Title: Arguments before the Committee on Patents of the House of Representatives, on H. R. 11943, to Amend Title 60, Chapter 3, of the Revised Statutes of the United States Relating to Copyrights

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ARGUMENTS
BEFORE THE
COMMITTEE ON PATENTS
OF THE
HOUSE OF REPRESENTATIVES
ON
H. R. 11943,

TO AMEND TITLE 60, CHAPTER 3, OF THE REVISED STATUTES OF THE UNITED STATES RELATING TO COPYRIGHTS.

MAY 2, 1906.

COMMITTEE ON PATENTS, HOUSE OF REPRESENTATIVES,

FIFTY-NINTH CONGRESS.

FRANK D. CURRIER, New Hampshire, *Chairman*.

SOLOMON R. DRESSER, Pennsylvania.
JOSEPH M. DIXON, Montana.
EDWARD H. HINSHAW, Nebraska.
ROBERT W. BONYNGE, Colorado.
WILLIAM W. CAMPBELL, Ohio.
ANDREW J. BARCHFELD, Pennsylvania.
JOHN C. CHANEY, Indiana.
CHARLES McGAVIN, Illinois.
WILLIAM SULZER, New York.
GEORGE S. LEGARE, South Carolina.
EDWIN Y. WEBB, North Carolina.
ROBERT G. SOUTHALL, Virginia.
JOHN GILL, Jr., Maryland.

Edward A. Barney, *Clerk*.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.

ARGUMENT (CONTINUED) ON H. R. 11943, TO AMEND TITLE 60, CHAPTER 3, OF REVISED STATUTES OF THE UNITED STATES, RELATING TO COPYRIGHTS.

COMMITTEE ON PATENTS,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 3, 1906.

The committee met at 11 o'clock a.m., Hon. Frank D. Currier (chairman) in the chair.

The CHAIRMAN. I have received a telegram regarding the bill now before the committee from John Philip Sousa, which reads as follows:

NORTHAMPTON, MASS., *May 3, 1906*.

The Chairman and Members of Congress,

Committee on Patents, Washington, D.C.:

> Earnestly request that the American composer receives full and adequate protection for the product of his brain; any legislation that does not give him absolute control of that he creates is a return to the usurpation of might and a check on the intellectual development of our country.

JOHN PHILIP SOUSA.

STATEMENT OF MR. A. R. SERVEN, ATTORNEY FOR THE MUSIC PUBLISHERS' ASSOCIATION—Continued.

Mr. SERVEN. Mr. Chairman and gentlemen of the committee, during the last hundred years and more the inventors of the country have been liberally dealt with by the lawmakers, and the result is to-day no country in the world stands higher in everything in the line of mechanical and industrial development than the United States does, and I think you gentlemen who have this matter of patents in charge may justly take pride in yourselves that your committee in the past has done such magnificent work for the wealth, the prosperity, and the reputation, and the ability of the United States at home and abroad. It is conceded, I think, to-day all over the world that the American inventor is the most industrious, the most ingenious, and is the most valuable part of the real wealth of the United States, and that is so because from the very start the laws have been most liberal to protect the American inventor for every bit of the right of property which he could possibly have in anything that is the creation of his brain and his genius.

Now, unfortunately, as I remarked yesterday, the record is not just that way in regard to the musical inventors—if I may use that term—of the United States, and that, and that alone, is the reason why we have to-day almost no names of composers that have a world-wide reputation. Perhaps the sender of the telegram we have just heard read is as well known in other countries as any composer we have; possibly his music has been heard by more people than the music of any other composer of the United States; and yet the musical critics all over the world say America has no national music because she has no national composers. It is true that there is not in existence to-day, perhaps, a single ambitious musical drama that can claim popularity and reputation that may be expected to be handed down as one of the musical classics that had as its composer a citizen of the United States. I am informed by these musical gentlemen that probably the greatest composer we ever had was compelled, in order to surround himself with the necessities which he required to prosecute his musical work, to leave the United States and take up his residence in Europe, where he continued to live, I believe, to his death. I think that Mr. Furness, who is much better informed than I—and possibly in the opinion of the Musical Publishers' Association, anyway, he is the one man of all those in the United States who knows most about these things—would like to tell you something about this composer this morning, because it is a unique part of the national history, and not by any means a creditable one.

Mr. WEBB. Who was it?

Mr. FURNESS. McDowell.

Mr. SERVEN. The reason that the composer has not gone hand in hand with the literary man and with the inventor, who produce their works from the brain, is because thus far our country has not been so ready to concede to them the right of absolute use and control of their works. The inventor has the right to say just who shall produce his invention, just what it shall be sold for, if he wants to limit it as to that, and just who shall buy it, even, if he

wants to go as far as that.

Mr. DRESSER. I doubt that.

The CHAIRMAN. An idea has just occurred to me. I understood you to say yesterday that this movement to enforce the law arose from the fact that men like Mr. Tams had gone into the renting or lending of musical works as a business.

Mr. FURNESS. I would like to treat of that later.

The CHAIRMAN. And that that was the feature which you wished to reach. Suppose this committee should amend this law so as to provide that the renting or lending of these books should be confined to the societies, as we indicated yesterday, that give charitable performances without profit, so that they could only borrow from other similar societies.

Mr. FURNESS. Mr. Chairman, if you will allow me, I would like to speak of that a little later.

The CHAIRMAN. That would entirely wipe out the evil which you suggested to the committee yesterday.

Mr. FURNESS. I doubt whether there is any great number of those people in the United States. You take choirs and churches. Of course churches are not in commercial line of business; they have no means of earning money except by general subscription by members or sale of the seats, and there are a very few cases where the Sunday school wishes to give an entertainment for charity. Those compositions are very inexpensive.

Mr. Tams yesterday tried to make you believe that some of them cost $2 apiece. That is not true. The short cantatas and little operettas run from $4 a hundred to 35 cents apiece, and in very few cases higher than 40 cents. In regard to the renting, we have made provision for that in the new copyright draft that is being framed, the publisher or author or owner of the copyright, whoever he is, should have the right to make such loan, but that it should not be done through what we term the scalper.

The CHAIRMAN. Do you think the publishers would greatly object if the lending of these books was confined to a religious or school society, and the loan was made to a similar society for charitable performances?

Mr. FURNESS. We have in Massachusetts, in Worcester, a musical society that gives an entertainment each spring, called the May Festival.

Mr. SERVEN. Do they charge an admission?

Mr. FURNESS. They charge an admission, and they get the best talent they can procure. They have a few hundred books, and many times they loan them out to other societies for similar entertainments, to societies that are not so poor but what they could afford to buy them. That is one of the great evils that is interfering with the business of the music publishers.

Mr. GILL. Do the singers and musicians give their services free?

Mr. FURNESS. No; they do not. They are well paid. They have Caruso and Sembrich and others of that class.

Mr. SERVEN. There may be a single song or instrumental piece which, of course, can be produced on three or four pages and sold separately; but anything other than something like that in the line of a musical composition is simply valuable to the producer of it because of the fact that it is going to be performed, and it is written especially for that purpose, just as the dramatic compositions are written solely for the purpose of performance, and not for the purpose of their literary merit or as a matter of reading. And for that reason the performance of the extended musical composition is exactly the same as the performance of the dramatic composition.

