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The Road to Gadgets

The Federal Bureau of Investigation released, early in 1984, some interesting statistics. The number of violent crimes committed in the United States in 1983 dropped more sharply than at any time since the organization began keeping figures on them in 1960. Serious crimes, including murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft, were dramatically down. The attorney general's office quickly claimed that some of the decline, which amounted to a respectable seven percent, was due to federal law enforcement efforts. But most thoughtful authorities, including F. Lee Bailey, rejected that explanation for the good reason that these crimes are not federal offenses, and not subject to FBI prosecution. What then caused the decline?

"Demographics play the most important role," the Washington *Post* said in an editorial. "It is well known that the most violent crimes are committed by men between the ages of 18 and 26. There have been fewer of them in recent years and the size of this cohort will continue to diminish.

"Birthrates began to decline in the early 1960s. Men born before then are now past the dangerous years and have settled down to law-abiding useful lives — or, in some cases, to long prison terms. There are more 22-year-olds in the country than people of any other age: 4,451,724. The number at each age declines all the way down to the 15-year-olds — there are only 3,518,982 of them — before levelling off. So the prospects are good that crime figures will continue to decline for a number of years because there will be fewer potential criminals."

We have previously noted that the Life Savers Company had to close its oldest plant in the United States due to a decline in hard-candy sales, caused by the aging of the population. Now another industry has been affected: liquor. Part of the reason for a substantial drop in liquor sales, according to analysts, is a greater American awareness of health issues and a consequent turn to wines. But the main reason is that the long and steady increase in the number of people entering the drinking years has ended. The industry projects a decline in Scotch sales for the next ten years.

At least two major cosmetics companies, La Prairie and Estee Lauder, have shifted their marketing strategies. They are using models over forty. A spokeswoman for La Prairie said it was ridiculous to continue pitching their products to young girls.

Over the past decade, then, one industry after another, from baby foods to booze, from candy to cosmetics, and even insurance companies (because of the fall-off in crime), has been affected by this change in the population. In 1984, there were in the United States more people over 65 than teen-agers, but the record industry alone persisted as if the change had not occurred, continuing to turn out music for adolescents and blaming its decline not on its own failures to keep up with events and the market but on the home taping of records.

Even if the industry's claims held up completely to scrutiny, the major record companies, which themselves manufacture the blank cassettes on which they claim the thefts are occurring, are in a position analagous to selling burglary tools and then demanding punishment of their users. They claim of course to be motivated by a deep and sensitive concern for the well-being of the artists. We shall examine the sincerity of this posture. Even the industry's own brochures admit that a great deal of taping is done because so many records are difficult or impossible to buy, as a result of the constant elimination of inventory. The industry has no interest in substantial and long-lasting music. Often the only way to get albums containing it is to tape them. In fact, artists end up taping their own out-of-print albums for friends.

This brings us to a separate but pertinent subject.

Dogs in the Manger

Due to this penchant for fast turnover and maximal profits, the record companies cancel an album the moment sales fall below a specified point.

"That practice," as a story in the Los Angeles *Times* noted on May 21, 1984, "not only denies consumers access to new copies of older recordings, but also prevents artists from reaping royalties from continued sales of these records.

"That has created a long-simmering controversy over whether the copyright on sound recordings may be too restrictive.'"

The present law is defended by Melville Nimmer, a law professor at UCLA, who told the newspaper, "Copyright is our way of encouraging authorship of creativity. The theory is that giving authors ownership rights to their works will encourage them to create more." Surely Mr. Nimmer is being something less than ingenuous. For he cannot but know that for all practical purposes, the publisher, not the composer or lyricist, is the owner of the song, and he may sell or reassign it as he chooses. And the industry, as we shall see, has a long history of trying to avoid paying royalties. The length of copyright protection has been steadily extended to the present term, which is life of the artist plus 50 years, as it has long been in Europe. (There is even a move afoot to extend it into perpetuity!) If the work is done for an employer, which is the case in most sound recordings, the life of the copyright is 75 years.

"Such extensions," the *Times* article said, "have met very little organized opposition. Few have found any reason to argue against giving artists more time to profit from their creative works." Well, I can't see how we are going to profit much from royalties paid forty or fifty years after we're dead. But I really wouldn't mind collecting certain royalties that are owed to me right now. ("Do not ask and ye shall not receive," as Henry Mancini once wryly put it.)

Tommy Gramuglia, who owns Hindsight Records, a label devoted to reissues — indeed, the salvaging of many things, such as old big-band broadcasts — has been lobbying for consumer rights in musical copyright legislation. Gramuglia claims the record companies that control the bulk of musical copyrights are using the laws to stifle competition and to limit the amount of music available to keep prices high.

Sound recordings came under federal copyright protection in 1972 as the result of extremely heavy lobbying from the record industry. The industry claimed that the new protection would curb piracy and counterfeiting of records.

Gramuglia thinks the length of copyright ownership is excessive. He says that though the extension of the monopoly was designed to encourage new recordings, it has not had that effect. On the contrary, the number of new LPs made in the United States fell from 4,300 in 1967 to 2,300 in 1983. This is hardly a riotous proliferation of cultural diversity.

Gramuglia has proposed a compulsory-licensing provision for sound recordings, with a 25-year period of exclusive protection and a non-exclusive period of 50 years. After 25 years, and for the next 25, other companies would able to issue the records, providing that royalties were paid. There is precedent for this in the compulsory-licensing provision for published songs, a subject we will get back to in due course, and it is an eminently sane idea. I would add one further condition: the originating company should have exclusive protection for 25 years only if it keeps the record available to the public. If a record has been out of print for a specified period, the automatic compulsory license provision should come into effect.

