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TO AMEND THE COPYRIGHT ACT, S. 2082

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HEARINGS BEFORE THE SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE NINETY-SIXTH CONGRESS

SECOND SESSION

ON
S. 2082

AUGUST 20 AND NOVEMBER 19, 1980

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TO AMEND THE COPYRIGHT ACT, S. 2082

WEDNESDAY, AUGUST 20, 1980

U.S. SENATE,
SUBCOMMITTEE ON IMPROVEMENTS IN
JUDICIAL MACHINERY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 6226, Dirksen Senate Office Building, Senator Dennis DeConcini (chairman of the subcommittee) presiding.

Present: Senator DeConcini.

Also present: Senator Zorinsky.

Staff present: Robert E. Feidler, chief counsel; Robert Cynkar, minority counsel; and Pamela Phillips, chief clerk.

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DeConcini. The subcommittee will come to order.

The subject of today's hearing is S. 2082, a bill to amend the Copyright Act by creating an exemption for nonprofit fraternal and veterans' organizations from the obligation of the act to pay performance royalties.

These nonprofit entities believe that this requirement under present law that they must pay a copyright fee, generally in the form of purchasing a license from either the American Society of Composers, Authors and Publishers or Broadcast Music, Inc., is contrary to other laws governing these nonprofit organizations, and that it creates an undue burden on them in their laudable community efforts of promoting charitable causes.

The other side of the issue addresses the rights of the creator of the copyrighted work, and that individual or group's reasonable expectation that they will receive the fruits of their labor.

We will hear today from witnesses representing both sides of this issue. It is the subcommittee's intention to hold another day of hearings, with a specific date to be announced.

Our first witness is Senator Edward Zorinsky, the distinguished Senator of Nebraska, the author of S. 2082.

We thank you for bringing this to the attention of the subcommittee. You may proceed with your statement.

After your statement I would be more than happy to have you join us here on the panel and have you participate in the hearings.

Prior to proceeding with your statement, Senator Zorinsky, Senator Thurmond has asked that his statement be made a part of the record.

[The prepared statements of Senators Thurmond and Simpson follow:]

PREPARED STATEMENT OF SENATOR THURMOND

Mr. Chairman, I appreciate your taking time out of your busy schedule to hold these hearings.

I have been contacted by a number of groups in my State of North Carolina, such as the American Legion and the Veterans of Foreign Wars. They tell me the requirement in the present law with regard to the payment of performance royalties for entertainment they hire for various social events is a real burden. All they want is a clarification of the law so that on a one-time basis performance royalties will not have to be made.

As I understand it, this exemption would be limited to nonprofit organizations and only for limited performances for events where although tickets may be sold, any profits would go for nonprofit purposes.

I look forward to the testimony of our witnesses today.

PREPARED STATEMENT OF SENATOR SIMPSON

I should like to join you in expressing the appreciation of this Subcommittee to all of the witnesses who have appeared before us today, and a special thanks to the representatives from the Benevolent and Protective Order of Elks, the Loyal Order of Moose, the Fraternal Order of Eagles, the Veterans of Foreign Wars and the American Legion.

I have long observed this issue of royalty payments required to be made by veterans' and fraternal organizations and have, therefore, joined Senator Zorinsky as a cosponsor of this legislation. I am compelled to speak out as this Subcommittee begins deliberations on S. 2082.

From 1909 to 1978 these types of fraternal and veterans' organizations enjoyed an exemption from the requirement that they pay any royalty for the use of copyrighted music. During this period, each of these organizations built an outstanding record of local, state and national service gained through a wide variety of charitable programs. The extent and scope of the programs developed by these non-profit groups is due in part to the exemption that was extended to these organizations. Each of the witnesses today has detailed for us the wide range of charitable works undertaken by his or her respective group. We can all be quite proud and grateful that there are such devoted and selfless individuals who will give of themselves for the benefit of others.

Today, however, these same dedicated groups are being threatened; and the good that they do is also being threatened. The 1976 revision of the copyright law took away the exemption that was enjoyed by them for so long a time and which enabled them to put their assets to such good use. Since 1978, each of the over 30,000 local units of the organizations represented here today has been required by law to pay a music copyright royalty, even though their use of the music has been only to further the fine programs outlined above. The result of this requirement has been to force the small local club to discontinue the use of music to assist in supporting its programs, in spite of the fact that music programs are one of the primary ways in which these clubs can generate revenue to finance their charities. In addition, even where the club is not forced to discontinue music the royalty payments must still be paid from funds which would otherwise be available for direct use in charitable programs. S. 2082 would restore the exemption previously enjoyed by these organizations and it would remove the threat to their very worthwhile charities.

There is another type of negative force at work here, that is the threat of prosecution of these charitable organizations in Federal Court For Copyright Infringement with a potential judgment for statutory damages in the amount of not less than \$250.00 for each copyrighted musical composition that is performed without permission of the copyright holder. The existence of this sanction—so inappropriate outside of the commercial context—has given rise to an unfortunate situation. Under threat of prosecution these representatives of the copyright holders can demand immediate compliance with their demands for royalty fees. I have been made aware of cases in my own state where this power has been wielded in a highhanded and arrogant manner. I believe that it reflects poorly

on the copyright holders that such shabby treatment is allowed to persist. Strong-arm tactics have no place here.

Further, Mr. Chairman, I believe that the very small sacrifice that the copyright holders will be called upon to make needs to be re-emphasized. Testimony today by Mr. Cramer confirms that the copyright industry derives less than one tenth of one percent of its gross income from the organizations that would be exempted under the provisions of this act. This same amount that would mean so little to the copyright holders collectively means a great deal to those who contribute so much to those in need. I feel no pangs of remorse on this issue. All that this bill will do is to restore the pre-1978 "status quo" and place the parties in the same relationship which they have been in since 1909—a period during which the American music industry has grown and developed into the world leader.

STATEMENT OF SENATOR EDWARD ZORINSKY

Senator ZORINSKY. Thank you, Mr. Chairman. I appreciate having the opportunity to come here today to talk about S. 2082 and I thank you for holding this hearing. I realize in the waning days of this session our time is limited and very precious. For you to extend this courtesy to us and give us the opportunity to have this hearing I feel is an outstanding contribution of yours to the hearing process.

In 1976 the Congress passed a general revision of the copyright law in an effort to improve a very complex situation, and they may have actually done so. But at the same time I believe the Congress took the unfortunate step of removing the exemption that had been in effect since 1909 for some very worthwhile organizations.

This issue was originally brought to my attention by a fellow member of the Fraternal Order of Eagles from my hometown of Omaha. As I looked into this further, I came to the conclusion that it would be extremely worthwhile to join Congressman Harsha of Ohio, who introduced a similar bill in the House, in an effort to provide relief to the fine organizations who do so much in the way of community service and public good.

