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SECOND-CLASS MAIL

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HEARING
BEFORE THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
USE OF REPRESENTATIVES
EIGHTY-EIGHTH CONGRESS
SECOND SESSION

BILLS TO PROVIDE FOR MORE UNIFORM APPLICATION OF
SECTION 4369 OF TITLE 39, UNITED STATES CODE, WHICH
PERTAINS TO FILING OF INFORMATION RELATING TO
SECOND-CLASS MAIL PUBLICATIONS

FEBRUARY 25, 1964

Printed for the use of the
Committee on Post Office and Civil Service



FILING OF INFORMATION RELATING TO
SECOND-CLASS MAIL

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SUBCOMMITTEE APPOINTED TO CONSIDER H.R. 5481 AND H.R. 5487

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| ARNOLD OLSEN, Montana | AUGUST F. JOHANSEN, Michigan |
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INFORMATION RELATING TO SECOND-CLASS MAIL

STATEMENT OF HON. MORRIS K. UDALL, A REPRESENTATIVE IN THE CONGRESS OF THE UNITED STATES FROM THE STATE OF ARIZONA

FILING OF INFORMATION RELATING TO SECOND-CLASS MAIL

TUESDAY, FEBRUARY 25, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON
POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., room 215, Cannon House Office Building, Hon. Dominick V. Daniels, of New Jersey (chairman of the subcommittee) presiding.

Mr. DANIELS. The meeting will come to order.

This subcommittee was appointed to hold hearings on the identical bills, H.R. 5487 sponsored by Mr. Udall and H.R. 5481 sponsored by Mr. Gross. These bills repeal the provision of section 4369(a)(4) of title 39, United States Code, which exempts trade publications serving the performing arts from the requirement that the magazine publish information relating to the extent and nature of the circulation of the magazine.

The exemption contained in section 4369 was added by the Senate in 1962 as an amendment to a House-passed bill. No explanation was offered as justification for the amendment. During the consideration by the House of Representatives on the acceptance of the Senate amendment, two esteemed members of the House Post Office and Civil Service Committee, Messrs. Udall and Gross, raised questions about the necessity for the exemption.

These hearings have been scheduled in order to ascertain what justification there may be for continuing to exempt trade publications serving the performing arts from the statutory requirement applicable to all other publication information as to the circulation of the publications.

(H.R. 5481 follows:)

[H.R. 5481, 88th Cong., 1st sess.]

A BILL To provide for more uniform application of section 4369 of title 39, United States Code, which pertains to filing of information relating to second-class mail publications

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4369(a) of title 39, United States Code, is amended by striking out "": Provided, however, That trade publications serving the performing arts need only to furnish such information to the Postmaster General".

Mr. DANIELS. We are pleased to have as our first witness this morning the Honorable Morris K. Udall, sponsor of H.R. 5487. It is always a pleasure to welcome our distinguished colleague who is a member of this committee.

**STATEMENT OF HON. MORRIS K. UDALL, A REPRESENTATIVE IN
THE CONGRESS OF THE UNITED STATES FROM THE STATE OF
ARIZONA**

Mr. UDALL. Thank you, Mr. Chairman.

I do not have a prepared oration with me this morning. I will proceed informally and make a few remarks, then submit myself to what I am sure will be a penetrating cross-examination on what I have said.

I am happy to cosponsor with the gentleman from Iowa the legislation that is before the committee this morning, as the gentleman from Iowa never sponsors anything unless it is carefully considered and in the best interest of all the people of this country.

As the chairman has stated, when we passed the 1962 act it was intended to at least balance part of the postal deficit; an attempt to bring the postal deficit into balance. We rewrote certain provisions—maybe I am mistaken, I was thinking this was part of the postal—no, it was not, this was a separate bill—which was intended to rewrite the requirements for publications affecting certain publishers.

The second-class mailing privilege is a privilege and the statutes have required that annually the publishers who seek this exemption and the privileges afforded second-class mailers publish a statement of ownership and circulation of their publication.

The House passed what I thought was an excellent and carefully thought out piece of legislation. It went to the Senate and the Senate approved it but added a specific exemption for magazines serving the performing arts.

It was the feeling of the gentleman from Iowa and myself, and other Members of the House side, that there was no justification for this, nothing to serve as a basis for setting aside this particular class of publication. Because of the lateness of the session and the difficulties that might have existed, we did not oppose the conference report. At the same time, the gentleman from Iowa and myself pledged ourselves to repeal part of this legislation at some future time and accordingly, we did introduce these identical bills.

I want to say that I am heartened at the response of most of the people in this field. I understand the Magazine Publishers Association has indicated it does not object to this legislation; in fact, favors it.

I had one of the finest letters I have ever received, which I am sure the committee has and will put into the record, from the publishers of Billboard, dated June 3, 1963. I believe a similar letter was sent to the committee.

Mr. DANIELS. We do not have it.

Mr. UDALL. I will suggest to the committee that this be made a part of the record.

Billboard magazine has indicated it does not want to take advantage of the exemption, would not do so, and is proud and happy to publish its circulation data.

Mr. DANIELS. Mr. Udall has furnished the committee with the statement and has requested it be in the record of this hearing.

Mr. UDALL. I think that is all I have to say, Mr. Chairman. I thank the chairman for holding these hearings and giving me the opportunity to participate.

Mr. DANIELS. Mr. Olsen?

Mr. OLSEN. Mr. Udall, do you know of any publication serving the performing arts, by specific name, that favors this exemption?

Mr. UDALL. My understanding is this amendment in the Senate bill was sponsored by Variety magazine. They were the chief sponsor who wanted this exemption.