Nimmer argued (and I would be interested to know his sources of income, which will of course also prove to be the sources of his reasoning), "To say it's all the big companies is to ignore the interests of authors and composers who made a deal with the big companies. I see no justification for the state to step in and say you have to license. To pierce that exclusivity just because someone else wants to use what you own is not justification." (Earlier, Nimmer had intimated that the ownership of the material rests with the artist. Now he seems to be arguing — note the phrase "what you own" — that it rests with the publisher or the record company.) If he sees no reason to "pierce that exclusivity," I do. It is *always* in the "interests of authors and composers" (not to mention performers) to keep our material in the market place. Most older recordings are no longer distributed by the companies that own the copyrights. The artists who created them are being denied royalties they would receive if the smaller companies were allowed to reissue them.

When she was registrar of copyrights, Barbara Ringer told a 1975 Congressional subcommittee that there is a "real problem" in record companies that will neither re-release records nor sub-license them to other companies. She said, "Unless a voluntary licensing method can be found for providing access to these recordings, it may well be that some kind of compulsory licensing system will have to be devised to deal with the problem."

Artie Shaw argues that a recording contract implies a responsibility on the company's part to keep the material available to the public. He sustained a running fight with RCA to have all his recordings issued, including some never released before, but no sooner had RCA put out *The Complete Artie Shaw* than it deleted the whole package.

Artie has joked that he would like to start a label of his own, which he would call Buccaneer Records, with a skull-and-cross-bones for a logo, to pirate his own recordings. "Why not?" he said. "Everybody else has pirated them." He thinks it would make an interesting court case if a record company accused an artist of the theft of his own creativity.

It is common in book-publishing contracts to provide that when a book has been out of print a specified amount of time, the ownership of the copyright must be reassigned to the writer, who then can negotiate the book's release through another publisher. This same arrangement should apply to records. Unfortunately there is no organization in music comparable to the American Authors Guild. The American Federation of Musicians is a trade union, an all but useless organization in the arts. So far as recording contracts are concerned, the AFM functions in a position akin to that of the typographers' or printers' unions, negotiating minimum hourly wages of employes but not determining any contractual terms for the headlined "artist" whose name appears on the album cover. There is in fact no organization to speak for the artist in dealing with the record companies. And there is no copyright reversion clause in record contracts.

Actually, this provision should be taken out of contract even in book publishing and passed into law, firmly establishing what is unquestioned in French law, *les droits de l'auteur*, the rights of the author. This is unlikely to come about as long as the conglomera[illegible] communications industry and its agents mount sustained and well-financed lobbying campaigns putatively in defense of the artist, in whom of course they have no interest except as a chicken to be plucked. Nothing has thrown so bright a light on their hypocrisy as the so-called Buffalo Case.

That and a string of singles' bars called Gadgets.

Notice

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The Buffalo Case

Laymen rarely understand how composers are compensated for the use of their music.

There are three forms of royalty — from publication in print; the mechanical royalty so-called because it was instituted for piano rolls and now is paid for each copy of a record sold; and performance monies, derived primarily from the use of music on radio and in television.

Every radio and TV station (along with, in theory, concert halls and nightclubs) pays an annual sum for the use of music, based on a percentage of its advertising grosses. It does this through the two main organizations that act as collection agents for Americ[illegible] lyricists, composers, and publishers. They are the American Society of Composers, Authors, and Publishers (ASCAP), founded in 1914 by Victor Herbert, Rudolph Friml, Irving Berlin, and other composers, chiefly from the musical comedy field, and Broadcast Music Incorporated (BMI), activated in 1940 by radio broadcasters as a counterfoil to ASCAP when the latter sought a rate increase. BMI was established to break this demand. It was in effect a union-busting ploy, although any good ASCAP member would have complained loudly if you had associated him with the labor movement.

The money collected by these two organizations is distributed to composers, lyricists, and publishers, according to arcane formulae that I for one find dubious. But the principle is the same in both. You get paid, in theory, according to how often your music is played on radio and television. (BMI pays a bonus on high airplay. The money that goes to the most successful pop songwriters clearly comes, and can only come, from the pockets of those who get less exposure, who may well be the best and most gifted composers. The courts clearly should put a stop to BMI's bonus practice. But then, nobody has taken the issue to court.)

CBS some time ago took a case to court in which it claimed it should be allowed to pay by the piece for each composition used on its television network, rather than pay blanket fees to ASCAP and BMI. CBS lost the case in the U.S. Supreme Court. But

another case eventuated from it, a class action in behalf of approximately 750 independent television stations (those not affiliated with the three American networks) in U.S. District Court, Southern District of New York. The suit was filed by the Buffalo Broadcasting Company, which is how it got its name.

The issue was the music in movies. Television stations broadcasting movies must pay the composers, through ASCAP or BMI, as well as the publishers, for the music in films — entirely separately from the rental fees for the pictures. These payments come out of the annual fees paid by the stations to BMI and ASCAP. The publishers, let us note, are almost invariably the producers of the movie, since composers are not allowed to write for films unless they sign over all publishing rights and the effectual ownership of their music to the companies producing or distributing the film. The TV stations demanded "clearance at the source", a phrase meaning that fees for the use of the music would be included in the rental costs from Warner Communications, Mary Tyler Moore Productions, or whomever.