Those who oppose this bill claim that this is a taking of private property without just compensation. Well, I agree it is a taking, but it is such a small taking when compared to the overall amount of copyright fees collected, and let us look at what we get in return.

Take the Fraternal Order of Eagles, for example. This organization, which just celebrated its 82d anniversary, has over 1,350,000 members in 3,500 chapters. It follows a credo "To make human life more desirable by lessening its ills and promoting peace, prosperity, gladness and hope." The Eagles have been involved in natural problems such as legislation for the elderly and poor, and on local issues like blood banks to save lives, an iron lung for a polio victim, and donations to the Red Cross and the Community Chest. The Eagles have been very involved in the development of Boys Town in my own State, and with all of the boys clubs across this country. In the 1950's the Eagles raised over \$1 million for the Damon Runyon Cancer Funds, and in the last 10 years founded the Max Baer Heart Fund, which has donated over \$4 million for heart research. This group pays \$550,000 a year in fees to copyright owners.

Let us look at the Loyal Order of Moose, founded nearly 100 years ago, with 1.7 million members in 200 lodges now in operation. This group is dedicated to the belief that a person can attain no higher

destiny than to serve his or her fellow human. The Order of Moose has developed an extensive and varied program of activities for the betterment of local communities throughout the Nation, with special emphasis placed on youth activities of recreation and training for the future.

Many lodges support Boy Scout troops, Girl Scout troops, and Camp Fire Girls. A typical lodge is involved with the sponsorship of scouting in all its branches, teenage activities, cooperation with recognized charitable organizations in fundraising projects, screening tests to determine hearing deficiencies, blood banks, and local cleanup, paintup campaigns.

The pride and joy of the Order of Moose is Mooseheart and Moosehaven. The former is the famed City of Children, which is a home and school owned and maintained by the order for the benefit of children of deceased members of the order, and other fatherless or motherless children. Moosehaven is a home maintained for aged members and their wives in Jacksonville, Fla. This organization pays over \$500,000 a year in fees to copyright owners.

The American Legion is another group actively involved in an effort to make the world a little better place to live. The legion has 2.6 million members in 16,000 posts. We are familiar with American Legion baseball, and I know that we in public life have experience with Boys and Girls State, as well as Boys and Girls Nation.

In addition to these well-known programs, there is the Special Olympics, nursing scholarship programs, grants to national foundations for research, and participation in local telethons. This group pays over \$1.5 million a year in fees to copyrights owners.

Mr. Chairman, what these and so many other fine organizations do, and what they contribute to our society, cannot be given enough credit. There is the Lions Clubs, with its work with seeing-eye dogs and the blind. There is the Shriners, and its work with crippled and disabled children. Then there is the Elks, and the Veterans of Foreign Wars. The list goes on and on.

All this legislation does is to provide a little relief and help, and in return we ask the copyright owners to give up 1 percent of their gross income of close to \$200 million a year.

Mr. Chairman, I can appreciate the concern of the copyright regarding the precedent of opening up this area of exemptions. There are many groups who would seek to be included but whose activities are either for profit, or who do not serve the general public in any constructive way. I urge the committee to study very carefully the wording of any legislation it might decide to approve, because there are many such groups that are considered nonprofit by the Internal Revenue Service, but who should not, in my opinion, be covered by S. 2082.

Mr. Chairman, I would like to discuss one more point of great concern to me, and that is the fact that the 1976 Copyright Act put the management of this new statute under the Library of Congress. This makes no sense at all. If it is to be anywhere, it should be under the executive branch of Government, not the legislative. However, even better, it really should be in the private sector of our business community, subject to contractual negotiations and bargaining, not Gov-

ernment edict. Other than as a recorder of copyrights, the Federal Government should leave to the free market system the determination of how, how much, and when royalty fees are paid.

To make matters even worse, the new law also established the Copyright Royalty Tribunal which must decide how much the cable systems, public broadcasters, and jukebox owners should pay, and how much of the cable revenues should go to the producers and how much to the broadcasters. Although the Tribunal is under the Library of Congress, it is not subject to congressional review.

President Carter initially did not even want to appoint anyone to the tribunal because that would be inconsistent with his campaign promise to eliminate unnecessary and duplicative Federal agencies. Each of the five commissioners is paid \$50,112.50 a year, plus staff and rent. Mr. Chairman, why should the taxpayer support this program, and pay for expenses that should rightfully be paid for by the beneficiary; namely, the copyright holders? Eliminating this would be a step in balancing our Federal budget and in reducing unnecessary regulations.

Thank you, Mr. Chairman.

Senator DECONCINI. Senator Zorinsky, thank you. You make an eloquent statement and explain the issue quite clearly.

I was unfamiliar with the amounts of money which are involved here until I read your statement. Have those amounts paid by the Fraternal Order of Eagles been increasing on an annual basis, or shall I withhold that question for one of the members of that group?

Mr. ZORINSKY. To the best of my knowledge they have not. However, I understand it is under consideration to increase the rate, as everything increases with inflation. Obviously the current rates are not set in concrete to last up to infinity. Definitely there would be an anticipation of increased rates.

Senator DECONCINI. Your legislation will apply only to charitable organizations?

Senator ZORINSKY. That is correct. As I pointed out in my statement, Mr. Chairman, there are some which are considered charitable organizations by the IRS but do not perform a public service. In that sense possibly verbiage could be created to include those.

Senator DECONCINI. Your primary intent in the paragraph for exemption is for the nonprofit veterans' organizations and fraternal organizations only to be covered?

Senator ZORINSKY. That is correct.

Senator DECONCINI. That definition differs from the charitable organizations definition under IRS regulations, I understand.

Senator ZORINSKY. That is right.

Senator DECONCINI. Religious organizations are already exempt from the copyright provisions?

Senator ZORINSKY. As far as I know, they are.

Senator DECONCINI. So there is no need to include them here so far as you know?

Senator ZORINSKY. As far as I know they are exempt under the current law.

Senator DECONCINI. Thank you very much, Senator.

We welcome your joining us here to participate in any questioning.

Senator ZORINSKY. Thank you, Senator.

Senator DECONCINI. We will now have a panel consisting of Daniel Splain, Fraternal Order of Eagles; Carl Weis, Loyal Order of Moose; Clarence J. Ruddy, Loyal Order of Moose; Anthony Ranieri, Loyal Order of Moose; and Donald O. Oesterling, member, Grand Lodge, Benevolent & Protective Order of Elks.

Please identify yourselves for the reporter when you speak. If you have statements, we would appreciate your summarizing them.