And, to follow the comparison with the patent, in the same way that the manufacture of the patent is to the right that is granted under the patent so is this performance to the right that is granted under the copyright, and the proceeds of the production are directly proportional to the performance of the production. There is, to be sure, a limited amount of private sales to persons who, for instance, find some one little theme in a composition and like to have it in their homes and occasionally sing it in their homes and possibly somewhere else, but I should think it would be safe to say that not less than 90 per cent of all the sales of oratorios or operettas or cantatas—I am speaking both of religious and secular musical works—are either directly or indirectly solely for the purpose of public performance and connected with public performance.

The CHAIRMAN. But one of these societies that bought the books for the purpose of giving a performance would only loan it to some society near by.

Mr. SERVEN. Unless, as they sometimes do, they would send from Worcester to California for something. It is easy to do those things, and they do it, or have done it.

The CHAIRMAN. There might be persons in a society in California that had friends belonging to a similar society in Massachusetts, and in such cases there might be some correspondence and exchange, but that would rarely happen, I should say.

Mr. SERVEN. They are in correspondence all over the country—the different societies. For instance, there is a Cincinnati society that has an annual festival there, and it carries on a correspondence with similar societies throughout the country.

Mr. WEBB. Your idea is that nobody but a person who buys a piece of copyright music should have a right to perform it publicly?

Mr. SERVEN. That is what is doing to-day. The person that buys it has the right of public performance.

Mr. CHANEY. Carrying out the analogy with patents, what would you say about the right of a man who buys a patent to dispose of it in any way he pleases?

Mr. SERVEN. He buys the patent right.

Mr. CHANEY. He buys a machine, for instance.

Mr. SERVEN. The object that is patented under the patent?

Mr. CHANEY. Yes; take a reaper or a mower or a trashing machine.

Mr. SERVEN. In a case of that kind it seems to me that the owner of the patent, if he likes, can do just as he pleases, and as a matter of fact in very many instances they sell the right to manufacture for certain districts——

Mr. CHANEY. Exclusive of manufacturing, I mean.

Mr. SERVEN. I will follow it from the manufacturer. I remember in my own county—my native county—that a certain variety of fence that was patented, in which case rights were sold in every township, not only to manufacture, but also to sell to other residents of that town the use of that particular kind of fence, whether it was manufactured by the fellow who bought the use, or whether it was manufactured by the fellow who had a license for that town, and nobody else who did not get that from the original patent-right owner, or the licensee under him, could build that fence, and I remember that there were several farmers who liked the fence but who didn't like to pay the price, and they attempted to build it, and they were hauled up in the courts, and my remembrance is that it cost them $1,500 or $1,800 altogether to settle for a little strip of fence that was not worth more than $50.

Mr. DRESSER. I don't believe a court would ordinarily give such a judgment as that in such a case.

Mr. CHANEY. Suppose you limit it as to a machine, without any statement as to his rights further than there is a machine for his use. Now, has he not the right that he can dispose of that machine to anybody he chooses?

Mr. SERVEN. Undoubtedly, because the law provides expressly that thing now.

Mr. CHANEY. Now, then, what difference would there be——

Mr. SERVEN. The law provides expressly the opposite in regard to the public performance of the musical composition, and under that old principle let the buyer look out! He is supposed to know what the law is.

Mr. CHANEY. That being so, ought not a man who buys a musical composition to have the right to do just as he pleases with it, the same as a man who purchases a mowing machine? For instance, I sing some myself. If I buy a piece of music ought I not to have a right to do what I please with it?

Mr. SERVEN. Certainly, if your contract covers that.

Mr. CHANEY. But suppose it does not.

Mr. SERVEN. There must be an express or implied contract as to what he is buying.

Mr. CHANEY. He buys the machine.

Mr. BONYNGE. I do not understand that he has not the same right if he buys a piece of music he can do what he wants to with it; but the other question is in regard to the public performance.

Mr. SERVEN. For profit; yes.

Mr. CHANEY. In the case of a musical composition, he buys it for the purpose of public performance.

Mr. SERVEN. Not necessarily.

Mr. CHANEY. For instance, take a Sunday-school book——

Mr. FURNESS. It does not cover that at all.

The CHAIRMAN. You state that this law refers to the use of these books for a public performance for profit. I do not understand the law that way.

Mr. CHANEY. I do not, either.

The CHAIRMAN. The committee has suggested yesterday and to-day an amendment which would put the law as you state it, and you object to that.

Mr. SERVEN. For this reason: It is proposed to make certain exceptions, to allow privileges to certain beneficiaries under this law, which would really defeat the law, because that sort of a proposition is solely for financial profit, the sort of entertainment that is referred to. Upon investigation it will be found that nearly every entertainment of the kind referred to is really for profit; that instead of lending or renting for a charitable enterprise pure and simple, it will be found that it is a money-making enterprise; there is hardly an exception. You will find that such an entertainment is not a social affair. It is not that sort of a thing. It is an institution solely devised as an expedient to raise money for certain specific purposes, whatever they may be. Now, if we simply give, as, for instance, for the benefit of the occupants of a hospital, or something of that kind, where there is no charge or anything of that sort, we give simply for the entertainment of a company of gentlemen and ladies, where the public is not shut out unless they had the price, then I am sure these gentlemen would not have the slightest objection to it whatever; in fact, they like to encourage that sort of thing, and they even lend their music for such purposes.

Mr. CHANEY. But you want the power of doing that lending yourselves?

Mr. SERVEN. Yes; if our music is gone, we like to do the lending.

Mr. CHANEY. Suppose I buy this composition [holding up musical composition]: haven't I a right to sing it, and have not my friends a right to sing it at my expense?

Mr. SERVEN. You have, so far as any private performance is concerned.

Mr. CHANEY. Well, in public?

Mr. SERVEN. I don't think so.

Mr. CHANEY. Ought I not to have that right?

Mr. SERVEN. That depends on what the contract is when you buy it.

Mr. FURNESS. You could not sing that yourself [referring to musical composition]; that requires more than one voice.

Mr. GILL. How was the use of that restricted when it was purchased?

Mr. FURNESS. The law says that if he does that willfully, or for profit—I think the words "for profit" are in the statute—that he is guilty of a misdemeanor, and, upon conviction, is subject to imprisonment not less than a year, I think, the same as for the dramatic public performance; it is the same remedy for both.

Mr. GILL. You sell that without any restriction?

Mr. SERVEN. Without any notice of restriction.

Mr. GILL. Without any restriction?

Mr. SERVEN. No.

Mr. GILL. Is it not a matter of fact that you make the sale without any contract? I concede that if you make a contract of course you can restrict its use, the same as you can make a contract for the use of a patent; you can give the whole use of a patent or limit it to a town or a county, or you may restrict the patent as to whom it shall be sold, or in any way you please, and I admit that you could restrict this; but I ask, as a matter of fact, what are the contracts? It is a matter of contract?

Mr. SERVEN. It is solely a matter of contract.

Mr. GILL. You sell it without any contract.

Mr. SERVEN. No——

Mr. GILL. Does not that, then, give the man a property right which he can use as he pleases—where you have made no restrictions whatever?