This presents a problem to composers of film and particularly television scores, since producers, as a matter of coercive daily business practice, beat them down on price by using future ASCAP or BMI earnings as a bargaining chip. In essence they tell the composer, "We'll pay you less but you'll make it up with the BMI or ASCAP money."

A Federal District judge ruled for the television stations, but was overturned in the appellate court. The U.S. Supreme Court has not yet decided whether it will hear the case. But in any event, some experts in the business think the whole matter will be resolved in the market place, no matter what the final ruling. Sam Trust, head of the ATV Music Group, has said that "the shadow of the Buffalo . . . decision has set such a crimp in this industry that even a favorable decision will be a setback at this point." An ominous side effect, he said, has been a proliferation of new background music firms offering "cheap, license-free copyrights . . . All it's done is lower the quality of the music."

Five of the largest independent station groups, all plaintiffs in the Buffalo case, reaching 45 percent of the viewing public, have set up a consortium that will finance new programming intended for syndication after running for the first time on their stations. Without doubt, they will — as have the few companies that now control the distribution of syndicated TV programming, including Viacom, MCA/Universal, 20th Century Fox, and MGM — form their own music publishing companies. They can, whenever they choose, resign from both ASCAP and BMI, and clear the music at the source, no matter what the court ultimately decides. Whatever happens, the composer will not find that his fortunes have improved.

There is an interesting legal anomaly in the situation. BMI is not a society made up of its members, like ASCAP or any of the European performing rights organizations. It is a corporation, owned by some of the very broadcasters who were party to the Buffalo case, demanding the reduction of payments to composers, lyricists and publishers affiliated with the defendant organizations. The broadcasters who own BMI make some interesting bedfellows, including the New York *Times* and the Mormon church, both of which own radio stations. There are no composers or lyricists on BMI's board of directors. The board is made up entirely of broadcasters.

It is thus a corporation *owned by* some of the very broadcasters collecting money in behalf of composers and publishers *from* broadcasters. And the broadcasters have repeatedly demonstrated that they are unflinchingly interested in paying as little as possible for the music they use, and preferably nothing. (The publishers in some cases are owned by corporations that own BMI.)

CBS, let us remember, took the action that preceded the Buffalo case. If CBS, through Blackwood Music, its BMI company, or April Music, its ASCAP firm, owns a song that is used on the CBS television network, it pays money to BMI or ASCAP that BMI or ASCAP then pays to CBS through April-Blackwood.

CBS has repeatedly shown that it wants to pay less, not more, money to composers. CBS is one of the organizations pushing for a tax on blank tape out of a deep and sensitive concern for the well-being of artists.

Before any BMI members rush to resign in high dudgeon to join ASCAP, it is well to remember that major film companies such as MCA/Universal and Warner Communications — and CBS — are important and powerful members of ASCAP through their enormous publishing holdings.

ASCAP is still another of the organizations pushing for a tax on blank tape out of a deep and sensitive concern for the well-being of artists.

Skill without imagination is craftsmanship and gives us many useful objects such as wickerwork picnic baskets. Imagination without skill gives us modern art.

— Tom Stoppard, 1972

From Print to Plastic

"Well, let's say," Russell Sanjek said with a smile you could hear over the telephone all the way from his home in Larchmount, New York, "that I didn't put the knife in too deep on this one. I didn't draw blood."

He didn't use his shovel, either. If there is a man in the music world who knows where the bodies are buried, it's Russ. I was discussing with him his *From Print to Plastic: Publishing and Promoting America's Popular Music (1900-1980).* It is a 72-page paper-backed book of about 35,000 words published as I.S.A.M. Monograph Number 20 by the Institute for Studies in American Music, Conservatory of Music, Brooklyn College of the City of New York, Brooklyn, New York 11210, at a price of seven dollars. It should be read by every musician, disc jockey, music critic, and anyone with a serious interest in music. It should particularly be read by Representative Don Edwards and Senator Charles Mathias, who sponsored the bill to put a tax on blank tape, and Senator Edward Kennedy, who is one of its supporters.

Russell Sanjek retired in 1981 as vice president in charge of public relations for BMI, 41 years after he joined the company at the time of its founding. Russ, now 68, a Philadelphian by birth, a man of middle height, solid build, and Yugoslavian background, is one of the most intelligent people ever to grace the music business. For five years he was a member of the first jazz panel of the National Endowment for the Arts, and instrumental in getting its grants for jazz increased from the initial meager $5,000 allotment. Despite his long association with BMI, he is notably objective in discussing the company and its contentious relations with ASCAP.

For a long time, Russ has been working on a three-volume history of the music business, particularly publishing, from its inception in England. John Playford began printing and distributing popular music from a London store in 1650, a century before anyone did so on the Continent. Sheet music as we know it was invented about 1695 by Thomas Cross, Jr., who used pewter for the engravings.

This major work of Russell's is under contract to Oxford University Press, with the third volume, covering the Twentieth Century, due to come out first because, as he says, "the scalpel cuts deep and the claret follows the blade." In that volume, still-famous names and the most recent scandals are dealt with, and long-accepted myths or flattened.

And a scandalous history the music business does indeed have. In London, Russ tells us in his monograph, "in the absence of legal or economic restraints, price-fixing, anti-competitive, copyright-owning monopolies came into being in the early Eighteenth Century. Like the conger eel, for which these bookseller combinations were named, they devoured all within their reach, including writers, poets, composers, and songwriters. Dealing only with each other (at mutually favorable rates) and controlling retail sales, 'congers' of bookseller-publishers dominated their world for decades."

