-music field, and its larger share of the trade-press charts made it difficult for Adams to provide a form of pension for veteran writers by basing their payments on the length of their association with ASCAP. At the autumn membership meeting, he predicted that, with more money coming in each month, income in excess of \$18 million

was expected for 1953. Yet ASCAP had relaxed admission standards in order to compete with BMI for promising new talent, and 800 new members had joined since the beginning of the year. Therefore, with 3,200 authors and composers now in the society, there would be no meaningful increase in the quarterly checks.

The autocratic attitude toward the general membership of the ruling bloc of publisher-directors, and of those writer-directors and officers who owed their positions to them, was exemplified by Herman Starr's remarks at the meeting. Stricken by the untimely death of former president Fred Ahlert, he insisted on the award of a \$25,000 pension to Ahlert's widow. The board approved this without any public discussion, contrary to ASCAP's bylaws.

Unable to reform the society from within and frustrated, not only by BMI's seeming control of what was played on the air, but also by doubts about their own ability to write what the public appeared to want, many ASCAP members became eager recruits to the ranks of the Songwriters of America. The cause was just, and they would share in the bonanza of \$150 million that lay waiting for a decision by a jury of men like them, who had had enough of BMI's "garbage" and wanted the return of the kind of music they had written.

The television negotiations and the hearing before Goddard moved to the sidelines on November 8, 1953, when a group of thirty-three ASCAP songwriters filed a \$150-million civil antitrust suit on behalf of 3,000 composers and authors, charging a radio-television-recording-company conspiracy, centered upon BMI. NBC, CBS, ABC, and Mutual, RCA Victor and Columbia Records, the NARTB, and a number of other corporations and individuals, including BMI's directors and executives, were charged with conspiring "to dominate and control the market for the use and exploitation of musical compositions." The actual complainants included only one of those involved in the 1941 antitrust action, Paul Cunningham. ASCAP president Adams, his associate in that action and in the Songwriters of America, was absent from the complaint. Other plaintiffs included Arthur Schwartz, the leading complainant, Ira Gershwin, Dorothy Fields, Virgil Thomson, Samuel Barber, Alan Lerner, the current SPA president, Charles Tobias, Milton Ager, and Edgar Leslie.

The press conference in the Waldorf-Astoria Hotel on November 9, at which *Schwartz v. BMI* was made public, included an explanation of the matter by John Schulman, attorney for the plaintiffs and counsel to SPA. The complainants had been united by a common desire to destroy BMI's giant subsidy scheme, he told the assembled press. It was financed by the broadcasting industry and pitted 1,300 BMI-affiliated publishers against a mere 600 ASCAP houses, who were not financed by anything but private capital, in a battle for air play, to the detriment and financial damage of ASCAP's song-writing membership.

A few weeks later, *Variety* reported a press interview in which Schwartz argued that broadcasters were in a position to "turn the plugs on and off at will . . . it's no longer a case where a song can fail or succeed on its merits, because the public is denied the opportunity to judge for itself . . . when a writer comes to an ASCAP publisher, who also has a BMI affiliate, he'll suggest that 'if you collaborate with a BMI writer we'll handle it via our BMI firm,' which can only prove indubitably that the BMI affiliation is more positively lucrative [due] to the subsidies from the number of BMI plugs over BMI-affiliated stations and networks."

Starr saw greater worth in ASCAP's repertory than in BMI's "flash-in-the-pan" jukebox hits. "Quality," he said, "is what lasts and what pays off. At the moment BMI is hot . . . but the music business is everything, and dominantly it's ASCAP income. This is the prime source of income and not the byproduct as when Nathan Burkan helped found the Society."

With more experience in the music business than Starr, Max Dreyfus was content to leave everything to "the brain trusters around the Brill Building and in Lindy's," the gathering places of those who supported the Songwriters of America in their war on the new music business.

The Schwartz suit came as no surprise to BMI, but did stun its executives and board because the long-pending issue was finally joined in the uncertain arena of trial by jury. Calling the complaint a "rehash of charges ASCAP has been making for years, and has never been able to substantiate," Carl Haverlin pledged a fight to victory. Shortly before Thanksgiving Day, with Robert Burton and others, he traveled to Nashville, the first visit to Tin Pan Valley, USA that most of them had ever made. During radio station WSM's second annual Country and Western Disk Jockeys Festival week, Burton presented Citation of Achievement certificates to the writers and publishers of twenty-four outstanding country-music songs of 1953. This presentation was without the big-city hotel glitter of BMI's second annual Popular Music Awards black-tie dinner just before Christmas. Five of the fifteen songs honored there came out of Nashville or were influenced by country music.

The day before the dinner, BMI won its first victory in *Schwartz v. BMI*: the right to examine ten of the thirty-three plaintiffs in pretrial proceedings. The ten were directed by the court to answer specific questions put by BMI counsel, seeking to link ASCAP to them and the action.