Mr. SERVEN. We have done everything the law says we shall do in order to put this matter under the protection of 4966.

Mr. GILL. Have the courts interpreted this in any way?

Mr. SERVEN. This penalty clause of it?

Mr. GILL. Has this been brought up?

Mr. SERVEN. This penalty clause has not been interpreted, for this reason: That so far as the music publishers are concerned, probably the same as the dramatic producers, they have not endeavored to press the penal provisions; they have felt that if the provision was in the law it was a warning to the man who was attempting to violate that provision, and that the moral effect, possibly, of such a paragraph ought to pretty largely protect their interests; yet they have a number of times considered that question, and I am not at all sure but what some day they may reach the conclusion that they would like to have the court pass upon the question whether Mr. Tams is violating the law.

Mr. GILL. But there is no practical notice or warning to a person who goes into a music store and buys that, because there is nothing on the book you sell that indicates that there is any limitation or restriction in regard to its use by the purchaser?

Mr. FURNESS. The only way that has been brought before us publishers is this: That when they have asked for a public performance, or probably to rent the orchestral part, then we have asked them, "Have you got the score yet?" They may reply, "Yes; we have rented the score," from such and such a man. Then we refuse to give them permission to render the public performance; we say to them, "You must buy the books from the publishers—the owner of the copyright or his authorized agent, the music dealer." So far as an individual goes, and so far as a society goes, we have never brought any suit at all, and the only suit that has been brought on a question of this kind emanates from Mr. Tams, who brings a suit for $200,000 against the music publishers for trying to restrain him from renting these books for public performances.

The CHAIRMAN. The committee does not get a clear idea of what the law is from your statement of it. My understanding of that law is this: That so far as the civil remedy is concerned it makes no difference at all whether the performance is given for profit or not. You can sue them and recover damages, no matter whether it is given for profit or not; but it must be given for profit in order to subject them to the criminal remedies.

Mr. SERVEN. Yes; that is it, willfully and for profit.

The CHAIRMAN. So far as the civil remedy is concerned, it makes no difference.

Mr. BONYNGE. As far as I understand, there has been no prosecution under the penal clause.

Mr. SERVEN. So far there has not; no.

Mr. BONYNGE. And the only use of the penal clause so far has been that it has been a sort of a club to enforce damages.

Mr. SERVEN. No; no action has been taken under that; it has simply been held there, and we have sent broadcast such notices as this which you have in your record, notice to people who were in the habit of violating that section, telling them that we might at some time be compelled to proceed under that section.

Mr. CHANEY. That is, you have threatened them with that penalty.

Mr. SERVEN. If that is the proper word; we have given them specific notice that there is a law and that they have been violating it, and that we do not want them to violate it.

Mr. BONYNGE. As a matter of good legislation, do you think we ought to have a criminal procedure of that kind where the ordinary person would not conceive that he was guilty of a crime?

Mr. SERVEN. The ordinary person, who is not a musician, who does not play in any musical society, would not pick that up; but not one person in a million is attempting to perform such a production without associating with himself many persons who are familiar with the law.

Mr. BONYNGE. My friend Mr. Chaney says he is a singer. Until this matter was called to his attention it is not at all unlikely that he would rent such a book and sing it, together with other singers, at an entertainment given for charity, and according to this he would be guilty of a crime.

Mr. SERVEN. I doubt it, unless he had attempted to form a company for the purpose of performing it.

Mr. CHANEY. Of course you would have to get the singers together.

Mr. SERVEN. You would have to do more than that; you would have to do the same thing that is done with a dramatic composition, and the remedy is the same in this case for a musical drama that it is for a tragedy or any other drama; the condition is the same, the remedy is the same, and if it is a wrong to the dramatist in one case it is a wrong to the music publisher in the other.

Mr. CHANEY. You take a church organization that seeks to raise money, for instance, to buy a pipe organ; they send to Mr. Tams or somebody who has these books, and they tell him how many they would like to get, and ask him how much he will charge for them, and it may be that sometimes they could get them for just the expense of the express charges and the payment for any damage or for any books destroyed. They go ahead and produce that musical operetta. Now, they have committed a crime?

Mr. SERVEN. No; because before that they have to have somebody who is a musical director, who knows about it.

Mr. CHANEY. That goes with the performance——

Mr. SERVEN. There is not such a person as that in the United States, I assume, that does not know just exactly what the provisions of law are.

Mr. BONYNGE. But he is not the only person who would be guilty of the crime. Those in the chorus would be guilty of the crime.

Mr. SERVEN. But here is the point——

Mr. CHANEY. The person who proposes to organize such an oratorio usually proposes it to the church.

Mr. SERVEN. As a matter of fact, I have been informed that Mr. Tams is the principal gentleman in the United States who is doing that sort of thing, to persuade people to violate this statute. Why? Because it is to his profit. At least we assume it is, because, according to his ratings, and so forth, we understand he has made a large amount of money in this particular business. In fact, it has been suggested that Mr. Tams's financial standing compares very favorably with some of these musical composers we have heard about.

The CHAIRMAN. I want to put into the record at this point this notice.

Mr. TINDALE. May I correct a typographical error?

The CHAIRMAN. No; read it just as it is.

Mr. TINDALE. (reading from the first page of a musical composition):

> The copying of either the separate parts or the entire composition by any process whatsoever is forbidden and subject to the penalties provided under section 4965 of the copyright laws, right to performance can only be secured by the purchase of a copy of this score for each and every singer taking part.

You do not allow any comments?

The CHAIRMAN. We will ask for comments. How lately have you been putting that notice in your copyright books?

Mr. TINDALE. For about four years.

The CHAIRMAN. Does that give any notice to the purchaser of this book that he can not rent or loan it?

Mr. TINDALE. It states it in a positive manner instead of a negative manner.

The CHAIRMAN. Let me ask you how it gives any notice whatever that the purchaser can not rent or lend the book?

Mr. TINDALE. It says that the performing rights are given only by purchase of this copy.

The CHAIRMAN. But the original purchaser purchases a copy for every single member of the chorus.

Mr. TINDALE. Then we have no objection.

The CHAIRMAN. No objection to their loaning them? Then we can fix this in a moment. I want to ask where there is anything in that notice that would give notice to the purchaser that he could not rent or loan those books?

Mr. SERVEN. He may loan or rent or do what he pleases, but the fellow that borrows is the fellow that that notice affects.

The CHAIRMAN. Not at all.

Mr. SERVEN. It is the fellow that wants to give the public performance.

The CHAIRMAN. You call attention to a certain section of the Revised Statutes, and that has nothing to do with this matter at all—the very section you call attention to.

Mr. SERVEN. Even with such a notice, it strikes me that that does not affect what the law does require.

The CHAIRMAN. That is not the question. What the committee is getting at is whether you give the people you sell these books to any notice at all that they can not rent them?

Mr. CHANEY. What information would that notice give them?

Mr. TINDALE. I take it that they would have notice that they had to do something, Mr. Tams having bought the copy.

The CHAIRMAN. I am not talking about Mr. Tams at all; I am trying to find out whether there is any notice to any musical society—whether there is any warning that they must not lend these books?