Throughout the history of the business, it seems, the publishers, and later record companies and broadcasters, have with an almost exquisite single-mindedness tried to avoid paying composers and lyricists. In America, Russ says, the "early Nineteenth Century music publisher-merchants became increasingly hesitant to take

One of the signs of Napoleon's greatness is that he once had a publisher shot.

— Siegfried Unseld, 1980

risks on new music by their countrymen, music that had come to be considered inferior to foreign compositions. They relied instead on a profitable body of imported music that could be reproduced in the United States at an even lower cost than in Europe. It was copyright-free music, to be had for the taking because of a biased provision in the original laws denying protection of any kind to non-American printed materials. Only one-tenth of all music printed in the United States was by Americans. Even as late as the early 1900s, 70 percent of all piano rolls and recordings were of foreign music."

Here, of course, is the reason the United States was so slow to develop a musical culture of its own. Permitted by law to rob European composers, American publishers stifled the development of American composers. A few songwriters did well, particularly Stephen Foster, whose *Old Folks at Home* sold 100,000 copies in a population of 28,000,000, and William Shakespeare Hays, whose *We Parted at the River* did 300,000 copies a generation later. And both of them got royalties. Lesser writers had to sell their songs outright "for five dollars, a meal or on occasion a bottle of whisky," Sanjek says.

But one of the biggest scandals, and one whose after-effects are with us to this day, was pulled by the Aeolian Company, which in 1902 launched the pedal-operated player piano known as the Pianola. Neither Congress nor the courts had decided whether the mechanical reproduction of music, by piano roll or phonograph record, constituted an infringement of copyright. And the Aeolian Company entered into secret agreements with most of the members of the Music Publishers Association, the American industry's own first conger, formed in 1855. "Within the next 15 years," Russell says, "a few members of this group had acquired control of virtually all American popular music printed since the creation of the Republic. . . . Gradually all power was concentrated in the hands of those houses (and) most newcomers were barred from admission. . . . As a classic 'trust' it continued to restrain trade by fixing and sustaining a uniform price for all music, effectively destroying competition in many other ways. The contracts signed by members of the Music Publishers Association gave Aeolian exclusive rights to draw upon the catalogues of participating music firms for a period of 35 years, with a royalty of ten percent to be paid whenever the issue of infringement was resolved in the copyright owners' favor. Aeolian also agreed to pay all costs in a legal action that would be taken to the Supreme Court. That body was expected to make new law, in effect, by affirming the right of both parties to enter into such an arrangement.

"Although the courts subsequently ruled against the copyright owners, competing piano-roll manufacturers and representatives of the young phonograph industry cried 'Monopoly' when they learned of the secret agreement. In the atmosphere of national trust-busting then prevalent, Congress and the President were roused to action, and a compulsory licensing provision was added to the Copyright Act of 1909. For the first time in American history, the peace-time bargaining process between a supplier and user was regulated by the federal government, and the price for the use of private property was fixed by national law. A royalty of two cents for each piano roll, phonograph record, or cylinder manufactured was to be paid to the copyright owner. In addition, seeking to guard against any future copyright monopoly on the order of that which Aeolian and the Music Publishers Association had intended to form, the law provided that, once permission was granted for the mechanical reproduction of music, the piece was available for the same fee to any others who chose to use it. . . ."

"Aeolian, the prime mover in an effort to create a monopoly of mechanically reproduced music, benefited from the legislation it had inspired. Rather than pay a ten percent royalty for the music used, a fee of only two cents for each composition was required." Because of this classic case of Congress meddling in a field it did not understand — as is the Edwards-Mathias tape tax bill — the American songwriter was shafted in perpetuity, stuck with a paltry two-cent mechanical royalty until a few years ago. Even now it is only 4.25 cents, which figure should be set against the devaluation of the currency since 1909. Incidentally, Canada, which as often as not behaves in a monkey-see-monkey-do manner in regard to the United States, set a two-cent mechanical royalty — and still has raised it. Due to the currency difference, then, the actual Canadian mechanical is 1.5 American cents. It is therefore approximately a third of the American mechanical.

Payola began with payments to vaudeville people to perform songs, in order to stimulate sheet music sales. In 1915, a half million dollars a year was going to that purpose. It reached the point that the head of the Keith-Orpheum theater circuit called up the heads of the major music publishers and told them, one after another, "I want subsidy of our acts stopped by 12 noon tomorrow and I want you to meet me in my office and give your pledge to that effect. Otherwise, our 187 theaters will bar out all your songs and material." The publishers complied. For a minute.

One of the most notorious manipulators was Al Jolson, who would perform a song providing he was "cut in" as a co-author and got his name and photo on the title page. The veteran publisher Louis Bernstein said some years ago that he cut Jolson in on 40 or 50 songs. The ASCAP dictionary lists Jolson as a co-author of

Elvis Presley — bloated, over the hill, adolescent entertainer — had nothing to do with excellence, just myth.

— Marlon Brando, 1979

Avalon, California Here I Come, Me and My Shadow, Back in Your Own Back Yard, There's a Rainbow Round My Shoulder, The Anniversary Song, and *Sonny Boy*. It is doubtful that he had much hand in any of them, and legend has it that Ray Henderson, Lew Brown, and Buddy de Sylva, who did write *Sonny Boy*, did so as a joke after a debate among themselves about whether it was in fact possible to write a song too corny for Jolson.

Bandleaders too were involved in the cut-in. A number of them took co-writer credits for songs and instrumentals they did not in fact write. So did the publishers.