Mr. OLSEN. Do you know of any others?

Mr. UDALL. No. I don't know if Variety has changed its position. But it is my understanding that they were the ones who persuaded some Senators to introduce this. Now whether or not they have changed their position to accord with the sponsors of this, I don't know. Billboard magazine and other magazines believe the bills should be enacted.

Mr. OLSEN. I have no other questions.

Mr. DANIELS. Mr. Watson?

Mr. WATSON. Just two things. First, I am disappointed you had not prepared your oration because I canceled another meeting order to come and hear you.

I want to establish—apparently this was not just put in on some fancy, merely upon the request of some individual. A man of your persuasion, and of Mr. Gross', when you asked about why this amendment was attached to it what reason, if any, was given at the time, in 1962?

Mr. UDALL. None to me, except this would be harmful and difficult for this particular magazine to comply with. As I recall, they hadn't done it in the past and for some reason they felt there were particular aspects of the performing arts that would make this difficult. I was outraged at the time. This was the feeling of the gentleman from Iowa and myself after we discussed it. The thing to do was to go ahead and get the bill passed, because there were good features in it, and then continue to attack it in the fashion we have.

Mr. DANIELS. Any further questions?

Mr. WATSON. No, sir.

Mr. DANIELS. Mr. Derwinski?

Mr. DERWINSKI. No, sir.

Mr. DANIELS. Thank you so much. Sorry you were delayed and we had to hold you more than necessary.

Our next witness is the distinguished gentleman from Iowa.

Mr. Gross, you may proceed.

STATEMENT OF HON. H. R. GROSS, A REPRESENTATIVE IN THE U.S. CONGRESS FROM THE STATE OF IOWA

Mr. GROSS. Thank you, Mr. Chairman and members of the committee.

First of all, I want to reciprocate in every respect the kind comments of my colleague, Mr. Udall, and say that it is a pleasure to in effect cosponsor a bill with him.

Mr. Chairman, I appear this morning in support of my bill, H.R. 5481, and an identical bill introduced by my colleague, Congressman Udall, H.R. 5487, which relates to the requirement that owners of publications having second-class mailing privileges furnish to the Postmaster General and publish in their publications information as to the circulation of the publication including the number of copies

distributed, methods of distribution, and the extent to which such circulation is paid in whole or part.

On October 10, 1962, the House approved legislation imposing the foregoing requirement on all publications except that trade publications serving the performing arts were only required to furnish such information to the Postmaster General without need for publication. The Senate inserted such exceptions as an amendment to the House-approved bill about which Congressman Udall and I raised questions on the floor of the House when the bill with the Senate amendment was under consideration. Mr. Udall stated on the floor of the House that he would be glad to cosponsor with me a bill to eliminate this exception which, as I understand it, relates to two publications by the name of Billboard and Variety. Just why the Senate saw fit to except these two publications from the provision of the law which affected all other second-class publications is a mystery. I think it would be interesting for the committee to ascertain from the Senate committee their objectives and motives in providing an exception to the law specifically benefiting Variety and Billboard.

I consider it eminently unfair to other publications when preference is shown in the law or when special consideration is given which discriminates against almost all other second-class publications. I assume that it is to the advantage of these two publications which have been excepted from the law not to be required to publish information concerning their publications, otherwise I see no purpose in such a provision.

Mr. Chairman, I appreciate the opportunity of appearing before the subcommittee and I regret my inability to shed any light on the reasons and the purpose of the other body in providing the exception which my bill would eliminate. I hope either of these measures before the subcommittee, H.R. 5487 or H.R. 5481, will be approved by the full committee.

Mr. DANIELS. Mr. Gross, in summarizing your testimony, am I correct then in understanding that there are only two magazines serving the performing arts which come under this exemption included in the act of 1962; namely, Variety and Billboard?

Mr. GROSS. So far as I know, Mr. Chairman.

Mr. UDALL. Mr. Chairman, could I interject? One of them.

Mr. DANIELS. The Chair is in possession of a statement from Mr. Littleford, president of the Billboard Publishing Co., of New York, in which he states they do not desire to have the exemption and even in spite of the exemption have continued to publish the data that is not required to be published under this exemption.

Mr. GROSS. Subsequent to, of course, adoption of the amendment by the Senate to the legislation enacted in October of 1962.

Mr. DANIELS. Do you have any personal knowledge of why this exemption was inserted?

Mr. GROSS. Mr. Chairman, as I said in my statement to the committee, it is a mystery so far as I am concerned. I have no way of knowing why the Senate inserted the exemption.

Mr. DANIELS. Have you been able to ascertain since that time why it was inserted?

Mr. GROSS. No; I haven't.

Mr. OLSEN. I haven't any questions but I do want to compliment my colleague, Mr. Gross, on his observations of this last October. I

agreed with him then and I agree with him now, there is no justification for this exemption. I am happy to see you and Mr. Udall have seen fit to sponsor this legislation.

Mr. GROSS. Thank you. It has all the appearance of being special privilege, preferential legislation; that is the reason I am opposed to it.

Mr. JOHANSEN. Mr. Chairman, may I say this off the record?
(Discussion off the record.)

Mr. DANIELS. Mr. Watson?

Mr. WATSON. Not to belabor the point further, Mr. Chairman, but I have been handed a report on this bill, which would indicate that Postmaster General Day had suggested the addition of the words:

Provided, however, That trade publications serving the arts or cultural interests need only to furnish such information to the Postmaster General.

According to this report, he had suggested it in a letter to Senator Monroney.

Now committee counsel advises me that there was similar language in the original bill but he suggested a change in the language.