Mr. TINDALE. The warning consists in the word "only"—can only be secured; and more recent copies——

The CHAIRMAN. I am not talking about the people that borrow; I am talking about the people that lend—the church society that buys the copies. Is there anything in that notice that would caution them that they must not lend these books?

Mr. TINDALE. The notice has to speak for itself. We think that is a warning.

Mr. SERVEN. We have no objection to the lending; that is not our point; it is the public performance from the copy that is loaned.

Mr. WEBB. For charity or profit or any reason?

Mr. SERVEN. For any purpose. It is the public performance that is the thing we object to.

The CHAIRMAN. What do you think the public would borrow these for if not for public performance?

Mr. SERVEN. They might want to look at them; somebody might borrow it to look it over.

The CHAIRMAN. I don't think they would borrow many copies for that.

Mr. SERVEN. That is what I say, that we sell almost no copies except for public performances. There are very few people who ever buy these for private inspection. Almost every single copy of this sort is sold for the purpose of public performance, and that is why this very thing has damaged us so much and estimated to have cut down our sales on those particular productions from 75 to 80 per cent.

The CHAIRMAN. Who makes that estimate?

Mr. SERVEN. Primarily I make that estimate from the best information I can get from gentlemen in the publishing business, and secondly, it is made from those who make the sales, whose sales are reduced.

The CHAIRMAN. It ought to be very easy for the musical people to furnish their books and give us a verification of that statement. If before Mr. Tams and the gentlemen engaged in that business entered the field they were making, for instance, $10,000 a year, and that business has shrunk, according to your statement yesterday, 85 per cent, it ought to be very easy for them to give the committee that information.

Mr. SERVEN. It so happens, Mr. Chairman, that our music publishers have other things to depend on. If they had only this I venture to say that the probability is that there would not be a single extended music work published in the United States to-day unless it was done solely through philanthropy. As to this question of notice, while I consider that aside from the point, because the law does not say that there shall be notice, but it says that we have complied with certain other things in the law, and we have to subscribe to that before we can get our copyright from the Librarian of Congress, yet this is a copy of the circular which last January, I understand, was sent to every musical society that the publishers knew of in the United States, specifically calling attention to the fact that there was such a law. So, in addition to whatever the law might have required in the question of notice, it would not be our fault that they did not have such notice, and in addition to that we have unanimously recommended that in case of every right of that sort where the right was reserved it should carry notice of it somewhere in a conspicuous place on the front of the work itself, so that there can not be in the future any question as to whether the fellow that uses it knows he is violating the law.

But to come to what I think is the real meat of this question. This is purely a business

question and nothing else, a question of contract——

The CHAIRMAN. I beg your pardon, you are not relying on your contract at all; you are relying on your statutory rights.

Mr. SERVEN. Which have to be read into our contract, of course. The only way we could make a contract which would give public-performance rights would be by furnishing the purchaser a contract or with an agreement from us that they should have the performing right, and it seems to us that the sole matter that is at stake in this controversy between these gentlemen and ourselves is simply this: Not whether or not we have sold them performing rights in the past, but whether or not we shall sell them performing rights in the future, and should you pass this act I think if the publishers should decline under that to sell performing rights, I think I see very clearly that they would have the right to go into the courts and compel it.

Mr. CHANEY. You would not make any sales.

Mr. SERVEN. We would sell to the people who came to us, if they wanted us to. We might sell them the right to perform it anywhere in the United States, or we might say that we would sell them the right to perform it once or ten times or whatever way we might want to limit it, in a certain place, or at certain places, for instance.

Mr. BONYNGE. Would not that be a good deal better than the way it is?

Mr. SERVEN. Possibly it would; I am not sure. But from the point of view of the fellow who proceeds in an enterprise without investigating the law, that would certainly take care of him, and while it would mean a little more trouble and expense on our part, it would tell him, "If you steal our performing rights you will be subject to punishment, and therefore if you do not buy it, we will send you up for a term;" and if we do it for other things, I do not know why we should not do it for music.

The CHAIRMAN. I must tell you that you only have two or three minutes left.

Mr. SERVEN. I will just take one minute more. We have not made exorbitant profits, as may perhaps be suggested by a copy of the letter which the chairman showed yesterday—a good many of them. That seems to be a stock letter, prepared by somebody who is directly interested in the enactment of this legislation——

The CHAIRMAN. We will not be able to hear any other gentlemen on your side this morning.

(Informal discussion followed about the method of procedure.)

Mr. WEBB. Would you be satisfied if we were to restrict the performance of your music to charitable performances or where no charge was made?

Mr. SERVEN. If you will hand in hand with that restrict the persons who perform our music to doing so without compensation, I think I may say, can I not [addressing some of the music publishers present], that we would be willing to do that. But we do not understand—we do not believe that you ought to say to us that we must furnish our property without compensation, while all the rest get compensation.

Mr. FURNESS. Providing those people would write to the author—the composer. Let us be the controller of the property belonging to us.

Mr. TINDALE. They pay for everything else; they pay for the carpet on the floor and the lights and carriages that come to the church entertainments.

Mr. FURNESS. I am sure in the case of the firm I am connected with—Oliver Ditson Company, of New York, Philadelphia, and Boston—that we would not object to helping charitable performances at any time; that where the people were not able to buy books we would be glad to lend them.

The CHAIRMAN. Would you object, then, to an amendment that they might be loaned for charitable purposes, the only prerequisites being that they should notify the publisher that they would desire the loan of the books, or do you desire to pass on each application?

Mr. FURNESS. Yes; we would prefer to pass on each application. I think we would hesitate to agree to anything else.

Mr. FROEMNE. As a matter of fact, don't you buy most of your publications? Aren't they your own property?

Mr. TINDALE. Absolutely not. Nine-tenths of them are published on a royalty.

Mr. FROEMNE. Then you don't buy them outright?

Mr. TINDALE. Very seldom.

Mr. FROEMNE. How many publications have you in your establishment that are bought

outright?

Mr. TINDALE. One out of ten.

Mr. FROEMNE. How many?

Mr. TINDALE. That would take a calculation.

Mr. FROEMNE. I would like to know for the information of the committee how many they have. As a matter of fact, most of them are bought outright. They give them a trifling sum of $50 or $25—even $10.

Mr. FURNESS. That is not true, Mr. Chairman, and I want to be put down on the record as saying it is not true. We have publications to-day, and we are paying large royalties on the full retail price of the article, which never retails for that price, and in most cases at one-half that price.

The CHAIRMAN. Just a minute. The members of the Publishers' Association may have until next Wednesday to file any statement they please, which will be made a part of the record.

Mr. SERVEN. I would like five minutes more.

The CHAIRMAN. I can not give you the time.

Mr. BONYNGE. That is all the time we have.

The CHAIRMAN. We will hear you for five minutes [addressing Mr. Froemne].

STATEMENT OF MR. HERMAN FROEMNE.

Mr. FROEMNE. Mr. Chairman and gentlemen of the committee, first I would wish to try to straighten out a few false statements that were made yesterday, and I want to say that they were made not by mistake, but absolutely——

The CHAIRMAN. I don't think we want anything of that kind to go in the record.