"The big money," Sanjek says, "was going to performers and music publishers, not to songwriters (most of whom) had no idea of the sales of their music and received little or no share in sales income and royalties." And we still have no way to check on sales, short of an expensive audit of a publisher's books. The American Guild of Authors and Composers claims to guard against theft by publishers, but in my experience AGAC is ineffectual and I no longer recommend to songwriters that they join it.

"The introduction of network broadcasting in 1926," Russell writes, "brought ever-growing audiences, attracted by free entertainment, and consequently led to the hunt on commercially sponsored variety and musical programs for that publicizing of a song by the constant repetition which produced hits. Even as the industry inveighed against the concentrated air play that resulted, charging that it reduced the very life of songs (hence royalties), *Variety* noted (10 April 1929) that 'it is doubtful whether in any other field there is so much chicanery, double-crossing, double-dealing, and hooey....' Except that the delightful word *hooey* has faded from use, the statement could have been made yesterday.

Says Sanjek: "As had the American Hotel Association, the American Federation of Musicians, the Motion Picture Exhibitors, and every other body before them whose constituents fell within the purvey of the 1909 Copyright Act's public performance section, American broadcasters protested

Puritanism — the haunting fear that someone, somewhere, may be happy.

— H.L. Mencken, 1920

immediately when it was suggested in 1922 by ASCAP that they too pay to play its music. Their argument against doing so ran along lines that had been laid down by other, earlier, reluctant music-users: because we play your music we make it popular, and therefore you songwriters and music publishers should be grateful for this advertising and ought to look somewhere else for license fees."

This attitude in broadcasting has never changed. *The Ed Sullivan Show* paid minimal fees, on the grounds that it was giving acts valuable exposure, leading to a famous altercation between Sullivan and Frank Sinatra, who refused to appear on the show to publicize a movie. *The Johnny Carson Tonight Show* takes a similar position. What one encounters in the music business, then, is widespread agreement that the composer should indeed be paid — but by somebody else.

In Europe, publishers get a third of the performance royalties, the writers two thirds. In the United States and Canada, the writers of a song get only half; the publisher gets the other half. Sanjek clarifies why.

"Most Tin Pan Alley houses had been reluctant to support (ASCAP) in its early days; just after World War I, only six firms, almost all dealing in 'production' or theater music, had joined. Not until late 1920, when there was a prospect of sharing in an initial $250,000 collected from music users, did the holdout firms begin to join. The price for their affiliation was surrender of the traditional European performing-right-society distribution policy which ASCAP had first embraced . . . In order to increase the society's repertory by the addition of publishers' catalogues, the ASCAP songwriters agreed in 1920 to equal distribution of collections and equal makeup of the board.

"Despite this pragmatic show of unity, relations between songwriters and publishers did not improve perceptibly during the '20s. The creators of popular music continued to have reason for complaint about their treatment by the music houses, which had changed little in more than a century. Songs were still usually purchased outright. The distribution of mechanical and sheet-music royalties were inequitable or even non-existent; the publisher who gave even the smallest share of royalty income to a writer was labeled a 'radical' or 'liberal'."

Sanjek gives us a detailed picture of the practice of payola (so-christened by *Variety* on October 19, 1938) and of the chart-

Dictators have only become possible through the invention of the microphone.

— Sir Thomas Inskip, 1936

rigging mechanism in the era of *Your Hit Parade*. "Financed by Tin Pan Alley at the rate of as much as $150,000 each week, the hit-making exploitation apparatus thrived on the general assumption that songs became hits because of their 'spontaneous free-will acceptance by the public because of the inherent merit of the number.' But out of some 40 popular-music publishers in New York in 1939, only 13 of them, all affiliated in some way with the motion-picture business, dominated the top songs each week...."

And there is this revelation for those with a sentimental recollection of the good old days: "Because they were regarded by publishers as 'not commercial', most songs written by well-known composers for Hollywood musicals or Broadway shows were published only in 'artists' copy' editions. Expecting them to be exploited by their publishers, the major labels recorded many of these, only to learn that few were promoted in any way. Only if the parent company insisted did publishers do so. They usually looked instead for songs with simpler melodies and commonplace lyrics. Well-written songs possessing any poetic qualities were rejected immediately, because it was the general Tin Pan Alley feeling that true sheet-music buyers had little or no interest in them and therefore they were 'not commercial'. Those great songs of the 1930s, beloved by cultural elitists and social historians, were well-known only to a minority of Americans — those who were better educated and more affluent than the average radio 'fan' and who had access to the Broadway stage and other sophisticated entertainment."

In their effort to avoid paying songwriters, the broadcasters tried to change the copyright laws, or lobbied for statutes limiting ASCAP's activities, and asked the federal government to take anti-trust action against the organization. They complained about rising fees for music use — two percent of advertising revenue in the early years, then five percent after 1936. Anticipating a further increase, the broadcasting industry in 1939 set up BMI, financed by sale of stock to broadcasters. BMI sought out songwriters not affiliated with ASCAP, and they were not hard to find, since ASCAP had a discriminatory membership requirement: you could not join it until you had five successful songs. This meant

that nobody at all would collect airplay money for you on your first four. Furthermore ASCAP would not accept composers of motion picture scores into membership, an area in which BMI was able to make great inroads, to the point that it is today probably the dominant society among film composers.

When the broadcasters refused to pay a further increase in ASCAP fees, the society pulled all its music off the air — and thereby made BMI a power in the music world. In 1941, ASCAP surrendered after losing $300,000 a month. It not only did not get its increase, it accepted a reduction in fees from five percent to 2.5 percent. The broadcasters had won, and now had their own society as well.