We might take it one step further to build up a record here. I am looking at the permanent record where they have taken it up in the Senate, and there was no discussion. There was one change, "arts or cultural interests" and to insert in lieu thereof "performing arts." Apparently there was no discussion. It was near the end of the session and everything was moving along smoothly.

It does cause me some concern that either the Postmaster General had either suggested or had given approval of it. I am still at a loss to understand why.

Mr. UDALL. Mr. Chairman, off the record.
(Discussion off the record.)

Mr. DANIELS. Mr. Derwinski?

Mr. DERWINSKI. Mr. Chairman, to aid our colleague from South Carolina in helping to make a legislative record, I would like to direct one question to the gentleman from Iowa.

You use the expression "mystery" in describing this accidental situation which you are trying to correct. From my recollection there were a number of other small but say mysterious changes made in the bill over in the other body, that do not give us any background or legislative record as to why they were included. I would hope the very least we do in this subcommittee, and later on in the full committee, is to establish the principle that we will review these small but certainly clear inequities. Is this a principle that you could subscribe to?

Mr. GROSS. I certainly can. And I assume that is the purpose for the gentleman from Arizona and myself being here this morning and introducing the legislation, to cure an inequity in this specific instance.

Mr. UDALL. My leader has stated my opinion.

Mr. DERWINSKI. I am pleased to see you two gentlemen cooperating; it is obvious that great minds run in the same channels.

Mr. JOHANSEN. Mr. Chairman, I just noticed one thing here and I suppose because of my membership in another committee in this House that I should not have to ask this question. I am not sure either gentleman is able to answer it. Reading ahead to some subsequent testimony which makes the statement, and I think quite properly, that any publication unwilling to publish its circulation

figures should be denied the second-class privilege, I assume the Worker and similar publications are required and do publish these circulation figures. I think it would be a matter of interest, however, to just doublecheck that point.

Mr. UDALL. Mr. Chairman, could I make one more suggestion to the committee? My colleague and coworker on this bill is a member of a party which has not controlled the House for a number of years and—

Mr. JOHANSEN. I ask that that be stricken as prejudicial.

Mr. UDALL (continuing). And there is no legislation or very little legislation bearing his name and I would urge the committee, if it decides to take action, to act on the bill of the gentleman from Iowa.

Mr. JOHANSEN. I think it is exceedingly gracious of the gentleman from Arizona, but I am sure the gentleman from Arizona wouldn't say that there isn't a great deal of legislation that bears his colleague's imprint.

Mr. UDALL. I would certainly agree.

Mr. DANIELS. We will take that under advisement.

Mr. GROSS. I thank my colleague from Arizona.

I hope if ever I can get H.R. 144 before the House, which provides for a balanced budget and orderly payment on the Federal debt, that I may have the same excellent cooperation.

Mr. DANIELS. Our next witness is Mr. Edwin A. Riley, Director of the Mail Classification and Special Services of the Post Office Department, who is accompanied by Mr. Adam G. Wenchel, Associate General Counsel.

**STATEMENT OF EDWIN A. RILEY, DIRECTOR, CLASSIFICATION
AND SPECIAL SERVICES DIVISION, POST OFFICE DEPARTMENT;
ACCOMPANIED BY ADAM G. WENCHEL, ASSOCIATE GENERAL
COUNSEL**

Mr. RILEY. Mr. Chairman, Mr. Wenchel and I are pleased to appear this morning in response to the request of the subcommittee. I have a brief statement on H.R. 5481 and H.R. 5487 which I would like to read. Mr. Wenchel and I would also be happy to answer any questions on these bills.

The purpose of these bills is to eliminate the proviso in paragraph 4 of section 4369(a), title 39, U.S. Code. That proviso is as follows:

Provided, however, That trade publications serving the performing arts need only to furnish such information to the Postmaster General.

On September 18, 1961, the Postmaster General submitted to the Speaker draft legislation to revise 39 United States Code 4369 substantially along the present lines of that section. The Department's draft legislation did not require the publisher to print in the publication the information furnished the Postmaster General. At the hearing held on H.R. 10696 and H.R. 10689 on September 11, 1962, considerable interest was shown in continuing the longstanding requirement that publishers' statements be carried in their respective publications. Thereafter, the House Post Office and Civil Service Committee reported H.R. 10696 with amendments including one to require publishers' statements to be printed in their publications (see H. Rept. 2370). It did not, however, contain the proviso which is the subject of the pending legislation.

The Senate committee added the provisions of H.R. 10696 to the House passed H.R. 10936 relating to star-route contracts and, added the proviso now under consideration. In this form the legislation was enacted.

During consideration of H.R. 10696 and H.R. 10936 the Department advised that we had no concern with whether the statements were published or not. We considered then, and we consider now, this to be a public policy matter not directly affecting the administration of the postal service. Accordingly, we have no recommendation on the merits of the pending legislation.

MR. DANIELS. Mr. Riley, would the enactment of this bill cost the Post Office any additional sum of money?

MR. RILEY. No, sir; I would say not.

MR. DANIELS. Does the Department have any opinion other than what you have expressed on this?

MR. RILEY. No, sir.

MR. DANIELS. Do you deem it advisable to enact one of the bills under consideration?

MR. RILEY. As I stated here, we do not make any recommendation either way.

MR. DANIELS. How many publications are affected by the exemption mentioned in 4369?

MR. RILEY. That is the exemption as it now exists?

MR. DANIELS. Right.

MR. RILEY. As Congressman Udall stated, it was generally understood that the publications Variety and Billboard would be exempt. The language of the exemption is broad enough that other publications could be exempt under it. We had, I would say, two or three inquiries from postmasters as to whether the exemption applied to certain publications—the names of which I do not have. We replied to the postmasters that the statute did contain this exemption and that if they had publications of that nature they did not need to require publication.