PANEL OF FRATERNAL ORDER OFFICIALS:

STATEMENTS OF DANIEL SPLAIN, FRATERNAL ORDER OF EAGLES; CARL WEIS, CLARENCE J. RUDDY, AND ANTHONY RANIERI, LOYAL ORDER OF MOOSE; AND DONALD O. OESTERLING, BENEVOLENT & PROTECTIVE ORDER OF ELKS

Mr. SPLAIN. Mr. Weis will lead.

Senator DECONCINI. Please proceed.

Mr. WEIS. Mr. Chairman, I represent the Loyal Order of Moose which expresses its appreciation to you, Mr. Chairman, for the opportunity to present to your subcommittee this memorandum in support of the Senate bill 2082, to amend title 17.

The Loyal Order of Moose, which was organized in 1888, is a non-profit private fraternal order now including more than 2,000 lodges throughout the United States. Each lodge is separately incorporated not-for-profit and has its own board of officers and its own funds.

The purposes of the order as stated in its constitution are to unite in the bonds of fraternity and charity persons of good character; to educate and improve members and their families; to assist aged members and their wives; to encourage and educate members in patriotism and obedience to laws; to encourage tolerance; to render services to orphaned or dependent children by the operation of the institution called "Mooseheart," situated at Mooseheart, Ill.; and to serve aged members and their wives at the institution called "Moosehaven" which is in Orange Park, Fla.

The Supreme Lodge of the World, Loyal Order of Moose, is the administrative representative and agent of the lodges of the order in all matters of common and joint interest which may be best administered by one central agency.

Both Mooseheart and Moosehaven are charities maintained by a portion of the dues of members and contributions of members and their families. In addition, the different lodges support a broad range of purely local, charitable, philanthropic, and community service activities. The continued existence of these charitable and community service activities depends upon the dues and contributions from these sources. No public solicitations of any kind are ever made.

To help carry out the purposes of the order nearly all Moose lodges provide music as a social activity for their members. For such functions, lodges usually hire one or more musicians, frequently members of the lodge, to furnish music for the particular occasion.

On all such occasions, admission is limited to Moose members, their wives, and their guests. Moose lodges use music strictly for nonprofit and noncommercial purposes, in which no provision is ever made for a profit for any promoters or organizers—usually not even for the lodge itself.

Lodges are merely interested in furnishing music for their members and their wives on various occasions throughout the year, infrequently making the equivalent of an admission charge to offset part of the cost of the evening, but never to make a profit for any promoters or organizers or anybody else, or even the lodge itself. Many of these affairs actually result in a small loss which the members willingly offset with a portion of their dues payments.

Naturally, increased costs occasioned by copyright fees and licenses result in more frequent losses which are borne by the respective lodges. Those losses curtail contributions to charitable institutions of the order as well as local charitable, philanthropic, and community service activities, and reduce the effectiveness of the lodges as well.

On a projected basis the amount paid for royalties and licenses by Moose lodges alone is more than a half million dollars annually. This diversion of funds materially reduces the contributions which could otherwise be made to Mooseheart, Moosehaven, and local charitable, philanthropic, and community service activities.

In fact, in an effort to reduce the effects of the excessive burden of the act, it has become necessary for many lodges to reduce the frequency of musical entertainment they provide for their members.

Many of the newly restrictive provisions applied to nonprofit organizations by the act stemmed from the monster rock concerts which some nonprofit groups sponsored in the past; however, none of those groups were nonprofit fraternal or veterans' organizations. Thus, these organizations are being penalized for improper actions which others committed.

The 1909 Copyright Act took note of the distinction between public performance for profit and those not for profit. Historically, public performances were required to have permission of the copyright owner and hence generally were charged a fee. Nonprofit performances were exempt.

The 1976 act now in effect reverses this. It does so by broadening the definition of the "public" in such a way as to distort its generally accepted meaning. The word "public" is defined in the dictionary as "of, pertaining to, or affecting the people as a whole, the community, State or Nation." The definition in the present Copyright Act is much broader. Section 101 states—

To perform or display work "publicly" means—(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances are gathered . . .

The act places an excessive financial burden upon the nonprofit fraternal and veterans' organizations by its severely narrowed definition of a "private" group. An illustration of this severity is the observation that a literal interpretation of the act would require in many cases a "father of the bride" to obtain a music license for his daughter's wedding reception at their home simply because he is paying one or

more musicians and has invited some of the groom's friends who have never been within the circle of his family and his social acquaintances, and, in fact, who are totally unknown to him and his family. The wedding reception thereby becomes a "public performance" under the terms of the act.

The definition of "public" or "publicly" in the Copyright Act is in direct conflict with the language of the public accommodations section of the 1964 Civil Rights Act which exempts private clubs and other establishments not in fact open to the public. By providing that a performance is made public if it is presented to an audience greater than a family circle or its social acquaintance, the Copyright Act makes a private club public.

The Civil Rights Act does not define the word "public," so it must be given its generally accepted meaning as pertaining to the community as a whole. If the definition in the Copyright Act were accepted, clubs would be in fact public and the distinction as a private group intended to be given by the Civil Rights Act would be lost. Fraternal orders would, therefore, lose their well-recognized character.

This status is already recognized by nearly all concerned branches of Federal and State Governments. For example, the State alcoholic beverage licenses held by nearly all Moose lodges carry a restriction specifically prohibiting accommodations of the general public, and limiting the benefits of the license to the members, their families, and their bona fide guests.

Additionally, although the act provides for exemption of certain performances, this purpose is virtually defeated for all nonprofit fraternal organizations by the requirement that there be no compensation paid to the performer. This requirement is unrealistic.

A performer's services are limited by time and space—in other words, he can perform at only one place at a given time, whereas an author can derive income indefinitely from a single action. In our society today it is unreasonable—even unthinkable—to expect musicians to perform without compensation, even in the many cases where they are also members of the lodge.

The Loyal Order of Moose does not object to a requirement that all performances truly public should require permission of the copyright owner; or to the concept that all persons engaged in a genuinely public venture for profit should share in the profits. It does object to the requirement that a fee be paid for a performance given by a private nonprofit veterans' or fraternal group for its bona fide members and their wives. Such functions are simply not public, except by artificial definition.

This requirement of a fee unfairly burdens the lodge officers and members who give of their time and energy in order to help a charity, and diverts to the copyright owner sums which would otherwise be available to that charity. Sums intended by the lodge members to be used for charity are thus siphoned off for the copyright owner.

The power given Congress by the U.S. Constitution to enact a copyright law was not primarily for the benefit of the author, but primarily for the public. The permissive works of the Constitution granting the power are "to promote the progress of science and useful arts."