Mr. FROEMNE. I wish to say that according to these very interests and the statements made in evidence the rights of performance can only be secured by the purchase of a copy of the score for each and every singer taking part. A copy of each score was bought for the past fifteen years by Mr. Tams. The publishers knew he was renting it out. It has only been a few months ago they wanted to make a stop of it, and I will now say that for the future—from now on—he should not have the right, or any other library have the right, to rent them out; but he certainly has a right to the use of the stock he has, which he bought and paid for. He does not reprint them, you understand. My friend refers you to a patent. Look at a patent. A patent has two sides to it. You have a right to buy a patented machine, but you have no right to manufacture it.

Now, we are not making plates to print these books. We don't buy one book and print a thousand of them and rent them out. That would be an infringement; but we are paying whatever the price of it is, 20 cents or 30 cents or a dollar for each book, and we have bought thousands of books, and these music publishers have received from Mr. Tams from $3,000 to $4,000 a year for the past fifteen years. Where is the justice now, when he has his place stocked up, in preventing him from making any profit on it? He has his musical library in connection with his other library; he rents out dramatic compositions and other things on which royalties are being paid.

Mr. GILL. May I make a suggestion? As to what he has already purchased, his rights in that connection and the conditions under which he purchased would be for the courts to determine, would it not?

Mr. FROEMNE. Yes.

Mr. GILL. We can not affect that in any way?

Mr. FROEMNE. True. But I am saying now where one of these church choirs can rent the music it is a great blessing. I have some letters here to that effect, saying it is a great advantage to them to have a place where they can rent a book which is sold for from 50 cents to a dollar, the rent being, probably, only 10 cents apiece, or, say, one-sixth the cost. As I explained yesterday—some of you gentlemen were not here—these societies can only use a book once a year. They can not give the same performance two years in succession, and it is to their advantage either to change it, or, if they bought the books, to turn them over to another society, which it seems they should have the right to do, as they have once paid for the book. If you buy a sewing machine or any other patented article you have a right to sell it or rent it or give it away, although you have no right to manufacture it—that would be an infringement of the patent.

Mr. CHANEY. What is that suit you were going to explain?

Mr. FROEMNE. I will explain it. There are in this association of publishers about 25 members, and of those 25 members, I believe I told you yesterday, a number of them are absolutely fair and just; and like any other organization, you will find a few that are not; and this circular, in which there was an attempt made to have every member sign them, only secured seven signatures, or eight, of which Mr. Ditson represented three. He is from Boston, New York, and Philadelphia, as he told you himself. This circular was sent out last January, and has injured Mr. Tams, not in the renting of these particular cantatas, masses, and so forth, but other works which he has, and publications of his own. Now, I will show you where Mr. Tams's profits come in on publications which he owns. He can print thousands of them, costing him only 1 or 2 cents apiece, which he rents out at the same price as the publications which he has to buy at 50 cents or a dollar apiece. This circular has stopped him. We have letters in our possession from parties writing to him. I saw one to-day. [Addressing a gentleman.] About what is that last one? I mean before we left New York? [After receiving a suggestion from the gentleman.] "The Crucifixion," a publication by Mr. Tams. Therefore that interferes with the other business, or his library business, for it is conceded, and my friends will not deny, that Mr. Tams has the largest library in the world.

Before coming before your committee to show you we were absolutely fair and just and didn't want anyone to take advantage of this amendment, that the phraseology was absolutely correct, we met their attorney, Mr. Serven, a few days ago, and I explained to him my purpose. He himself saw the justice of it. Mr. Bayly, who represents a reputable house here in Washington (Ellis & Co.)—they didn't sign the circular, by the way—didn't see any impropriety in it, but they said they expected two men from New York, and if they could arrange with them, no doubt the matter would be adjusted. I said: "Change the phraseology; do whatever you like; do not interfere with that property which we have bought and which we claim we have a right to rent in order to at least get our money back, many thousands of dollars, which they cost us." It can not be denied, we can prove it by the bills, that Mr. Tams has paid for the past fifteen years from three to four thousand dollars for books which he bought of them. They knew he had a library; they permitted him to rent it; they knew he had rented it, and it is only recently that they are trying to stop it.

Mr. SULZER. Do you mean $3,000 or $4,000 a year?

Mr. FROEMNE. Yes. So making it altogether from $45,000 to $60,000. As he explained to you yesterday, a work can not be loaned out more than five years once a year. It is then worn out, the pages break, and you can not use them any longer. He can not reprint them; if he did, of course he would make himself liable to the provisions of the law. So he doesn't get more than what it costs him for renting it, and it is a blessing to those who rent from him—that is what those societies say. They can go to Mr. Tams or to anyone else, or to another society, and rent these books for 10 cents apiece, or whatever the price.

Now, I want to say that these gentlemen are very unjust, as has been brought out by some of the questions asked by the committee. "What do you object to if this is done without profit?" Well, they don't know exactly, except that they object. That is about the only conclusion I could reach as to what their answers mean. Now, they show great feeling toward charitable organizations—they show what great philanthropists they are——

The CHAIRMAN. The time has expired. Anything further you desire to submit can be submitted in writing before next Wednesday, and will go in as part of the hearing. The same privilege will be extended to the music publishers. I want to ask the representatives of the latter gentlemen present what their objection is to a bill if we amend the law in this way:

> Nothing in this act shall be construed so as to prevent the performance for charitable purposes, and not for profit, of religious and secular works, and so forth, rented or borrowed by a public school, church choir, or vocal society, when rented or borrowed from a public school, church choir, or vocal society.

Mr. FROEMNE. Or from the libraries up to the present time.

The CHAIRMAN. In the amendment I suggest now I will strike out "from any person or musical library."

Mr. TINDALE. That would be very easily evaded.

The CHAIRMAN. You can state your objection in the supplementary statement you file. I wish to say for myself—and I think I speak for the committee—that as the thing now rests in the minds of many members of the committee we had better endeavor to reach some kind of a compromise proposition. I think you had better direct your attention to some modification of the law.

Mr. TINDALE. We are speaking for the American composer who furnishes this entertainment.

The CHAIRMAN. You have run for more than a hundred years with no serious trouble, as you

stated to us yesterday. Then came the musical libraries, men conducting an establishment like that of Mr. Tams, and the objection urged yesterday by you gentlemen to any modification of the law was on account of that. Now, suppose we cut that all out?

Mr. FURNESS. In going back for a hundred years this international copyright law has changed very materially the native publications in this country. Previous to that time we had hardly anything but foreign publications worthy of any great value, nothing but a few light cantatas and light operas; but now the protection of the international copyright causes a foreigner to spend money in this country to make his publications known and give a better showing to the American author and publisher.

The CHAIRMAN. The committee must adjourn.

(Thereupon, at 12.05 o'clock, the committee adjourned.)

Memorandum in support of H. R. 11943.

It is unfortunate that sufficient time could not be granted to me on the hearing in favor of the amendment proposed by Congressman Bennet to section 4966 of the copyright law, especially as those opposing it consumed more than three times the time on the first day of the hearing than was consumed by our side, and that in addition thereto three-quarters of an hour was consumed by counsel for the opponents to the bill on the hearing held on the 3d instant.