MR. DANIELS. There may be more than two magazines?

MR. RILEY. There may be a few more. We have not sent into the Department copies of publications in which the statements are printed. We leave that to the local post offices. Actually, I have no actual knowledge as to whether a few publications may not have published.

MR. DANIELS. Mr. Olsen?

MR. OLSEN. Could you furnish for the record the names of the magazines or publications that made such an inquiry as you referred to in your statement to the chairman?

MR. RILEY. Yes, sir; I think I could locate the inquiries.

(The information follows:)

While it is believed that there are several other publications claiming the exemption, the Department can identify from its records at this time only those publications mentioned at the hearing and one other publication; namely, the Motion Picture Exhibitor published by Jay Emanuel Publications, Inc., 317 North Broad Street, Philadelphia, Pa.

MR. OLSEN. Has your Department made any inquiry as to why this exemption was sought?

MR. WENCHEL. As far as we know, I think the testimony that preceded us here related to the situation, as we understood it in the

Department. Beyond that, I don't know any reason why a particular publication might not have wanted to publish its statement.

Mr. OLSEN. Do you have any idea why?

Mr. WENCHEL. I can speculate; I don't know.

Mr. OLSEN. What is your speculation?

Mr. WENCHEL. They may have some sense of privacy. There are various corporations which don't like to spread what they consider their private affairs before the public. For instance, in the old days the Ford Motor Co. was an example of one of those; that was a very sound organization.

Mr. OLSEN. Of course, the reason for the second-class privilege or the basis of the second-class privilege is entirely that there be a legitimate, bona fide subscription circulation; isn't that correct?

Mr. WENCHEL. There should be a legitimate list of bona fide subscribers.

Mr. OLSEN. Subscribers is the qualification because we want these publications that have the privilege of second-class mail to bear some responsibility to the subscriber-readers; is that correct?

Mr. WENCHEL. There should be some demand for the publications. This is what I have thought the purpose of that requirement was, a publication for which there was some public demand.

Mr. OLSEN. Well, there are some competitor publications, magazines, that do not have second-class privileges and are not trade magazines.

Mr. WENCHEL. There is a class of publications which we call controlled circulation publications which are not in second-class but which are designed to reach a particular type of reader. Those perhaps are the ones that you are referring to.

Mr. OLSEN. They don't qualify for second-class privileges because they don't have the required subscriber circulation?

Mr. WENCHEL. That is right.

Mr. OLSEN. Is there assistance in enforcement of the regulation of reporting to the Postmaster General in this requirement of the publication?

Mr. WENCHEL. No, sir.

Mr. OLSEN. The fact that the circulation should have to be made public, you don't think that is any assistance to the Postmaster General?

Mr. WENCHEL. I don't believe we have found that.

Mr. RILEY. It is not technically of any assistance. In an around about way you might say it is of assistance in that it enables members of business to police each other.

Mr. OLSEN. It helps the Postmaster General to police the industry?

Mr. RILEY. In a aroundabout way, that when the figures are published in the copies of the publication, other publishers can see them and if they are familiar with the business and have reason to doubt the truth of the figures they are very apt to speak right up and inform the Post Office Department of that fact.

Mr. OLSEN. The light of day generally does assist any kind of law enforcement or regulatory agency?

Mr. RILEY. Yes, sir; in that respect it would be of some assistance; but otherwise it would not be of assistance. We have the statements which are filed.

Mr. OLSEN. You have the statements and you file them but you don't know that they are true or false without further investigation?

Mr. RILEY. No, sir, and in the case of a particular complaint, we would still have to make our own investigation. In other words, we can't take the broad accusations of competitor publishers, but it would pinpoint a case. It would bring a particular case to our attention so we might be more apt to make our investigation.

Mr. OLSEN. Do you investigate every single publication and verify the truth of the report to the Postmaster General?

Mr. RILEY. Annually as they are filed, you mean?

Mr. OLSEN. Yes.

Mr. RILEY. No, sir; we do not.

Mr. OLSEN. You spot check them?

Mr. RILEY. Yes; we actually investigate quite a large number.

Mr. OLSEN. You don't have enough personnel to investigate every one?

Mr. RILEY. No, sir; definitely not. We would need at an office like New York a great staff of people just going out and looking at the books that the publishers maintain.

Mr. OLSEN. Just in one city you would have to have an enormous staff?

Mr. RILEY. In cities like Chicago and New York it would be terrifically large.

Mr. OLSEN. What percentage of the publications using second class do you investigate as to the circulation reports?

Mr. RILEY. I would hate to venture an estimate as to the percentage.

Mr. OLSEN. How many investigators do you have assigned to this particular task?

Mr. RILEY. We don't have any investigators assigned specifically to this specific task. Ordinarily, we would depend on the local post office and the postmaster's staff to attend to this and if we wanted to go into it further we would ask the Chief Postal Inspector to assign an inspector to investigate any given case. And we do that quite regularly. So there are a number of post office inspectors performing this particular function at any given time.

Mr. OLSEN. It seems to me there would be a very great number—the preponderance, as a matter of fact—of publishers using second-class privileges would escape investigation.

Mr. RILEY. I think that is a correct statement.

Mr. OLSEN. Then I would say that I think the Post Office Department ought to review their position, that you have stated so well. I must compliment you and your colleague here but on this particular statement the Post Office Department could well review their position as to whether or not this circulation report should be published. I think that the question of just how well you might be assisted, on who or which publications to investigate, could be reviewed.

Mr. JOHANSEN. Mr. Chairman.