In its early days, BMI did not distribute the money it collected to composers and lyricists. You have to stop and think that one over: it did not pay its composers and lyricists at all. It turned the money over to its affiliated publishers. And you know how much of it they

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The harpsichord sounds like two skeletons copulating on a corrugated tin roof.

— Sir Thomas Beecham

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passed along to writers. None. This condition was later corrected by the direct payment to composers, but the publishers (some of whom, we must keep in mind, were owned by broadcasters who owned BMI) continued to be paid at a higher rate than composers. And they still are.

The songplugging mechanism developed in the days of vaudeville became only more effective in radio. It had been investigated by the Office of Radio Research even before the foundation of BMI. Its purpose, according to that report, was to lead the public, specifically the radio audience, "more and more to the point of merely accepting these songs as standardized (musical) products, with less and less active resentment and critical interest. While the accepted songs are being incessantly hammered into the listeners' heads, the prestige build-up strives to make audiences believe that this constant repetition is due to the inherent qualities of the song, rather than the will to sell it. . . . Thus it may be assumed that this controlled repetition and manipulated recommendation seem to tend to the standardization of the tastes of the listener and the *subsequent gradual eradication of those tastes*." My italics.

BMI, while it can hardly be assigned sole responsibility for the rise of rock-and-roll and the deterioration of American taste, nonetheless created a pool of music published by independent companies that considerably assisted the process. And it was in the 1940s that "race" music, aimed at a black audience, began to attract a white audience as well.

"Among the founders of the independent record companies created to fill the vacuum left by the major labels' (wartime) withdrawal from the black-music business were jazz record collectors, record retailers catering to blacks, and suppliers to black-ghetto juke boxes," Russ relates. "Most of them intended only to provide records for fellow jazz fanatics or local and regional commercial markets. To keep costs down and avoid paying royalties for mechanical reproduction of copyrighted music, some of them did 'what everybody else had always done' in dealing with artists (who often wrote their own material): they simply took over all rights to the music recorded.

"The practice was an old one. In the 1920s, when the recording industry first found sizeable markets among various racial and ethnic minorities, it had adopted a general policy of not recording any copyrighted music; rather, it signed artists who could write their own music or who used popular or folk music that could be put over as new songs. Most of this material was sold for a few dollars or assigned to the manufacturer as part of the recording agreement. The music went into 'file-cabinet' publishing companies owned by the manufacturer or one of its employes.

"Borrowing this procedure, the post-World War II independents created their own 'desk-drawer' publishing houses, with the proprietor or a record supervisor often named as the songwriter or co-writer. Black creative artists, untutored in copyright law with its bundle of rights, acquiesced without complaint. Many felt — as had race, hillbilly, and jazz talent throughout the 1920s and 1930s — that what counted was the publicity following a record release, which boosted fees for personal appearances. . . ."

Rock-and-roll arose as a laundered white imitation of black songs and performers, whose work was by secret covenant barred from many radio stations. Scandal came to Dick Clark's *American Bandstand*, owned by Triangle Publications, the parent company of *TV Guide*, and to others in radio broadcasting, including disc jockey Alan Freed. A Congressional investigation of the new payola scandals accomplished nothing, because of various devices of evasion, including rigged statistics. Bernard Schwartz, who at one time was counsel to this investigation, wrote, "What the country does not realize is that improprieties other than those committed by Charles Van Doren, Alan Freed, et al — what may be aptly described as the 'real payola' — remained buried in the (Congressional) committee's files.

"Those aware of the material involved know that we are sadly deceiving ourselves to believe that Congressmen carried out anything like the really thorough investigation of the federal agencies that is so urgently needed."

On November 21, 1973, Senator James Buckley, Republican of New York, made a speech to the U.S. Senate that too few people paid any attention to. I did not see so much as a newspaper report

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Dear Mr. Edison,
For myself, I can only say that I am astonished and somewhat terrified at the result of this evening's experiment. Astonished at the wonderful form you have developed and terrified at the thought that so much hideous and bad music will be put on records forever.

Sir Arthur Sullivan, 1888

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on it at the time, but I obtained a copy of it from the Congressional Record. Buckley had set a staff to investigating the new form of payola, drugola — in its narrowest sense, the use of drugs as payola to disc jockeys and others, a practice that was notoriously common with the major labels though difficult to prove, since the evidence disappeared into someone's arm or lungs or up their nose.

As a term, drugola also implied in a secondary sense the proselytizing of the young to drug use, partly because the backers of some rock groups and records were themselves drug distributors.

Buckley quoted Paul G. Marshall, a New York recording attorney and counsel for the Woodstock Festival of August, 1969: "Record companies and music publishers have been responsible for the issuance of many successful records, bringing millions of dollars in gross revenues, which records embody the performance of a youth extolling the virtues of soft drugs and LSD. Songs like

Mr. Tambourine Man, Acapulco Gold, Lucy in the Sky with Diamonds . . . and too many others, have made vast fortunes for companies which accept the money and deny the responsibility. Would one turn out phonograph records extolling the virtues of forcible rape, armed robbery, or kidnapping? The answer, I think, for many companies, is yes — as long as there is money in it and they don't go to jail. Several company executives have said that 'we're not judges and are only giving the kids what they want.' It is the same argument one occasionally hears in the courts of New York to defend narcotics pushers."

Within a few years, of course, the industry was turning out records precisely of the kind Marshall foresaw, and women's groups would have to protest albums and album covers celebrating the brutalization of women.

Buckley also quoted a Columbia a&r man, Steve Payley: "This business is amoral. If Hitler put together a combo, all the top executives would catch the next plane to Argentina to sign him up."