Abel Green's annual review of 1953's significant industry events emphasized that the publishers were not involved in the songwriters' suit, but he hinted that they might be pleased if control of the business was taken out of the hands of the record manufacturers and restored to the publishers. A veteran of Tin Pan Alley told Green: "Everybody but the music publisher, who used to be pretty good at that, nowadays picks songs. And don't tell me that in the final analysis the public really picks 'em. We . . . used to have a pretty good concept of quality and values in songs that we pub-

lished. . . . Today, we don't dare publish a song until some artist perhaps likes it, or when the whim of an A&R genius decides it should be done. . . . A record should be a by-product of publishing; not the sparkplug of songwriting and publishing.''

ASCAP versus BMI

The time had long since passed when entertainers in search of new material they could live with during a year on the vaudeville circuit beat their way to the concentration of music houses on West 28th Street, then on West 46th Street, and now in the Brill Building and 1650 Broadway, around the corner. The hegira had been in eternal search of the centers of song exploitation, which in the mid-1950s were New York's television and radio networks. It was no longer necessary to have large offices with rows of piano rooms where songwriters could work or demonstrate the newest songs. The trade in free professional copies was mostly a thing of the past. New songs now were taken directly to the A & R men, who had taken the place of the music publisher and his general manager in determining what would be recorded and promoted. Next in importance to the record-company executives were the disk jockeys and radio stations, which had become the primary conduits of exposure to the public.

It was radio's use of music, plus that of the fast-growing video medium, that gave music publishers their single largest source of monetary returns. Only Herman Starr, head of Warner Brothers' Music Publishers Holding Corporation, who was secure in the certainty that the combine would continue to receive the largest single annual ASCAP payment (over \$1.5 million), could maintain that sheet music was "still the barometer of music publishing," completely ignoring the collapse of printed sheet-music sales. The MPHHC had extended the operation of its school-band division, published new junior-high-school music textbooks, started a department for the accordion market Lawrence Welk stimulated, stolen a march on others in the growing chord-organ field, and increased its activity in amateur-theatricals production with special editions of Victor Herbert operettas and newly commissioned series for the youth market. The song "Secret Love," from a

Warner movie, sung and recorded by Doris Day, had to wait half a year before concentrated plugging by MPHHC's professional staff pushed it onto the million-sales chart, a period during which only 200,000 printed copies were sold.

"Without ASCAP's performance revenue I couldn't survive," Irving Berlin told *Variety* in October 1954. "Without those quarterly remittances from a performing rights society like ASCAP I would have to close shop and see my 30-year-old organization go down the drain because sheet music and records, and revenues from foreign affiliates, no longer can keep a publisher going."

ASCAP made its quarterly payments for 1953 on the basis of 19 million performances for writers and 16 million for publishers, paying eight cents per air play to the former and twenty-four cents to the latter. Twenty percent of ASCAP's writer royalties was based on performances. Current performances accounted for 55 percent of the publishers' distribution, availability—performances of songs more than two years old—for 30, and seniority for 15. In 1954, writers of an ASCAP hit earned between \$4,000 and \$5,000 from performances and might look forward to an additional \$20,000 over many consecutive years of membership. The publisher of such a song got between \$12,000 and \$15,000 from ASCAP, as well as deferred cumulative-distribution royalties.

At BMI, where all affiliated publishers, but only writers in the company's writer plan, shared in the bulk of distributions, measured by broadcast performances, publishers received six cents for each performance on a network and four cents for those on independent stations. None of the additional factors taken into account by ASCAP were recognized. A song whose performances were mostly those of its recordings earned approximately \$6,000 from BMI, whereas one that enjoyed both live network and recorded air play received more than \$15,000.

Television was taking ever larger bites out of the networks' production budgets and such once-reigning network stars as Amos 'n' Andy, Edgar Bergen and Charlie McCarthy, and Red Skelton worked off their long-term contracts by doubling as record spinners on the thirty-four hours each week devoted to recorded music. Many of the dozen or so nationally syndicated transcribed programs starring "name" personalities as disk jockeys were written so that recordings of the local subscribing station's choice could be interpolated. In New York and on the West Coast, nearly 600 union song pluggers pitched material to network program directors, advertising-agency men, and artists. Television alone remained open to them as the quickest route to a song's success, but it remained one to which only the largest music houses had access, and for which top stars formed their own publishing companies. Without television, and in the face of several dozen new releases each week from the major labels alone, smaller publishers had to rely on the stars of the last live daily radio-network musical program,

cord of August 12 an anti-BMI column written for *Newsday*. It urged that BMI be probed, quoted Crosby, and used some of the material that was being widely distributed by Schwartz, the SPA, and the SOA.