Mr. DANIELS. Mr. Johansen.

Mr. JOHANSEN. Mr. Riley, I think I understood you to say that there may be some other trade publications serving the performing arts that would fall within the category of this provision as it now stands?

Mr. RILEY. Yes, sir; it is a broad provision which could include any publication serving the performing arts.

Mr. JOHANSEN. Let me ask: Is there in the existing law or in the pending legislation any category either of trade publications or other

publications with respect to whom the exception or provision is made that they need to furnish only such information to the Postmaster General?

Mr. RILEY. No, sir.

Mr. JOHANSEN. In other words, this provision, to the best of your knowledge and recollection, relates only to the trade publications serving the performing arts?

Mr. RILEY. Yes, sir.

Mr. Wenchel brings to my attention that the law overall does not require publication of statements by a large group which has second-class mailing privileges under a different act of Congress. For the most part these publications do not have paid circulation so it was the opinion of the committee at the time the bill was enacted that there would be no object in requiring these publications to show only the ownership. These were largely church publications and such which, under the law, were allowed to mail to their membership provided they didn't carry advertising.

Mr. JOHANSEN. Do I understand the trade publications serving the performing arts basically do involve paid circulation?

Mr. RILEY. Yes, sir; definitely.

Mr. JOHANSEN. So if I revise my question to if there were other categories, either of trade or other, which have paid circulation which come under a similar provision, your answer would be an unqualified "No"?

Mr. RILEY. Yes, sir; the exemption applies only to publications serving the performing arts. There are no other classes of publications included.

Mr. JOHANSEN. Even though I was not here, unfortunately, for the earlier testimony, I must say I join with my colleague in the sense of mystification as to how come this popped up; I don't see anything necessarily sinister, but it is intriguing, at least.

Since I mentioned the matter earlier, and just to satisfy my own interest, if you can clear up the record, am I correct in my assumption that the Worker and other Communist publications do come under the requirement of filing reports?

Mr. RILEY. Yes, I think generally the answer would be that they do file unless you had by some odd chance a publication which had been able to prove it is religious in character.

Mr. JOHANSEN. I am not sure that would be easy for a Communist publication to do.

Mr. RILEY. There are some questions which are raised about publications which are said to be hiding behind some other purpose that might obtain second-class privileges under the provisions of the law which would not require public disclosure.

Mr. JOHANSEN. I understand. Thank you very much.

Mr. DANIELS. Mr. Watson?

Mr. WATSON. Mr. Riley, will you tell me how many names—of those publications—have filed with your Department such information as is provided by this exemption since its passage in 1962?

Mr. RILEY. I am not sure I understand your question.

Mr. WATSON. Just tell me how many companies have furnished this information to your Department, and the names of those companies, in accordance with this exemption and the act of 1962?

Mr. RILEY. You mean publications serving the performing arts?

Mr. WATSON. Yes, sir.

Mr. RILEY. To my knowledge I only know one that has not published the information. Now they have all filed the information. I said awhile ago I would obtain for the record the inquiries that have been made by other publications as to whether they needed to publish or not. But every publisher has filed with the postmaster the statement and to my knowledge, one publication did not publish it. I am not prepared to say which others did not.

Mr. WATSON. To the best of your knowledge only one?

Mr. RILEY. That is the only—all that I am prepared to state definitely—one that did not.

Mr. WATSON. I am sure you made a study before you came over here to testify this morning?

Mr. RILEY. I regret to say I didn't check this feature. I mean I really don't have the information.

Mr. DANIELS. Mr. Johansen.

Mr. JOHANSEN. Is there any reason why we should not indicate which that one was?

Mr. RILEY. No, sir; it was Variety.

Mr. JOHANSEN. You say Variety.

Mr. WATSON. It is Variety.

The chairman probably asked as to whether or not the passage of this pending bill would cause an additional cost to the Department and you stated "No"?

Mr. RILEY. I stated it would not.

Mr. WATSON. I ask you if the passage would result in any additional workload on the Department?

Mr. RILEY. I answered earlier, "No." In view of my discussion with Congressman Olsen, perhaps I should say that if additional investigations were the direct result of more publishing, there might be some slight additional cost. But considering the number of publications involved, I think I can still say there would be no additional cost of any significance.

Mr. WATSON. With the passage of these bills?

Mr. RILEY. With the enactment of either of the bills under consideration.

Mr. WATSON. I don't want to belabor this but how could it possibly result in any additional cost for these bills to be passed?

Mr. RILEY. My earlier answer was it would not.

Mr. WATSON. I thought you were trying to qualify your answer as to the cost.

Mr. RILEY. Only to the extent that if additional investigations may be the result of publishing, as was brought out here in my discussion with Congressman Olsen, there might be some very minor or slight additional cost for the investigation.

Mr. WATSON. Actually no more than under the present law, as you would have?

Mr. RILEY. No; I don't think it would be any cost of any significance.

Mr. WATSON. One final question, if we might try to elicit this, since you say the Department has no official position on this legislation. May I ask you this question: In the absence of any justification having been given for this exemption, which you will agree that you have none and none certainly has been presented here today, in the

absence of that justification do you not think that it is eminently fair to treat all of the publications with paid circulations alike under the second-class mail privileges?

Mr. RILEY. Yes, sir; I would answer "Yes" to that.

Mr. JOHANSEN. One further question, off the record.

(Discussion off the record.)

Mr. DANIELS. On the record.

Mr. JOHANSEN. Let me direct a question to the chairman as to whether, since Variety has been mentioned here as the one publication that has apparently availed itself of this exemption, whether or not Variety has indicated any opposition to this bill or any desire to testify before the subcommittee?