In addition to what has been said in favor of the bill and by way of reply to opponent's argument, we beg to submit that it must have been apparent that the music publishers will consent to none of the suggestions made by the chairman of the Committee on Patents. It will be remembered that the opponents to the amendment have made the ridiculous and false statement that their sales have decreased from 80 to 85 per cent by the renting of its copyrighted publications, and they should be required, as suggested by the chairman of the Committee on Patents, to submit statements from their books showing the amount of sales prior to the passage of the act—section 4966 of the copyright law—and since the act has been in existence.

It is safe to say that by this method it would be shown, if true statements are presented, that the decrease of sales would not amount to over 5 per cent, and this 5 per cent is more than offset by the benefit derived by the publishers from the fact that in nearly all cases where a choir, vocal society, or school rents copyright music certain members thereof, and also individuals in the audience witnessing such performances also purchase a copy so used to be kept for their personal use. Thus the publishers reap the benefit of the copies sold after a performance given from rented copies.

In answer to a question put by me to Mr. Tindale as to whether or not it was not a fact that his firm owned outright most of its publications, he made a statement to the effect that they did not own more than one-ninth or one-tenth per cent of all their publications, but could not say how many publications it amounted to. As a matter of fact, as far as my knowledge goes, I understand that Schirmer & Co., who was represented at the hearing by Mr. Tindale, own outright most of their publications. I am attorney for many authors and composers, and I know that when they need money they take their composition to a publisher and he will pay them a small amount—$25 to $100—for a musical composition, and no matter what the income may be, whether it is $25,000 or $100,000, these music publishers are not philanthropists enough to hand any additional sum to such author or composer.

The statement has not been denied that Mr. Arthur W. Tams has purchased of the various music publishers publications of secular works, such as oratorios, cantatas, masses, and octavo choruses amounting to three to four thousand dollars per annum, and he has since ascertained that it was nearer $5,000 per annum, and that this has been going on for the past fifteen years. These publishers knew the nature of his business and have never interfered with the renting thereof. I believe it has already been stated that these publications were bought by Tams as a convenience to the various church choirs, schools, and vocal societies who rent and perform the same without profit, and that it takes five years or more for Mr. Tams to get back the amount which it cost him for the publication. It is conceded that Mr. Tams is the proprietor of the largest music library in the world, and that his profit is derived from publications of his own of which he can print any number of thousands of copies at a cost to him of from 1 to 2 cents apiece, and that in addition thereto that he rents operas and other plays belonging to him which are being produced for profit and on which royalty is paid by him, and it was on account of the pressure of his various customers throughout the United States that he did bother with buying the publications of religious or secular works, such as oratorios, cantatas, masses, and octavo choruses for the purpose of renting the same to church choirs, schools, and vocal societies that performed

the same without profit.

Mr. Tams is willing that libraries should not be permitted to rent the same, provided that it shall refer to future and new works, in which case he would not need to buy the publications and have them on hand for that purpose. It is an extraordinary claim on the part of the music publishers to say that, while they admit that when they sell copies of their publications it carries the performing rights with the copies sold, yet the music publishers claim it only carries these performing rights to such persons who purchased the same from them, and that these books which have been purchased from them can not be used for performance by any other society to whom they may be loaned or rented by the society or person purchasing the same originally.

Take any patented article, like a sewing machine; one who has bought it clearly has a right to lend it to another, to sell it, or to rent it without any infringement on the rights of the patentee, but when he attempts to manufacture the same that is another question, just the same as if Mr. Tams or any other purchaser of books from the music publishers would attempt to reprint them. This would be clearly wrong; but as long as this is not done and the books have once been paid for, how can the music publishers, composer, or author be wronged if it was performed by A., B., and C., so long as these very books have been purchased and paid for originally?

It seems to me that section 4966 of the copyright law should not be permitted to be used as a club by some of the unscrupulous music publishers in any case where they hear that one of their publications is to be performed by one of our schools or a church or a vocal society for the purpose of charity and without profit, and threaten them by imprisonment and damages. The imprisonment clause seems to be a most obnoxious and unjust clause, and not inserted for any good to society. It seems that the music publishers, authors, and composers got along swimmingly prior to the adoption of the statute, section 4966 of the copyright law, and it is admitted that either the whole act should be eliminated or an amendment made by which these poor societies should not be held up in the case where the books have been paid for. They should be permitted to rent to each other or borrow from each other or buy from each other the books which have originally been bought of the music publishers, and the music libraries that have purchased the books from the various music publishers should be protected to date on such publications, if it should seem, in the wisdom of the Committee on Patents, that they should not be permitted hereafter to rent them.

The music libraries of the country to these poor societies are a blessing and are actually necessary, as they act as a clearing house, as, for instance, one society in St. Louis might wish to use a copyrighted work, such as Hiawatha's Wedding Feast, and if the various other societies in the neighborhood do not own copies of this particular work, it is necessary for a music library to be in existence that can furnish the work desired, and which at the time might be unobtainable from a sister society, or any society owning the work desired, as they might be using it at the time themselves, and there is absolutely no wrong in the renting of publications by these libraries of books which they have purchased, and they should not be prevented from renting them to the various societies for the reason that they have once been bought and paid for, and there can not be any profit derived therefrom by their renting it, as it has already been argued that it takes about five or six years to obtain the return of the cost of the publication, and that at the end of such time the books become useless from the handling they have received and have to be thrown away, as each society performs only one publication each year.

The publishers themselves are among the largest customers of the music libraries, and have at various times arranged with the Tams Library to make at his own expense orchestrations to their various works, and hold them in stock, so as to have them available for the use of the publishers, so that if a customer of a publisher desired to purchase a large number of copies of any particular work that purchase would be contingent on the ability of the purchaser or publisher to obtain the orchestra parts (which are in manuscript), and publishers have been writing to their customers, after selling a lot of vocal scores, that they, the customers of the publishers, could obtain the orchestra parts to the various works desired at Tams's library, and we have letters from various publishers, Ditson, Schirmer, and others, to prove this, and the publishers themselves, in many instances, before selling one of their customers a particular work, would send to Tams's library and obtain from him the orchestra parts to send to accompany the goods sold, and in many instances had notified Tams that they proposed to sell a particular work and desired to know if he wished to furnish the orchestra parts to the same.

In conclusion it is urged that the Committee on Patents should render immediate relief by recommending the amendment, or some amendment, favorably on which immediate action by the House may be taken in the passage of the same. We submit that the matter of the passage of the amendment should not be delayed on the pretense that the same can be inserted and taken care of in the general codification of the copyright law, for it seems on a casual perusal thereof that there are many imperfections and unfair and unjust discriminations therein and that it is safe to say that it will take some time to come before it

can be reported if it will be reported at any time.

Although the Bennet bill has been introduced in January, we have received no invitation to attend any of the conferences in the preparation of the codification of the copyright law, and knew nothing of the kind being contemplated until we arrived at Washington for this hearing, and it is safe to say that there are a great number of others interested in the copyright law who have been ignored.

It is therefore respectfully submitted that action on the Bennet amendment should not be delayed, but that relief should be granted at this session.

Respectfully submitted.

HERMAN FROMME.
287 Broadway, New York City.