The U.S. Supreme Court has held that the copyright law makes a reward to the owner a secondary consideration. It has held that rights of access through fair use of the copyright material pertaining to the cultural, esthetic, historical, educational, scientific, technical, and religious heritage of the Nation come within the scope of the right of free press guaranteed by the Bill of Rights.

The first amendment guarantees freedom of speech, of the press, and assembly, and the Supreme Court has said that these rights are meaningless unless the people have freedom of access to the materials protected. It has, therefore, consistently applied the doctrine of fair use to copyrighted materials. In passing upon particular claims of infringement, courts have occasionally subordinated the copyright holder's interest in a maximum financial return to the greater public interest in the development of art, science, and industry.

The Loyal Order of Moose respectfully submits that a performance given by a veterans' group or a fraternal lodge, to its members and guests, for nonprofit and noncommercial purposes, is fair use of the copyrighted material and should not be regarded as a copyright infringement.

Summing up, from 1909 to 1976 America's nonprofit veterans' and fraternal organizations were regarded as exempt from the old Copyright Act because they were looked upon as private groups whose musical performances were generally limited to their members and families. On behalf of its more than 1.7 million members, the Loyal Order of Moose respectfully urges restoration of the exempt status of these organizations from the requirements of the 1976 Copyright Act.

Thank you, Mr. Chairman.

Senator DeCONCINI. Thank you, Mr. Weis.

Does anyone else care to make an opening statement?

Mr. OESTERLING. I appreciate the opportunity to present testimony at this public hearing. My name is Donald O. Oesterling. I am here officially as a member of the Grand Lodge, Benevolent & Protective Order of Elks, Government Relations Committee, to testify in favor of passage of S. 2082, which would exempt fraternal organizations and others from payment of license fees and royalties under the Copyright Act of 1976.

By way of background, let me say that I am a past State president of the Pennsylvania Elks State Association, a former State senator in Pennsylvania, and presently president of a public affairs and public relations organization located in Harrisburg, Pa.

The Benevolent & Protective Order of Elks is fundamentally an organization numbering 1,649,267 members bound together under the basic tenets of love of God, flag, and country. Yes, we are basically a patriotic group, but more than that, we are a community-oriented order which is dedicated to helping those in our society who are less fortunate than we.

Our membership is diverse throughout the 50 States, belonging to 2,257 lodges. All the States or combinations of several are also combined into organizations further dedicated to social and community improvement. Most of these State organizations have projects of major

proportions and usually referred to as the "major project." These involve work with persons with cerebral palsy, crippled children projects, eye banks, youth camps, just to name a few.

I'm most familiar with the Pennsylvania major projects program and want to relate briefly what that's all about. Our major project supports 21 registered nurses in mobile units working in concert with the various local cerebral palsy affiliates to bring home-bound nursing care and therapy and counseling to the hundreds of people, mostly youngsters, who are afflicted with cerebral palsy and may have, years ago, been closeted away with no attempt to educate or blend them into society.

Our program cost this year in Pennsylvania is close to \$400,000. Many States are doing similar work and many of them are spending much more money. Nationally, our expenditure on cerebral palsy is \$2,279,553 and for crippled children's programs \$2,300,000 for a total of \$4,579,533 annually.

I mentioned that we are a patriotic organization and indeed we do go out of our way to exercise our patriotism, for it was through the Elks that the national observance of Flag Day was instituted. Further, our order has pledged that so long as a disabled veteran is hospitalized in these United States, the Order of Elks will never forget him, and to that end, the Order of Elks spends yearly almost \$1 million with hundreds of thousands of volunteer hours donated by our members. Our people visit every veterans' hospital in this Nation on a weekly and often daily basis.

When we realized that we would be called on to testify at the hearings, a call went out to all our State organizations to see if we could get current information regarding our charitable works as to dollars and volunteer time. I have received current information from 35 States reflecting charitable contributions of over \$20,208,184 and well over 20,979,770 volunteer hours. Who knows what figure we might approach if all Elks State organizations were factored into those figures?

In addition to those figures, the grand lodge of our order disbursed \$1,691,814 paid out in scholarships principally, but also to State major projects and some youth programs.

Gentlemen, what I'm trying to say is that the Order of Elks is a totally unselfish, nonprofit organization that should not be considered under the Copyright Act. S. 2082, designed to exclude fraternal from paying licensing fees and royalties, ought to have your favorable consideration.

We are not promoters; we are not for profit; we are not in competition with entertainment groups. We do have dances for our membership and sometimes bona fide guests. Most of our dances are for the benefit of our many charities.

Fraternal are not unlike other organizations who in this time of inflation and diverse activity are having trouble maintaining themselves. The impositions on our lodges placed there by the Copyright Act are yet another "straw on the camel's back."

On behalf of the entire membership of the Elks, I join with my colleagues from the other fraternal organizations to request your favorable consideration of S. 2082 and your support for its eventual passage.

I will be happy to try to answer any questions you might have about our order.

Senator DECONCINI. Thank you very much, sir.

Anybody else?

Mr. SPLAIN. My name is Daniel Splain. I appear before you today representing 1,800 local aeries of the Fraternal Order of Eagles in the United States of America for the purpose of voicing our support of S. 2082, amending the Copyright Act of 1976 to grant relief to non-profit veterans' organizations and nonprofit fraternal organizations for the performance of musical works in connection with their nonprofit activities.

The Fraternal Order of Eagles is a nonprofit, fraternal, beneficial society exempt from income tax under section 501(c)(8) of the Internal Revenue Code as amended and has approximately 1,250,000 members in the United States of America.

In behalf of the entire American membership of the Fraternal Order of Eagles, we strongly urge this subcommittee to favorably consider the amendment to the Copyright Act of 1976 that is proposed in S. 2082.

In 1835, Alex DeTocqueville wrote in his epic book "Democracy in America" the following statements:

Americans of all ages, all conditions, all dispositions, constantly form associations. They have not only commercial manufacturing companies in which all take part, but associations of a thousand other kinds—religious, moral, fraternal, serious, futile, general and restricted, enormous and small. The Americans make associations and organizations to give entertainment, to found seminaries, to build endowments, to construct churches, to aid hospitals, to diffuse books, to send missionaries abroad and in this manner they have founded most of the hospitals in America; have helped the prisoners, have built America's schools.

If it is proposed in the United States of America to inculcate some truth or to foster some feeling by the encouragement of a great example, the Americans form an association or organization or a society.

Whenever, at the head of some new undertaking in France you will see the head of government; or in the country, the United Kingdom, you will see a man of title and rank; in the United States of America you will be sure to find an association or an organization heading or leading the way.