Mr. DANIELS. The Chair desires to state that Mr. Les Carpenter, counsel for Variety, was notified of this hearing and offered the opportunity to appear here today to testify or to submit a statement for the record. I do not know if anyone is here from Variety but before this hearing concludes I shall ask for Variety's representative to step forward, either to testify or to submit a statement.

Mr. JOHANSEN. Thank you.

Mr. DANIELS. That will be all, Mr. Riley and Mr. Wenchel. Thank you.

Our next witness is Mr. Serrill, executive vice president of the National Editorial Association, who is accompanied by Mr. William Potter, legislative chairman.

Mr. SERRILL. Mr. Chairman, I apologize for Mr. Potter. He is deeply involved in some production problems and he has left the responsibility to me this morning.

Mr. DANIELS. That is perfectly all right.

STATEMENT OF THEODORE A. SERRILL, EXECUTIVE VICE PRESIDENT, NATIONAL EDITORIAL ASSOCIATION

Mr. SERRILL. Mr. Chairman, I am Theodore A. Serrill, executive vice president of the National Editorial Association and general manager of its headquarters office here in Washington.

This is my second appearance in less than 18 months before this group on legislation to amend the newspaper publicity law of 1912. In September 1962, Mr. Walter Potter, Culpeper, Va., and I, on behalf of association members, endorsed the purpose of the amendments then proposed by the Post Office Department and suggested certain changes which were subsequently made by your committee. As reported and passed by the House, the 1962 bill, H.R. 10696, was endorsed by the National Editorial Association.

The National Editorial Association is a 79-year-old trade association of hometown newspapers. It is the oldest national newspaper organization in the United States, with members in all 50 States. Our membership includes more than 6,200 weekly, semiweekly and daily newspapers. NEA is affiliated with State newspaper associations in 45 States and serves as their Washington representative. Virtually every NEA-member newspaper holds a second-class mailing permit, which explains our strong interest in any legislation affecting second-class mail.

The legislation under consideration here today would affect directly only "trade publications serving the performing arts." None of our

members engage in that field. Nonetheless, hometown newspapers are concerned about upholding the integrity of second-class mail, which is limited to publications with a bona fide paid circulation list. We see no reason why, as a condition of obtaining and retaining the second-class privilege, a publication should not only be required to report to the Post Office its paid circulation but should publish that figure annually. We argued for that publication requirement before this committee in 1962 and the enactment of the amendment that resulted so provided.

Through no fault of this committee, the other body added a rider to the 1962 bill, exempting "publications serving the performing arts" from publishing their circulation figures. The circumstances at the time were such that your committee and the House were forced to accept an objectionable rider—a special privilege for a very few trade journals. The bills before you today would repeal that special privilege and close that loophole.

The National Editorial Association wholeheartedly supports H.R. 5481 and H.R. 5487. Any publication unwilling to publish its circulation figures should be denied the second-class privilege. NEA hopes a bill will be reported by this committee and passed.

Gentlemen, I thank you for the opportunity to express these views of the hometown newspaper industry.

As an addenda, I would say that we feel that in the half century this legislation has been on the books—having been amended during that time—it has been very helpful in making a better newspaper printing and publishing industry.

Thank you.

Mr. DANIELS. Mr. Serrill, as one who is actually associated with the publication media, how many magazines to your knowledge would come under the category of serving the performing arts?

Mr. SERRILL. I would say that there are several publications, or at least a few publications, which in part serve the performing arts—Broadcasting would be one; another would be Television—but I don't think they were inclined to be concerned in this area. There are probably some regional or local publications that would be serving the performing arts. It is so written that you could not specifically pin it down to a single type of publication.

Mr. DANIELS. Do you have any knowledge as to why this was enacted by the Senate?

Mr. SERRILL. I suspect that it was at the request of some one of the performing arts publications.

Mr. DANIELS. Do you know of any worthwhile reason for its enactment?

Mr. SERRILL. I do not, sir.

Mr. DANIELS. Mr. Olsen?

Mr. OLSEN. Do you think that the publication of circulation reports is an assist to the Postmaster General in the qualifications for the use of the privilege of second-class mailing?

Mr. SERRILL. I certainly do. It is public notice and it puts the publisher on record as to what his circulation is and, to some extent, how the circulation is delivered.

Mr. OLSEN. And do you know that users of second-class mail help to police this privilege of second-class?

Mr. SERRILL. I do, sir. As recently as yesterday I was involved at the Post Office in a question involving a statement, one of these statements published last fall. These are read. It is public notice and it is in the columns of the publication and columns of our own newspapers that the readers and the advertisers and the competition see once a year not only what the circulation is but also what the ownership of that publication is.

Mr. OLSEN. Is this common that the challenge is made?

Mr. SERRILL. Not common, but not uncommon.

Mr. OLSEN. It is not uncommon. Does it happen more than once a year?

Mr. SERRILL. It happens more than once a year through our own organization.

Mr. OLSEN. I have no further questions.

Mr. DANIELS. Mr. Johansen?

Mr. JOHANSEN. I commend the position of the NEA both in this general area and in this specific legislation.

I have no questions.

Mr. SERRILL. Thank you.

Mr. WATSON. I would also like to commend you. You mentioned earlier about not knowing how many publications would be affected by this and it gives rise to one question in my mind. Would a magazine that advertised or exchanged advertisements about positions that are open in the television field or radio field, or what have you, would they qualify as publications serving the performing arts?

Mr. SERRILL. I couldn't answer you, sir, but I expect that they could qualify because there is no definition in the act as to what is a publication in that area.