In introducing his bill, Smathers said that BMI had subsidized "hundreds of publishing firms [and] today this musical empire consists of 2,000 such firms." Joining in the colloquy on the Senate floor, Barry Goldwater, acting on information supplied by Hoagy Carmichael, agreed that "the airways of this country have been flooded with bad music since BMI was formed." Synchronized attacks on BMI in the next several days included a column by Oscar Hammerstein in the *New York Herald Tribune* of August 26, 1957, in which he wrote that "once [broadcasters] became owners of songs, they acquired an interest beyond giving the best music to the people. It became important to them to give *their* music to the people.

The high cost of meeting the SPA's constant attacks and forays into legislative circles, mounting legal fees, and steadily increasing performances of its music forced BMI to draw back on its expenses, beginning late in 1957. BMI's radio-broadcaster program clinics, for many years the centerpiece of Carl Haverlin's station-relations program, were suspended. The Chicago and Los Angeles song-plugging branches of the company's music-publishing operation were closed down. Clerical staffs were reduced. Sale of the BMI publishing department, which had shown small or no profit in eighteen years, was considered.

Robert Burton was promoted to the newly created position of vice-president in charge of domestic performing-rights administration. Robert Sour was moved to take charge of writer relations and deal with nearly 4,000 songwriter affiliates. Theodora Zavin, a graduate of the Columbia Law School who had joined the company in 1952, took Sour's place as assistant vice-president in charge of publisher relations.

From the start, BMI had paid distributions on a local- and network-station performance basis. To build up a repertory of music in the ten months before the 1941 music war started, the company had made many fixed-guarantee contracts, ranging from six-figure advances down to \$24,000 and \$12,000 annual guarantees to lesser publishers. After the 1954 crisis, when more performances than expected were logged, arrangements for logging plus 25 percent or 38 percent were made. At the bottom of its publisher roster were about a thousand firms that got the standard four- and six-cent contracts, among them houses that had failed to earn earlier guarantees or had been cut down during regular reappraisals of their activity. With more and more publishers applying for affiliation, more record company-publishing houses in the marketplace each year, and a larger share of hit songs in all fields of music, BMI's problem in 1958 was its success. The difference between income and outgo was shrinking to a dangerous point. Zavin was charged with reversing the situation and correcting inequities. The cost-performance to BMI in 1953 ranged from 47.1 cents, paid to a Hollywood-

Broadway publisher whose contract called for \$30,000, to 4.1 cents, paid to a country-and-western publisher who received \$9,600 that year but had five times more performances.

BMI's guarantee contracts had first come under scrutiny during the Celler hearings, when the renewal, in 1949, of an agreement with Hill & Range Songs, owned by the Aberbach family, was addressed. It had been brought to the committee counsel's attention by plaintiffs in *Schwartz v. BMI*. Jean Aberbach, recognized by the music business as one of the most professionally astute in it, was born in Europe, where he started working in 1926 for publishers in Berlin and Paris and as a representative of the major British music house, Campbell, Connelly. He had also become a member of the Italian music society and enjoyed success as a popular songwriter. At some point during World War II, the Aberbach family came to the United States. Between 1945 and 1948, Jean worked as the American representative of Salabert, of Paris, and was responsible for the success in the United States of its "Symphony," and for Max Dreyfus, of Chappell Music, as West Coast representative, placing Chappell music in feature motion pictures. Both relationships were terminated in 1948 when he joined Hill & Range as a full-time employee to negotiate contracts with country-and-western songwriters to form their own companies and affiliate them with Hill & Range. By means of the affiliated companies, the Aberbachs had built up BMI's leading publisher combine of country-and-western music firms.

Hill & Range had originally been formed in 1945 by four stockholders, brother Julian and father Adolph Aberbach, Milton Blink, and Gerald King, both of Standard Radio Transcription Service. The original catalogue consisted of music already cleared through BMI that had been recorded for and assigned to Standard and then transferred to Hill & Range. By the time of the 1949 renewal, the Aberbachs had formed three ASCAP companies, and it was those that were referred to in a clause in the document that permitted them to operate the firms but did not permit them to exploit songs published through the ASCAP firms. BMI had inserted the restriction at the demand of its directors, who felt that a protective provision would ensure the Aberbachs' best efforts. The contract also called for a \$100,000 annual guarantee, and \$250 for each copyrighted song recorded by any of a number of major labels, up to a maximum of \$75,000 yearly. By 1956, Hill & Range was the seventh-highest-paid BMI publisher affiliate. The "anti-ASCAP" clause, which BMI insisted at the Celler hearings had never been invoked, came under particularly heavy questioning and was used by Schwartz in the charges he made publicly through the press.

In a letter written to the Celler committee on October 18, 1956, Jean Aberbach said that though three ASCAP firms were mentioned during the hearings, only one of them was important. Among other firms they owned in 1956 was Ross Jungnickel, one of the oldest and most respected firms in ASCAP, Reg Connelly, Rosarita Music, and Charles N. Daniels. "As a