What DeTocqueville wrote in 1835 still remains very true to the present day. Unfortunately, many of the burdens imposed by Government on legitimate nonprofit organizations like the Fraternal Order of Eagles and my colleague groups here today make it much more difficult for members of the Eagles and other similar organizations to lead the way to aid our society.

S. 2082, if passed by the Congress of the United States, will provide a great deal of relief to nonprofit fraternal organizations in the pursuit of their charitable activities by relieving the organizations of the current requirement imposed by the Copyright Act of 1976 that they secure copyright licensing agreements for the performance of musical work in conjunction with our legitimate nonprofit activities. The passage of S. 2082 is compatible in principle with section 110, paragraph 4, of the Copyright Act of 1976, as currently written.

Nonprofit fraternal organizations like the Fraternal Order of Eagles raise a great deal of their charitable funds through fundraising dances. These dances, at which live music is performed by a band, are restricted to members of the fraternal organizations and their bona fide guests.

According to reports filed by local aeries of the Fraternal Order of Eagles with our international office, the local units of our order in the United States are now paying approximately \$550,000 annually to copyright licensing organizations.

The current definition of the performance of a public work in the Copyright Act of 1976 indicates the following in section 101 of the act:

To perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered * * *.

We feel that the Copyright Act of 1976 would be much fairer to nonprofit organizations if the same definition of "public facility" were used in the Copyright Act as is used in the Civil Rights Act of 1964. There is presently a conflict in the definition of a public place between the Civil Rights Act of 1964 and the Copyright Act of 1976.

A legitimate nonprofit fraternal organization is not a public accommodation as defined in the Civil Rights Act of 1964. Dances and other social events held under the sponsorship and on the premises of nonprofit fraternal organizations are not functions that are open to the public. Admission is restricted by fraternal law, State liquor laws, and coverage of the Civil Rights Act of 1964 to members, their families, and guests.

If this is not the case in any given situation, as far as we are concerned, the organization is not operating as a legitimate nonprofit fraternal organization and should be entitled to no favored treatment under the Copyright Act of 1976, the Internal Revenue Code of 1954, the Civil Rights Act of 1964, or any other Federal, State, or municipal legislation.

However, as long as a nonprofit organization operates for the exclusive benefit and enjoyment of its members, their families, and their guests, we strongly feel that the definition of a public act of a musical performance should be redefined in the Copyright Act of 1976 to conform to the definition of a place of public accommodation in the Civil Rights Act of 1964.

We are confronted today with the strange situation of operating the Fraternal Order of Eagles as a place of private accommodation within the scope of the Civil Rights Act of 1964 while at the same time as being treated as a public place of accommodation by the Copyright Act of 1976.

If S. 2082 is passed and the Copyright Act is amended to exempt fraternal and veterans' organizations from the coverage provisions of the act, copyright owners would still have remedy under section 110 to object to any given performance of a musical work in a fraternal or veterans' organization by filing the notice of objection defined in section 110(4). In this way, the copyright owner would still be protected from organizations that he or she felt were not truly operating as nonprofit organizations.

The six theater owners who founded the Fraternal Order of Eagles in 1898 set forth as their basic goal for the organization the following ideals:

"To make human life more desirable by lessening its ills and by promoting peace, prosperity, gladness, and hope."

The Fraternal Order of Eagles has done a remarkable job over the last 82 years emulating those ideals set forth by our six founders.

In 1935, President Franklin Delano Roosevelt credited the Fraternal Order of Eagles for the passage of the Social Security Act. The Eagles sponsored the first old age security insurance law in the country in Montana in 1923 and worked for 12 years after the passage of that first piece of legislation until national social security became a reality in 1935.

Among the many other programs the Eagles have been given credit for over the years are the passage of workmen's compensation acts, mother's pension laws, the Age Discrimination in Employment Act, and vigorous liberty under law programs to teach the young people of our Nation respect for our country's laws and the people whose responsibility it is to enforce those laws.

In cooperation with CARE, the International Relief Agency, the Eagles have established 32 vocational training centers throughout the world to aid young children regardless of race, religion, color, and creed to learn a vocation in order that they may get a start in life.

When the late Broadway columnist Walter Winchell launched the Damon Runyon Fund for cancer research, the Eagles were the first national organization to join the effort. One million dollars later, Winchell was to term the Eagles ". . . the Santa Claus of the Damon Runyon Fund."

Well over \$12 million has been raised and distributed by the Fraternal Order of Eagles nationally in the last 5 years alone for heart research, cancer research, gerontological research, and research into catastrophic diseases of childhood.

It is impossible to estimate total voluntary man-hours that Fraternal Order of Eagle members devote to charitable activities. It is also impossible to pinpoint the exact amount of money that is donated by local Fraternal Order of Eagle aeries in the 50 United States directly to charities and community services in the 1,800 localities that the Eagles call home in our great Republic. Without a doubt, both man-hours and dollar volume locally would reach the 5 million mark.

Attached to our testimony, Mr. Chairman, are several pamphlets and brochures which describe in detail the goals and accomplishments of the Fraternal Order of Eagles for our Nation.

We sincerely hope, Mr. Chairman, that your distinguished subcommittee will favorably consider S. 2082 in order that the Fraternal Order of Eagles, and many other organizations like the Fraternal Order of Eagles, can continue to serve their communities and their fellow man as we have done rather capably for the last 82 years.

All we are really asking, Mr. Chairman, is some degree of relief under the Copyright Act of 1976 so that we may continue to emulate those very high standards established by our founders 82½ years ago in Seattle, Wash.

The favorable consideration of the legislation currently before you can help 1¼ million Americans honor their constant commitment to fulfill the dreams of those six Seattle theater owners who founded the Fraternal Order of Eagles.

We wish to thank you, Mr. Chairman, for the opportunity to appear before your subcommittee today and we stand ready to provide any

further information or assistance that you or the subcommittee may need to answer any questions unresolved in your minds.

Senator DECONCINI. Any further statements?

Mr. SPLAIN. Not at this time.

Senator DECONCINI. Gentlemen, let me first thank you for your background material. Also let me note for the record that this Senator is well aware of the Eagles', the Moose's and the Elks' participation, at least in the State of Arizona, in many charitable functions.

I happen to be a member of one of those organizations, and I am keenly concerned about the equities involved here.

I do not think anyone questions, certainly not this Senator, the fine work that these organizations have done. I am familiar with them, and I know in my own State of Arizona the Elks have provided rest homes for their own members and for disabled veterans for years. They were leaders in this activity, as they still are, in Tucson, Ariz., demonstrating great foresight and the need for a great social cause long before the Federal Government responded.