Mr. WATSON. So if the users of second-class privilege were of a mind to do so, then they could start running ads for actors and actresses or summer stock plays or television, and they could qualify under this exemption?

Mr. SERRILL. It's a very ingenious idea.

Mr. WATSON. I don't mean to start any run on this prior to the passage of this legislation.

Mr. DANIELS. Thank you.

Is Mr. Les Carpenter or anyone here representing Variety magazine who desires to testify?

(No response.)

Mr. DANIELS. Let the record show no one steps forward and there is no response.

In all fairness to Variety, the chairman would like to state that we will leave the record open for 2 weeks for affording Variety the opportunity of testifying on this.

I would like to file for the record the statement of Mr. W. D. Littleford, president, the Billboard Publishing Co., 165 West 46th Street, New York, N.Y.; a statement of Mr. Charles Ablard, vice president, Magazine Publishers Association, Inc.; a statement of Mr. Eliot H. Sharp, editor, Investment Dealers' Digest, 150 Broadway, New York, N.Y.; and a statement of Mr. Robert A. Saltzstein, attorney, Associated Business Publications.

Without objection these statements will be received for the record.

(The statements of Messrs. Littleford, Ablard, Sharp, and Saltzstein follow:)

STATEMENT OF WILLIAM D. LITTLEFORD, PRESIDENT, BILLBOARD PUBLISHING Co., NEW YORK, N.Y.

Billboard, the international music-record newsweekly, supports H.R. 5481 and H.R. 5487, identical bills introduced by Congressmen Gross and Udall.

Billboard did not seek the exemption which was finally written into H.R. 10936 in 1962. As a matter of fact, we oppose exemption for any second-class publication, including those serving the performing arts, a field which we serve.

When the law was passed, we stated that we would not avail ourselves of the so-called opportunity not to disclose the same information thousands of other second-class publications not serving the performing arts, are properly required to disclose. Accordingly, we have printed this information in Billboard each October, the exemption privilege available to us notwithstanding. A copy of our sworn statement as it appeared in Billboard on October 12, 1963, you will find below.

Not having sought the legislation, unwilling to take advantage of it, seeing no reason for it, and committed to the principle of full disclosure of circulation information by all publications desiring to mail at second-class rates, Billboard urges passage of H.R. 5481 and H.R. 5487 so that the exemption for trade publications serving the performing arts will be eliminated.

STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION

(Act of October 23, 1962; sec. 4369, title 39, United States Code)

1. Date of filing: October 1, 1963.
2. Title of publication: Billboard.
3. Frequency of issues: Weekly.
4. Location of known office of publication: 1964 Broadway, New York, N.Y., 10036.
5. Location of the headquarters or general business offices of the publisher: 2160 Patterson Street, Cincinnati, Ohio, 45214.
6. Names and addresses of publisher, editor, and managing editor: Publisher, Hal B. Cook, New York, N.Y. Editor, Lee Zhito, New York, N.Y. Managing Editor, Jack Orr, New York, N.Y.
7. Owner: The Billboard Publishing Co., 2160 Patterson Street, Cincinnati, Ohio; Mrs. Marjorie D. Littleford, Fort Thomas, Ky.; J. W. Ross, Sr., trustee, Fort Thomas, Ky.; R. S. Littleford, Jr., Port Washington, N.Y.; W. D. Littleford, Roslyn Estates, N.Y.; Jane L. Stegeman, Fort Thomas, Ky.; estate of Mariana W. Littleford; Marjorie L. Ross, Fort Thomas, Ky.; L. M. McHenry, Fort Thomas, Ky.
8. Known bondholders, mortgages, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages or other securities: None.
9. Paragraphs 7 and 8 include, in case where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting; also the statements in the two paragraphs show the affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner. Names and addresses of individuals who are stockholders of a corporation which itself is a stockholder or holder of bonds, mortgages or other securities of the publishing corporation have been included in paragraphs 7 and 8 when the interests of such individuals are equivalent to 1 percent or more of the total amount of the stock or securities of the publishing corporation.
10. This item must be completed for all Publications except those which do not carry advertising other than the Publisher's own and which are named in sections 132.231, 132.232 and 132.233, Postal Manual (secs. 4355a, 4355b and 4356 of title 39, United States Code).

	Average number copies each issue during preceding 12 months	Single issue nearest to filing date
A. Total number of copies printed.....	25,500	26,300
B. Paid circulation:		
1. To term subscribers by mail, carrier delivery, or by other means.....	16,545	17,201
2. Sales through agents, news dealers, or otherwise.....	3,090	3,000
C. Free distribution by mail, carrier delivery, or by other means.....	1,731	1,714
D. Total number of copies distributed.....	21,366	21,915

I certify that the statements made by me above are correct and complete.

JOHN W. ROSS,
Secretary, the Billboard Publishing Company.

MAGAZINE PUBLISHERS ASSOCIATION, INC.,
New York, N.Y., February 17, 1964.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN MURRAY: It is our understanding that on February 25, 1964, your committee will hold a hearing on H.R. 5481 and H.R. 5487, relating to the exemption for "trade publications serving the performing arts." The exemption was included in the statement of ownership legislation enacted by the 87th Congress as Public Law 87-865 as an amendment to 39 U.S.C. 4369.

The Magazine Publishers Association represents 113 member publishers who publish over 70 percent of the total circulation of American magazines. We know of no reason why "trade publications serving the performing arts" should be subject to any more or any less stringent requirements affecting the periodical press in either the acts of Congress or rules of the Post Office Department.

Accordingly, we would urge that the exemption be removed unless an adequate showing can be made to justify the exemption. Such a showing was neither made nor attempted at the lengthy hearings on the statement of ownership requirements conducted by your committee in the 87th Congress.