After Jay Sebring, Sharon Tate and others were murdered — and Tate's unborn baby cut from her abdomen — by the "family" of Charles Manson, there was talk in the business of marketing Manson's songs to cash in on the publicity. A certain famous performer with interesting connections put out the word that whoever issued such an album would be removed. Perhaps for that reason, the album did not come out at the time. But years have gone by, and the fuss had died down, and you can in fact get an album of the songs of Charles Manson.

In his film *Silent Movie*, Mel Brooks named his fictional film studio Engulf and Devour, an obvious play on Gulf and Western, which owns Paramount Pictures and Famous Music, among other things. The big record companies and their parent conglomerates began to gobble up the independent record labels long ago. By 1982, 82 percent of recordings issued in the United States were controlled by five conglomerates.

"Another manipulated increase of profits," Sanjek says, came "in 1969, when the average number of selections on a 12-inch LP was reduced from between 12 and 16 to a standard ten: this automatically cut mechanical royalties to songwriters and publishers. . . ."

And later on, "in the process of cutting costs by deleting merchandise whose shelf life had been found wanting by the manufacturers' computerized analysis, 'unprofitable' examples of recorded creativity in all fields of contemporary music disappear from circulation. Contemporary concert music has been virtually abandoned by the major companies to six German-owned labels, which already record half of *all* classical music." And of course German and Japanese record companies come to New York and Los Angeles to record jazz albums that are never even issued in the United States. "American composers," Russ says, "have found a new but small outlet for their work (among) new independent record makers. As once did rhythm-and-blues audiences, Americans seeking new and innovative popular music, as well as those who love traditional forms, must look to such small new competitors of the established order." Competitors whom the entire structure of the industry is designed to destroy. AGAC, the American Guild of Authors and composers, submitted an elaborate brief to Senator Mathias, one in which he apparently put credence, because he sent it to me after my first protests against the tape-tax bill he co-sponsored, to explain to me a situation and an industry he presumed I do not understand. That AGAC brief says that money made by the major American pop labels goes to support jazz and classical music. That is an absolute lie, cynically told. As we have seen, the majority of classical music is recorded by foreign companies and small independents such as Lincoln Mayorga's Sheffield Lab label. The majors record very little jazz at all, although there is a slight glimmer of light in Capitol's engaging Bruce Lundvall to set up a new pop label and a new jazz label with it. What little jazz the major labels do record — a little on CBS, none at all any more on RCA — is often of a tasteless compromised commerciality that raises a doubt whether it should be called jazz at all. If it doesn't pay for itself, meet the same sales requirements as the most commercial pop music, it is quickly dumped. Far, far and away the greatest bulk of jazz recorded in America is on labels such as Carl Jefferson's Concord, Bob Thiele's Dr. Jazz and Teresa, Gene Norman's Crescendo, Albert Marx's Discovery and Trend, Norman Granz's Pablo, Bernard Brightman's Stash, George Buck's Jazzology and Audio Fidelity, and Gus Statiras's Progressive, as well as Palo Alto, Muse, Fantasy, and GRP, and a few more labels such as pianist Marian McPartland's Halcyon and the Copenhagen-based Matrix, which is owned by pianist Kenny Drew and baritone saxophonist Sahib Shihab. Probably 95 percent of the jazz recorded in America is on these independent labels, and they absolutely are not subsidized by pop music.

> **Commercial rock and roll music is a brutalization of one stream of contemporary Negro church music ... an obscene looting of a cultural expression.**
>
> **— Ralph Ellison, 1964**

"The critics of the major manufacturers," Sanjek says, "complain about the indiscriminate corner-cutting that produces records full of pops and other noises (many feel that records pressed 20 years ago sound better); discs warped by overly tight shrink-wrapping that makes an extra penny's profit on each sale; records made from recycled vinylite, resulting in quality far below that of foreign competitors. The public complains about increasing prices — not caring, of course, that they are effected to counter falling sales . . .

"Beginning in the late 1960s, all of the major manufacturers carried a line of pre-recorded cassettes, as well as blank cassettes, and advertised both in the trade and consumer press. Today Pygmalion cries publicly because of the uses to which his Galatea is being put by the home-tapers of recorded music . . ."

Russell does not discuss the buying up of the book-publishing industry by the same conglomerates that own the record and television and movie industries — the bulk of American communications. You are unlikely to read anything critical of ABC-TV or its music interests in *High Fidelity*. ABC owns it. Nor are you likely from now on to read anything sharply critical of the record industry in its major competitor, *Stereo Review*. That publication is owned by the Ziff-Davis complex of magazines. And CBS just bought Ziff-Davis. The book industry too is owned by the conglomerates who own the record industry. RCA owns Alfred A. Knopf, Atheneum, and the paperback house Vantage Books. CBS owns Holt, Rinehart and Winston, and still other magazines besides those in the Ziff-Davis stable. Warner Communications owns a book division.

Furthermore, Pickwick and Dalton between them control 60 percent of book *sales*. Add the other chains of book-sellers, including Coles and Crown, and you find that a remarkably small number of people decide what books will in fact be placed before the buying public — and their decisions are almost entirely based on commercial factors. Not that many "non-commercial" books are likely to be submitted to them: sales departments now have a major say in the actual editorial decisions of book-publishing

houses. The very concept of democracy is based on the idea of an informed electorate. That decisions on the dissemination of information should be controlled by so few persons, and persons whose decisions are determined almost entirely on a basis of avarice, is frightening.

"What ever happened to the anti-trust laws?" said Ken Glancy, the former CBS executive and former president of RCA Records.