I appreciate the record which shows not only your fine statement but also the sediments of this Senator who is extremely supportive of your efforts. I wish you would express that to the local chapters upon your return.

Let me address a couple questions to you. It seems to me we are not discussing just the benefits and the magnificent display of community participation and patriotism of organizations; we are talking about some equities involved here. We need to examine thoroughly the public good, in my opinion, of taking from someone something which under the law they have a right to have at this time, and balancing that with the public good provided by the organizations which will benefit.

In the fraternal order that you represent, are you permitted, and do you at any time hold, events purely for the public to raise money for your charitable causes?

Mr. SPLAIN. Speaking on behalf of the Fraternal Order of Eagles. at no time do we hold purely public functions. By virtue of liquor licensing laws we are restricted to members and their families and guests.

Senator DECONCINI. Is that correct as to your organization?

Mr. OESTERLING. Likewise with the Elks. We are nonpublic.

Senator DECONCINI. You do not sell tickets to dances which non-members can purchase?

Mr. OESTERLING. Unless they are a bona fide guest of a member, we too are restricted under the liquor licensing provisions.

Senator DECONCINI. If I am not a member of an Elks club but a friend of yours, and you are having a dance and you sell me a ticket for \$10—

Mr. OESTERLING. I could take you as my guest.

Senator DECONCINI. You could not sell me a ticket for \$10?

Mr. OESTERLING. That is right.

Senator DECONCINI. In light thereof, are the estimates of money paid for the copyright benefit an increasing expense incurred in the organizations and one which is escalating by inflation or increase in organization charges, and is there any special fee for charitable organizations?

Mr. SPLAIN. In my opinion the annual payments made by the Fraternal Order of Eagles and most of the other organizations, Elks and Moose who are here today, have increased each year since the Copyright Act became effective in 1978. This is due to two factors, one being inflation. The second is by increasing requirements for compliance with the act, as ASCAP and BMI became more aware of local organizations and licensed more of the organizations which were not previously licensed.

Senator DECONCINI. Referring to those fees which are paid, each chapter or each lodge has to pay it?

Mr. SPLAIN. Each local area has its own individual contract with BMI or ASCAP and their payments are determined with BMI based upon the annual dollar volume which they spend on entertainment.

With ASCAP it is based on a number of variable factors, including seating capacity.

Senator DECONCINI. Is there any consideration for charitable organizations?

Mr. SPLAIN. No.

Senator DECONCINI. No deduction or lessening of the amount?

Mr. SPLAIN. Not to my knowledge.

Senator DECONCINI. Just for the Eagles, what do you estimate the expenditures are for the Eagles?

Mr. SPLAIN. I do not have figures. I would hate to hazard a guess.

Senator DECONCINI. Will that involve a great deal of time?

Mr. SPLAIN. I can write each of the lodges and find out.

Senator DECONCINI. I do not want to put you through any tremendous effort of expenditure. I would be interested to know how much that would amount to.

Mr. SPLAIN. I would be happy to find out.

Senator DECONCINI. The same would apply to the Elks if that information is available. I would like to have it in the record.

The other question which comes to my mind is with regard to religious organizations. In looking at the limitations on exclusive rights, it makes reference to the literary and musical works of a religious nature, but it certainly is unclear as to whether or not if a nonprofit religious organization wanted to put on an event whereby they would use the funds either for their members or even for the public for charitable purposes they might be exempted today.

What is your feeling about including nonprofit and religious organizations if the exemptions were expanded?

Mr. SPLAIN. Speaking only on behalf of the Eagles we would be more happy and would welcome the inclusion of nonprofit religious organizations and nonprofit fraternal organizations already covered by Senator Zorinsky's bill.

Senator DECONCINI. Do the Eagles, Elks, or Moose have patents themselves on any of their songs, writings, or other fraternal and ritual works?

Mr. SPLAIN. Our emblem is copyrighted as a trademark. We do not have an official song in the Fraternal Order of Eagles to have a copyright.

Mr. OESTERLING. The same is true of the Elks.

Mr. WEIS. We do not have copyrights on any of our material.

Senator DECONCINI. If someone were to use your copyright or anything that you have copyrighted, if there were a charitable organization involved would you object to the use of it?

Mr. SPLAIN. We have had many local units and internal units of the Fraternal Order of Eagles and other related nonprofit organizations who have wanted to use our emblem or trademark for a charitable purpose. We have gladly permitted them to do so.

Senator DECONCINI. Can you supply a few examples of where that has occurred?

Mr. SPLAIN. I would be more than happy to do so.

Senator DECONCINI. Do you know of any?

Mr. OESTERLING. I don't know of any case we have done that.

Senator DECONCINI. Have you ever objected to anyone using it for a nonprofit purpose?

Mr. OESTERLING. To my knowledge, no.

Senator DECONCINI. As to the cost of these copyright fees, can you give me an example of what it costs a local lodge in Pennsylvania, Utah, or Arizona annually for the Elks Lodge in Tucson, Ariz., or in Pittsburgh?

Mr. SPLAIN. My own home club of the Fraternal Order of Eagles in Pittsburgh is paying \$150 a year to BMI and I think the figure is \$285 or \$385 to ASCAP.

Senator DECONCINI. About how many performances does that lodge have a year?

Mr. SPLAIN. Approximately 14 a year.

Senator DECONCINI. Can you gentlemen from the Moose or the Elks give me an example of one or two fee structures you have to pay?

Mr. WEIS. Mr. Chairman, in your own backyard of Arizona we have three lodges that are currently paying license fees totaling \$440 by the three lodges to ASCAP and we have four lodges paying to BMI a total of \$340.

Senator DECONCINI. Let me have another State. Do you have those States listed? Give me Pennsylvania.

Mr. WEIS. In Pennsylvania there are 64 lodges.

Would you like New York?

Senator DECONCINI. I would like to have some idea.

Mr. WEIS. Pennsylvania 64 lodges paying \$8,252 to ASCAP and 12 lodges paying \$1,530 to BMI. This is as of April 30.

Mr. OESTERLING. I have no figures but I will be happy to compile them and supply them.

Senator DECONCINI. I would like to have them for the record.

From your experience with the local lodges, has this been a significant financial burden or strain on the lodge?

Mr. SPLAIN. As Mr. Oesterling pointed out in his testimony, it is one more straw breaking the camel's back. Although it sounds very good to be a nonprofit fraternal organization, in every State of this Nation we must pay property tax. The only thing we are exempt from is income tax. However, we have the same costs of operation as any other profitmaking facilities. At the same time while trying to see that many of our dollars go for charity purposes, locally, statewide, and nationally, it makes it much more difficult to hold fundraising dances and events where we must pay this additional fee.