Counsel for F. N. Innes, of Chicago, Ill.; The A. W. Tams Music Library, of New York, and George Lowell Tracy Music Library, of Boston, Mass.

Brief in opposition to H. R. 11943 to amend the copyright law respecting public performance of musical works.

On behalf of the Music Publishers' Association of the United States, the following is submitted supplementing the hearings already had on H. R. 11943, "A bill to amend title 60, chapter 3, of the Revised Statutes of the United States, relating to copyrights."

The music publishers and the composers of music whom we represent are opposed to the bill, which in effect provides for the public performance of religious and secular works of a musical character without first obtaining consent therefor from the copyright proprietor.

PROPERTY RIGHTS OF COMPOSERS.

The laws of the United States have recognized two distinct property rights in a musical composition that has been copyrighted.

1. The copyright proprietor has the exclusive right to reproduce copies of the original work. This he may assign in toto or with any limitations he may choose to impose on such assignment.

2. The copyright proprietor has the exclusive right of public performance of the copyrighted work. This right also may be assigned in part or in toto.

The United States has adopted these provisions from the English copyright laws, as have most of the other Christian nations. Under English statutes—

"The right to present and perform a dramatic piece or musical composition is a right distinct from the copyright in a book containing or consisting of such dramatic piece or musical composition, and no assignment of the copyright of any such book conveys any right of representation or performance unless so specified; and by the twenty-second section of 5 and 6 Vict., chap. 45, an entry of every such assignment should be made in the registry book." (Copyright Office Bulletin No. 5.)

This is in accordance with the modern idea of copyright protection and seems to be fully justified. For why should the exclusive right of performance be denied to the creator of the work if he is to enjoy any exclusive rights because of his contribution to the knowledge and usefulness of mankind? Under the common law this right certainly belongs to him, and he can be deprived of it only by voluntary or involuntary assignment.

A QUESTION OF CONTRACT.

The whole question presented by the proposed amendment to section 4966 of the Revised Statutes seems to be one rather for the court than for Congress to determine. Either the copyright proprietor has or he has not the exclusive right of public performance. If he has it the next question is, Has he assigned any part of it by the sale of a book or any number of books containing his copyrighted musical conception, unless somewhere he has "so nominated in the bond?" The English law requires that the right of performance must be expressly specified in the contract. This is clearly in exact harmony with the principle of "caveat emptor," under which all other purchases are made in our country and in England.

The proprietor of the musical library, if he desires, may purchase the right of general public

performance when be buys his books. If he simply buys the books without specifying that general right, he is getting all his contract calls for and all he has paid for. Our laws do not require that there shall be a notice of express reservation of this right in order to reserve control of it to the copyright proprietor, but some of our publishers have put such notices in their publications, and this association of publishers has recommended that a requirement of such notice be made a part of our copyright law.

NO LEGISLATION NEEDED.

No legislation is needed in this matter unless you intend to deprive the composer or his assignee of the right to control the public performance of his work. Should this be done it will lessen the value of the composer's efforts and of necessity restrict the production of important musical works because of less encouragement to the composer, and consequently restrict the business of all the trades now employed in supplying it to the public.

The 6,000 retailers of music, as well as the composers and the 500 publishers of musical works in our land, are vitally interested in whatever tends to deprive them of their occupation and its compensation. In the face of what all other enlightened nations are doing to protect, encourage, and reward the genius of their countrymen, will the United States take this backward step and thereby begin to discourage the tardy development of its citizens in musical learning and progress?

INTERNATIONAL COPYRIGHT TREATY.

Previous to the international copyright treaty of 1891 few works of American composers were on the market, because the foreign works monopolized the trade. Since then our composers have been on an equality at home with the foreign works, and the rewards have been more equitably distributed to American composers, as our people have spent more of their money at home for music.

The result is seen in the schools and colleges of music in America, more eminent teachers, and much better training for our students, who can now obtain at home the same grade of instruction they formerly received in European conservatories.

VALUE TO THE UNITED STATES.

All of this has been of great value to us as a nation, not only in the highest sense, but from the purely selfish view of financial profit. Therefore our composers should be considered and protected in their compensation, which comes solely from the sale of their works under the prevailing methods of trade. When a work is rendered many times from one purchase of books there is but small return to the creator of it; consequently for this privilege a higher price should be demanded than if the book is purchased for home use or for a few performances.

DAMAGES THREATENED BY BILL.

While each work costs the same labor and expense to prepare for publishing, yet it is admitted that not more than from two to three out of each one hundred are successful, and not more than one in twenty of them ever pay for the cost of printing. When limited first editions cost from $5,000 to $15,000 to bring out, it can readily be seen why the publishers are so active in trying to protect their clients, the composers, and their own interests, so covertly threatened by this bill. If this bill becomes a law they will be obliged to adjust their business to the change, and no doubt the better composers will be driven to adopt the methods of the dramatists and deny all use of their works to the public at large.

Shakespeare says, "The man that hath no music in himself is fit for treason, stratagems, and spoils." The love of music has from the dark ages been the inspiration for all progressive peoples. It is earnestly hoped that your committee will not lend itself for the advancement of any measure which is not primarily designed to encourage and foster the best ability of the American composer.

Respectfully submitted,

A. R. Serven,
Attorney for the Music Publishers' Association of the United States.

May 8, 1906.

McGowan, Serven & Mohun.

1419 F Street NW., Washington, D.C.

NEW YORK, *May 8, 1906*.

THE CHAIRMAN AND COMMITTEE ON PATENTS,

Washington, D.C.

GENTLEMEN: At the recent hearings on the Bennet bill, the music publishers were represented, and the committee, of course, represented the interests of the people. There was, however, one party at interest in the matter who was not represented. That party is the American composer, and it is in his behalf that we ask you to please consider a few words.

The effect of this amendment would be to put the American composer out of business, so far as the writing of serious or important works is concerned. It would be our saying to him: "You are good enough for writing coon songs and a few rag-time pieces, but we don't want you to attempt anything better. We don't want American composers; we prefer to use what is written in Germany, France, Italy, Russia."

The amendment under consideration seeks to remove the present copyright protection from religious works; and in the hearing which your committee was kind enough to give last week, frequent mention was made of charitable work and entertainments given by churches, poor singing societies, and our poverty-stricken public schools. From certain questions asked by members of the committee it was indicated that they might favor a compromise measure in which, by exception, the renting of copyrighted musical works would be legalized in the case of entertainments given by religious bodies or not given for profit.

We yield to no one in reverence toward religious matters, and trust that what we shall say will not be misconstrued, but religious bodies first of all should be and are noted for dealing justly with all men. They have taught us that "the laborer is worthy of his hire;" and next to observance of divine laws they advocate obedience and respect to human laws. It would seem, therefore, that churches do not need nor do they ask for anyone to exploit his own business under the guise of obtaining for the church the right to do what it is unlawful for others to do.

In seeking to give this exemption to churches, societies, etc., a serious matter is that we entirely forget and lose sight of the musical composer or author, who, in most cases, is not a rich man. It is about the composer that we wish to say a few words. To illustrate what we should like to say, we ask you, Mr. Chairman and the committee, to picture the fact that a certain church or society has prepared to publicly perform on a certain date a work of average size, costing, say, 40 cents each copy. The average number of copies required for such performance is about 30 copies, making a total outlay of $12, of which $1.80 accrues to the composer as royalty for the performing rights.