Russell ends his monograph, "The future will not be the same for songwriters and publishers unless federal legislation strengthens and expands protection for the intellectual property that is music." With Ronald Reagan poised to appoint as many as five justices to the U.S. Supreme Court, the rights of the artist in American would seem to be in as much jeopardy as they have ever been and maybe more.

Ken Glancy does not favor the proposed tax on blank tape. I was curious about Russell Sanjek's attitude to it, as a former vice president of BMI, which is one of its heavy sponsors. So I asked him. He said, "I was in favor of the proposal at first, for sentimental reasons. I wanted to see the artist and the songwriters and the publishers get more money, now that they're at the mercy of record manufacturers to distribute their music in the largest quantities. On second thought, I asked, Why should the manufacturers share in the revenue from such a tax, which they alone may be able to get passed? Further, under the bureaucracy it calls for, I doubt that it can ever be fairly distributed."

Indeed, one wonders how much of it would simply be absorbed by the bureaucracy established to administer it. If the experience of Sweden is a guide, 75 percent of it would go to distribute the 25 percent remaining.

One of the most powerful proponents of and lobbyists for the tax is Warner Communications, which published an elaborate magazine-size brochure crammed with "statistics" to support its case. Its survey claimed that home taping displaces an estimated $2,850,000 in annual potential pre-recorded sales. It says 50 percent of all home taping is done by 20-to-24-year-olds.

A survey by the Electronics Industry Association, however, says that 52 percent of all tapes made by 1,018 respondents to telephone interviews were not of music but of other things, including video programs. Both surveys noted that longer playing times, easier handling and storage, the impossibility of finding many desired recordings in stores, the difficulty of finding certain albums in cassette form, the desire to make one's own programs, were all cited as reasons for making tapes — along of course with the desire not to pay for the record — as the chief motive. Many people tape albums they have in fact purchased in order to play them on portable machines or in car stereo systems.

There is only one possible way to distribute the money that would be collected from a tape tax — proportionally to the distributions of BMI and ASCAP. But those distributions are already grossly unfair, for reasons I shall analyze on another occasion. And we would have the peculiar situation of money collected because people have taped albums the record companies do not consider commercial enough to keep in the inventory being distributed to the most glaringly commercial productions and performers. In other words, take the money that should go to the artists who cannot get distribution and give it those who can.

Since this issue arose, I have watched with interest the careers of Representative Edwards (Democrat of California) and Senator Mathias (Republic of Maryland) and get an impression of two decent men, intelligent and progressive legislators. Of course I know only what I read in the newspapers, as Will Rogers used to say. The New York *Times* no longer publishes music, but it used to. And it owns a radio station. The Gannett chain of newspapers, publishers of *USA Today*, also owns television chains, and in fact is a member of the consortium that intends to produce filmed programs and control all rights, including music, as do the others involved, Metromedia, Storer Communications, Taft Broadcasting (co-producers of *Entertainment Tonight*) and the Hearst chain of newspapers and magazines, which owns Hearst Broadcasting. The Los Angeles *Times* has television interests and *Time* magazine owns a record company. And the three television networks all have record-company and music-publishing interests that stand to make money if the Edwards-Mathias bill is passed. The power of news coverage of these interests, so important to the advancement of their careers, is doubtless not lost on senators and congressmen considering the Edwards-Mathias tax bill.

I am not imputing a cynical motive to the sponsorship of the bill by Mathias and Edwards. I am ascribing gullibility, however, and in legislation that can be just as dangerous. In defense of the bill, Senator Mathias wrote me a letter that was careful, thoughtful, and decent — and utterly uninformed about the character, moral and otherwise, of a business whose future he is in a position to affect profoundly and forever, a business with a horrific history of damage to the American culture in general and American music in particular. (Senator Kennedy also wrote to me, but his letter was merely silly.) Senator Mathias said that I could not make a moral generality about an entire industry. But I can and I decided to document it for him, which is why I have written all this. Keeping in mind major record companies are linked to movie and television interests, it is interesting to consider all the actors who have filed suits against the movie companies to recover missing moneys, Michael Caine and Sir Laurence Olivier among them. James Garner filed suit against Warner Communications to regain money he claims is missing from his *Rockford Files* TV series. When Cliff Robertson blew the whistle on "creative bookkeeping" — the outright embezzlement of money — he was blackballed by the entire industry. He did not work again for three years. *That* is the morality of the entertainment conglomerates.

Congressman Edwards is a former FBI man. He might well look at the figures on declining crime put forth by his former employer, take note of the fall in Scotch sales, apply the logical extrapolation to the record industry, consider that industry's ethical history and discuss the matter with Senator Mathias. An interesting place to do it would be the bar at Gadgets.

This Must Be the Place

There are eight of them, in Atlanta and other cities around the country. The motif of the decor in each of them is a variety of gadgets displayed on the walls. They are singles bars, pick-up places, and they are doing a thriving business. Entertainment consists of a pianist-singer. He is identical in all eight Gadgets. He is a puppet. He is a sort of Mortimer Snerd figure, a mockery of musicians. He sits there moving his hands over the keyboard, wagging his head from side to side, opening and closing his mouth like a fish, his eyes forever fixed in a blank stare, "singing".

He sings the same songs in the same way in all eight establishments. He displaces eight musicians. The music is all on tape.

The ownership of Gadgets is interesting. The chain is owned by Warner Communications.

Warner Communications is another of the organizations fighting for a tax on blank tape because of a deep and sensitive concern for . . .

But you get the picture.