Senator DECONCINI. Your testimony is that it is an additional burden.

Mr. SPLAIN. Yes.

Senator DECONCINI. It is certainly not the cause of less expansion or less participation, is it?

Mr. SPLAIN. It has been the cause in some localities of the cessation of fundraising dances.

Senator DECONCINI. It has?

Mr. SPLAIN. Yes.

Senator DECONCINI. Can you give me a list?

Mr. SPLAIN. I will be happy to provide a full list.

Senator DECONCINI. Is that true with the Elks?

Mr. OESTERLING. The problem is that not only is it an added expense but it is an agitation. Having enjoyed an exemption up until the passage of the Copyright Act of 1976, it is an agitation and it makes it difficult. The more lodges being discovered now by ASCAP and BMI, the more agitation we get from the lodges because they are going after licensing these. That is why costs are increasing to the various organizations as well.

Senator DECONCINI. How about the Moose?

Mr. WEIS. Mr. Chairman, I know of none which have discontinued.

Senator DECONCINI. As a result of that?

Mr. WEIS. As a result of that, except to the extent of reducing the entertainment program or the social activity program of the members themselves. It has made the difference—

Senator DECONCINI. Along that line, when you make a payment to ASCAP or BMI, is that for the total year? Are you restricted then to the number of performances?

Mr. WEIS. The payment is for the total year. That is my understanding.

The number of performances in the one contract, the ASCAP contract, is specified. In the BMI contract, it is not specified.

Senator DECONCINI. So they vary.

Mr. WEIS. That is right.

Senator DECONCINI. In the ASCAP contract, if your fee for the lodge is \$150 a year, it is in that contract that you have the right to have 12 performances of live music?

Mr. WEIS. I don't believe it is worded that way but that is the essence of it. There is a fee.

Senator DECONCINI. Then if you have No. 13, 14, or additional ones, you are subject to additional fees?

Mr. WEIS. I would suppose so. I have not heard of that.

Senator DECONCINI. In BMI, you pay a fee and can have as many as you want.

Mr. WEIS. Based upon total expenditure for entertainment of all kinds, not including just music.

Senator DECONCINI. Total expenditures of the lodge toward entertainment?

Mr. WEIS. Yes.

Senator DECONCINI. When you say entertainment, is that just musical entertainment?

Mr. WEIS. All kinds of entertainment.

Senator DECONCINI. If you had a singer come in, a local singer, and you were going to pay him something, that is included in the total gross amount of dollars?

Mr. WEIS. That is right.

Mr. RANIERI. In our area of the country, I am familiar with approximately 25 lodges in the State of Arizona. It has come back to me directly from official representatives from some of those lodges they are having considerable difficulty financially although they are making it. However, they are having problems financially, and this licensing fee has a significant effect on their operation and discouraging their providing entertainment for the operation of their lodges.

Senator DECONCINI. You have been paying this for 2 or 3 years? When did it start?

Mr. SPLAIN. The third year, Mr. Chairman.

Senator DECONCINI. I have no further questions.

Mr. Feidler?

Mr. FEIDLER. I have no questions.

Mr. SPLAIN. Thank you in behalf of all of us.

PREPARED STATEMENT OF CARL WEIS

The Loyal Order of Moose expresses its appreciation to the Chairman of the Senate Judiciary's Subcommittee on Improvements in Judicial Machinery for the opportunity to submit this memorandum in support of Senate Bill 2082 to amend Title 17 of the United States Code to exempt nonprofit veterans' organizations and nonprofit fraternal organizations from the requirement that certain performance royalties be paid to copyright holders.

The Loyal Order of Moose, which was organized in 1888, is a nonprofit private fraternal Order now including more than 2,000 lodges throughout the United States. Each lodge is separately incorporated not-for-profit and has its own board of officers and its own funds.

The purposes of the Order as stated in its Constitution are to unite in the bonds of fraternity and charity persons of good character; to educate and improve members and their families; to assist aged members and their wives; to encourage and educate members in patriotism and obedience to laws; to encourage tolerance; to render services to orphaned or dependent children by the operation of the institution called "Mooseheart", situated at Mooseheart, Illinois; and to serve aged members and their wives at the institution called "Moosehaven" which is in Orange Park, Florida.

The Supreme Lodge of the World, Loyal Order of Moose, is the administrative representative and agent of the lodges of the Order in all matters of common and joint interest which may be best administered by one central agency.

Both Mooseheart and Moosehaven are charities maintained by a portion of the dues of members and contributions of members and their families. In addition, the different lodges support a broad range of purely local, charitable, philanthropic and community service activities. The continued existence of these charitable and community service activities depends upon the dues and contributions from these sources. No public solicitations of any kind are ever made.

To help carry out the purposes of the Order nearly all Moose lodges provide music as a social activity for their members. For such functions, lodges usually hire one or more musicians, frequently members of the lodge, to furnish music for the particular occasion.

On all such occasions, admission is limited to Moose members, their wives, and their guests. Moose lodges use music strictly for nonprofit and noncommercial purposes, in which no provision is ever made for a profit for any promoters or organizers—usually not even for the lodge itself.

Lodges are merely interested in furnishing music for their members and their wives on various occasions throughout the year, infrequently making the equivalent of an admission charge to offset part of the cost of the evening, but never to make a profit for any promoters or organizers or anybody else, or even the lodge itself. Many of these affairs actually result in a small loss which the members willingly offset with a portion of their dues payments.

Naturally, increased costs occasioned by copyright fees and licenses result in more frequent losses which are borne by the respective lodges. Those losses curtail contributions to charitable institutions of the Order as well as local charitable, philanthropic and community service activities, and reduce the effectiveness of the lodges as well.

On a projected basis the amount paid for royalties and licenses by Moose lodges alone is more than a half million dollars annually. This diversion of funds materially reduces the contributions which could otherwise be made to Mooseheart, Moosehaven, and local charitable, philanthropic and community service activities. In fact, in an effort to reduce the effects of the excessive burden of the Act, it has become necessary for many lodges to reduce the frequency of musical entertainment they provide for their members.

Many of the newly restrictive provisions applied to nonprofit organizations by the Act stemmed from the monster "rock" concerts which some nonprofit groups sponsored in the past; however, none of those groups were nonprofit fraternal or veterans' organizations. Thus, these organizations are being penalized for improper actions which others committed.

The 1909 Copyright Act took note of the distinction between public performance for profit and those not-for-profit. Historically, public performances were required to have permission of the copyright owner and hence generally were charged a fee. Nonprofit performances were exempt.