Instead of buying the music, we find that for economy the church has been persuaded to hire or to borrow copies that have been used elsewhere. Imagine the large and well-dressed audience assembled on the night of the performance. Listen to the delicate arias, the grand choruses, the pealing organ, and notice the swelling enthusiasm of the people during some of the climaxes. Picture this brilliant and enjoyable scene, but let us also not forget the one man whose brain and heart created this music and made the entertainment possible. The pittance of $1.80 which he would receive is all too small; but such as it is, it should not be taken from him. When copies of the music are rented or borrowed and not bought, all the composer gets is glory and applause. Now, glory is all well enough, and applause to most men is sweet. But we wish to say to you, gentlemen, that glory alone will not put a coat on that man's back; it will not help him to protect his wife; nor will glory alone clothe and feed his children.

Furthermore, and in closing, in giving the above supposed entertainment a fair admission price has been charged, or in lieu of a fixed admission the plate has been passed; and few of us would care to listen to the music and neglect the opportunity to contribute. So that we may say that there is practically no such thing as performances of this kind without a revenue. In giving such an entertainment everything else is paid for. The light and heat are paid for, programmes are paid for, parties from whom the books are rented are paid, the organist—even the sexton is paid—but not the composer. We, the signers of this paper, do not believe that American churches are so poor, or American societies ever so needy as to make this injustice necessary; and it is hoped that your committee in protecting the American people will also at the same time not forget fair play toward the American composer.

VICTOR HERBERT, *Composer*.
REGINALD DEKOVEN, *Composer*.

BRONSON HOWARD, *Author and Playwright*.
HARRY ROWE SHELLEY, *Composer and Organist*.

Constitution and by-laws of the Music Publishers' Association of the United States.

CONSTITUTION.

ARTICLE I. This organization shall be known as the Music Publishers' Association of the United States, and shall have for its object the uniting of the music publishers of the United States for their own interest and the general welfare of the music trade.

ART. II. The officers of this association shall consist of a president, vice-president, secretary, and treasurer, and an executive committee consisting of five members, who shall be elected at each annual meeting, to serve one year from the date of their election, or until their successors are elected; and the president and secretary shall be members of the executive committee ex officio.

ART. III. There shall be an annual meeting of the association, for the election of officers and the executive committee and the transaction of business, on the second Tuesday of each month of June, at such place as may be determined upon. All elections shall be by ballot, and the votes of a majority of the members present shall constitute a choice.

ART. IV. Each member, whether an individual or firm, shall be entitled to one vote, and ten members shall constitute a quorum for the transaction of business.

ART. V. This constitution may be altered or amended by a two-thirds vote of the members present.

BY-LAWS.

ARTICLE I. The president, and in his absence the vice-president, or in the absence of both a chairman selected by a majority of those present, shall preside at all meetings of the association.

ART. II. The secretary shall keep a record of the proceedings of every meeting, give necessary notices of meetings, receive all moneys and pay the same over to the treasurer and take his receipt therefor, and perform such other duties as pertain to his office.

ART. III. The treasurer shall take charge of the funds of the association and disburse the same by order of the association signed by the president, and shall make a report of his receipts and disbursements at the annual meeting subsequent to his election.

ART. IV. The executive committee shall transact all necessary business in the interval between the annual meetings of the association.

ART. V. Any music publisher or firm of music publishers in good standing in the United States is eligible to membership, and may become a member by making application through the secretary, upon payment of $10 and receiving a majority of votes of those present at the annual meeting. The executive committee shall have the power to admit members during the period intervening between the annual meetings, subject to the approval of the association at its next annual meeting.

ART. VI. The regular dues of this association shall be $10 annually, payable on or before November 1 of each year, and no member in arrears shall be entitled to vote or participate in the meetings.

Members Music Publishers' Association, June, 1905 to 1906.

Albright Music Company, Chicago, Ill.
Anthony Brothers, Fall River, Mass.
Ascher, Emil. 24 East Twenty-first street, New York.
Biglow & Main Company. 135 Fifth avenue, New York.
Bloom, Sol., Forty-second street and Broadway, New York.
Boosey & Co., 9 East Seventeenth street, New York.
Bouvier, A. J., Fall River, Mass.
Chandler-Held Company, 439 Fulton street, Brooklyn, N.Y.
Ditson, Chas. H., & Co., 867 Broadway, New York.

Ditson, J. E., & Co., Philadelphia, Pa.
Ditson, Oliver, Company, Boston, Mass.
Ellis, Jno. F., & Co., Washington, D.C.
Feist, Leo, 134 West Thirty-seventh street, New York.
Fischer, Carl, 6 Fourth avenue, New York.
Fischer. J., & Bro., 7 Bible House, New York.
Frain Publishing Company, 20 West Fifteenth street, New York.
Francis, Day & Hunter, New York.
Goggan, Thos., & Bro., Galveston, Tex.
Gordon, H. S., 1241 Broadway, New York.
Groene, J. C., & Co., Cincinnati, Ohio.
Hald, J. R., Company, 337 Wabash avenue, Chicago, Ill.
Harms, T. B., Company, 126 West Forty-fourth street, New York.
Harris, Chas. K., 31 West Thirty-first street, New York.
Haviland, F. B., Publishing Company, 125 West Thirty-seventh street, New York.
Jacobs, Walter, 165 Tremont street, Boston, Mass.
Lyon & Healey, 199 Wabash avenue, Chicago, Ill.
Mills, F. A., 48 West Twenty-ninth street, New York.
Molineux, Geo., 150 Fifth avenue, New York.
Movello, Ewer, & Co., 21 East Seventeenth street, New York.
Parks, J. A., Company, York, Nebr.
Paull, E. T., Music Company, 46 West Twenty-eighth street, New York.
Remick, J. H., & Co., 45 West Twenty-eighth street, New York.
Rohlfing Sons Music Company, Milwaukee, Wis.
Schmidt, Arthur P., 146 Boylston street, Boston, Mass.
Schuberth, E., & Co., 11 East Twenty-second street, New York.
Sherman, Clay & Co., San Francisco, Cal.
Stern, J. W., & Co., 34 East Twenty-first street, New York.
Summy Company, Clayton F., Chicago, Ill.
Swisher, M. D., 115 South Tenth street, Philadelphia, Pa.
Thiebes-Stierlin Music Company, St. Louis, Mo.
Thompson, C. W., & Co., 13 West street, Boston, Mass.
Thompson Music Company, 269 Wabash avenue, Chicago, Ill.
Vandersloot Music Company, Williamsport, Pa.
Victor-Kremer Company, Chicago, Ill.
White-Smith Music Publishing Company, Boston, Mass.
White-Smith Music Publishing Company, Chicago, Ill.
White-Smith Music Publishing Company, 13 East Seventeenth street, New York.
Witmark, M., & Sons, 144 West Thirty-seventh street, New York.
Witzmann, E., & Co., Memphis, Tenn.
Wood Music Company, The B. F., Boston, Mass.
York Music Company (A. Von Tilzer, manager), New York.

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