The second-class entry is reserved for periodical publications which meet the statutory requirements established by the Congress. The American public is better informed and better read because the Congress has provided it. Magazines and newspapers have flourished and grown in this country as in no other because Congress in its wisdom established this class of postage for the periodical press. Specific statutory exemptions of selected categories of the press sets a bad precedent and, barring some unusual circumstances or justification, should not be made.

Thank you for affording us the opportunity of submitting our views.

Sincerely,

CHARLES D. ABLARD, *Vice President.*

FEBRUARY 7, 1964.

HON. DOMINICK V. DANIELS,
House of Representatives,
Washington, D.C.

DEAR MR. DANIELS: The Investment Dealers' Digest has no objections whatsoever to publishing circulation figures as required by the Post Office Department under its regulations for magazines having second-class mailing privileges.

One group of second-class magazines, however, has preferential treatment. We object to this preferential treatment as discriminatory. This group comprises the few publications "serving the performing arts." Requirements applied to all other publications should be applied to these with equal force and effect.

Cordially,

INVESTMENT DEALERS' DIGEST.
ELIOT H. SHARP, *Editor.*

STATEMENT OF ROBERT A. SALTZSTEIN, PARTNER, WYATT & SALTZSTEIN, WYATT BUILDING, WASHINGTON, D.C. FOR THE ASSOCIATED BUSINESS PUBLICATIONS, FEBRUARY 25, 1964

On September 11, 1962, the Associated Business Publications, an association of 165 business publications, all audited by the Audit Bureau of Circulations, and all circulated at second-class rates, testified in opposition to a bill which would have done away with the publishing of ownership and circulation information by all second-class periodicals. At the time that hearing was held, every second-class publication was required by law to publish this information annually. Along with other publishing associations, Associated Business Publications could see no reason whatsoever for abolishing the publication requirement, and so testified. The tenor of our testimony was that a publisher ought to be ready, willing, and able to tell in his publication what his circulation is, and who owns the publication, if he desires to continue mailing at second-class rates.

Practically all reputable publishers already supply similar information to various auditing bureaus and to Standard Rate and Data, a publication which lists circulation data for most periodicals. Some publications are not audited by an independent, tripartite auditing bureau such as Audit Bureau of Circulations. Accordingly, the only figures available to determine whether or not a publication has a legitimate list of subscribers to mail at second-class rates are those required by the Post Office Department in the annual publication requirement. In the absence of this kind of a check, the door is opened for fraudulent use of second-class mail. Inclusion of the requirement that all second-class publications print their circulation information once a year in that publication is not an onerous requirement, and is in the public interest.

The magazines Broadcasting and Billboard, both members of Associated Business Publications, serve the performing arts. Under the law as it presently reads, neither of them are required to print this information. But they do not desire the exemption. They have declined it. The new law notwithstanding, both Broadcasting and Billboard continue to publish their ownership and circulation statements just as they always have, and just as thousands upon thousands of second-class newspapers and magazines have done, and continue to do. It is our understanding that Television magazine, also serving the performing arts has declined the exemption and continues to publish its circulation and ownership information, the law notwithstanding.

We fail to see anything different about "trade publications serving the performing arts" from any other kind of publications, and we support H.R. 5481 and H.R. 5487 so as to remove the exemption.

Mr. DANIELS. That concludes the hearing this morning.
(Thereupon, at 11:13 a.m., the subcommittee was adjourned.)



STATEMENT OF ROBERT A. GILBERT, PARTNER, WATTS, TITCOMB, WATTS
 BUREAU, WASHINGTON, D.C. FOR THE ASSOCIATED BUSINESS PUBLICATIONS
 FEBRUARY 25, 1962

On September 11, 1962, the Associated Business Publications, an association of 105 business publications all listed by the Audit Bureau of Circulations, all organized as second-class rates, testified in opposition to a bill which would have done away with the publishing of ownership and circulation information by all second-class publications. At the time this hearing was held, every second-class publication was required by law to publish this information annually. Along with other publishing associations, Associated Business Publications could see no reason whatsoever for abolishing the publication requirement, and so testified. The tenor of our testimony was that a publisher ought to be ready, willing, and able to tell in his publications what his circulation is and who owns the publication. It is desirable to continue mailing at second-class rates.

Practically all reputable publishers already supply similar information to various administrative agencies and to Standard Rate and Data, a publication which lists circulation data for most periodicals. Some publications are not listed by an independent, objective auditing bureau such as Audit Bureau of Circulations. Accordingly, the only figures available to determine whether or not a publication has a legitimate list of subscribers to mail at second-class rates are those compiled by the Post Office Department in the annual publication reader's guide. In the absence of this kind of a check, the first is opened for landing use of second-class mail. Location of the requirements that all second-class publications submit their circulation information once a year in Post publication is not an onerous requirement and is in the public interest.

The managers, proprietors and publishers, both members of Associated Business Publications, were the beneficiaries of the law as it presently stands. Nothing of theirs is required to print this information, but they do not leave the government. They have decided to print this information voluntarily. Both Associated Business Publications and Standard Rate and Data have their own separate and distinct information, and just as thousands upon thousands of second-class newspapers and magazines have done and continue to do. It is our understanding that television magazines also serving the publishing industry, the best of the television and continue to publish its circulation and ownership information, the law notwithstanding.

We will be pleased to discuss about your publications serving the public. If you have any other kind of publications, and we support it, let us know and we will be glad to discuss the matter.

Mr. Boardman: This concludes the hearing this morning.
 (Thereupon, at 11:13 a.m., the adjournment was announced.)