The 1976 Act now in effect reverses this. It does so by broadening the definition of the "public" in such a way as to distort its generally accepted meaning. The word "public" is defined in the dictionary as "of, pertaining to, or affecting the people as a whole, the community, state or nation". The definition in the present Copyright Act is much broader. Section 101 states unto perform or display work 'publicly' means—(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances are gathered . . ."

The Act places an excessive financial burden upon the nonprofit fraternal and veterans' organizations by its severely narrowed definition of a "private" group. An illustration of this severity is the observation that a literal interpretation of the Act would require in many cases a "father of the bride" to obtain a music license for his daughter's wedding reception at their home simply because he is paying one or more musicians and has invited some of the groom's friends who have never been within the circle of his family and his social acquaintances, and, in fact, who are totally unknown to him and his family. The wedding reception thereby becomes a "public performance" under the terms of the Act.

The definition of "public" (or "publicly") in the Copyright Act is in direct conflict with the language of the public accommodations section of the 1964 Civil Rights Act which exempts private clubs and other establishments not in fact open to the public. By providing that a performance is made public if it is presented to an audience greater than a family circle or its social acquaintances, the Copyright Act makes a private club public. The Civil Rights Act does not define the word "public", so it must be given its generally accepted meaning as pertaining to the community as a whole. If the definition in the Copyright Act were accepted, clubs would be in fact public and the distinction as a private group intended to be given by the Civil Rights Act would be lost. Fraternal Orders would, therefore, lose their well recognized character.

This status is already recognized by nearly all concerned branches of Federal and State governments. For example, the State alcoholic beverage licenses held by nearly all Moose Lodges carry a restriction specifically prohibiting accommodations of the general public, and limiting the benefits of the license to the members, their families, and their bona fide guests.

Additionally, although the Act provides for exemption of certain performances, this purpose is virtually defeated for all nonprofit fraternal organizations by the requirement that there be no compensation paid to the performer. This requirement is unrealistic.

A performer's services are limited by time and space—in other words he can perform at only one place at a given time, whereas an author can derive income indefinitely from a single action. In our society today it is unreasonable—even unthinkable—to expect musicians to perform without compensation, even in the many cases where they are also members of the lodge.

The Loyal Order of the Moose does not object to a requirement that all performances truly public should require permission of the copyright owner; or to the concept that all persons engaged in a genuinely public venture for profit

should share in the profits. It does object to the requirement that a fee be paid for a performance given by a private nonprofit veterans or fraternal group for its bona fide members and their wives. Such functions are simply not public, except by artificial definition.

This requirement of a fee unfairly burdens the lodge officers and members who give of their time and energy in order to help a charity, and diverts to the copyright owner sums which would otherwise be available to that charity. Sums intended by the lodge members to be used for charity and thus siphoned off for the copyright owner.

The power given Congress by the United States Constitution to enact a copyright law was not primarily for the benefit of the author, but primarily for the public. The permissive words of The Constitution granting the power are "To Promote the Progress of Science and Useful Arts".

The United States Supreme Court has held that the copyright law makes a reward to the owner a secondary consideration.¹ It has held that rights of access through fair use of the copyright material pertaining to the cultural, aesthetic, historical, educational, scientific, technical and religious heritage of the nation come within the scope of the right of free press guaranteed by the Bill of Rights.²

The first amendment guarantees freedom of speech, of the press, and assembly, and the Supreme Court has said that these rights are meaningless unless the people have freedom of access to the materials protected. It has, therefore, consistently applied the doctrine of fair use to copyrighted materials. In passing upon particular claims of infringement, courts have occasionally subordinated the copyright holder's interest in a maximum financial return to the greater public interest in the development of art, science and industry.³

The Loyal Order of Moose respectfully submits that a performance given by a veterans' group or a fraternal lodge, to its members and guests, for nonprofit and noncommercial purposes, is fair use of the copyrighted material and should not be regarded as a copyright infringement.

Summing up, from 1909 to 1976 America's nonprofit veterans' and fraternal organizations were regarded as exempt from the old Copyright Act because they were looked upon as private groups whose musical performances were generally limited to their members and families. On behalf of its more than 1.7 million members, the Loyal Order of Moose respectfully urges restoration of the exempt status of these organizations from the requirements of the 1976 Copyright Act.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF DONALD O. OESTERLING

My name is Donald Oesterling, I'm here officially as a member of the Grand Lodge Benevolent & Protective Order of Elks, Government Relations Committee, to testify in favor of passage of S. 2082, which would exempt Fraternal organizations and others from payment of license fees and royalties under the Copyright Act of 1976.

By way of background, let me say that I am a Past State President of the Pennsylvania Elks State Association, a former State Senator in Pennsylvania and presently President of a Public Affairs & Public Relations organization located in Harrisburg, Pa.

The Benevolent & Protective Order of Elks is fundamentally an organization numbering 1,649,267 members bound together under the basic tenets of love of God, Flag and Country. Yes, we are basically a patriotic group, but more than that, we are a community oriented Order which is dedicated to helping those in our society who are less fortunate than we.

Our membership is diverse throughout the 50 States, belonging to 2,257 Lodges. All the States or combinations of several are also combined into organizations further dedicated to social and community improvement. Most of these State Organizations have projects of major proportions, usually referred to as their "Major Project." These involve work with persons with Cerebral Palsy, Crippled Children Projects, Eye Banks, Youth Camps, just to name a few.

I'm most familiar with the Pa. Major Projects program and want to relate briefly what that's all about. Our Major Project supports 21 registered nurses in

¹ *Mayer v. Stein*, 347 U.S. 201, 219, 74 S. Ct. 460, 471, 98 L. Ed. 630 (1954).

² *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 386, 390, 23 L. Ed. 2d 371.

³ *Berlin v. E. C. Publications*, 329 F. 2d 544, Aug. 5, 1980.

mobile units working in concert with the various local CP Affiliates to bring homebound nursing care and therapy and counseling to the hundreds of people, mostly youngsters, who are afflicted with CP and may have, years ago, been closeted away with no attempt to educate or blend them into society.

Our program cost this year in Pennsylvania is close to \$400,000. Many States are doing similar work and many of them are spending much more money. Nationally, our expenditure on CP is \$2,279,553 and for Crippled Childrens' Programs \$2,300,000, for a total of \$4,579,533 annually.

I mentioned that we are a patriotic organization and indeed we do go out of our way to exercise our patriotism, for it was through the Elks that the National Observance of Flag Day was instituted. Further, our Order has pledged that so long as a disabled veteran is hospitalized in these United States, the Order of Elks will never forget him, and to that end, the Order of Elks spends yearly almost \$1 million with hundreds of thousands of volunteer hours donated by our members. Our people visit every Veterans Hospital in this Nation on a weekly and often daily basis.

When we realized that we would be called on to testify at the hearings, a call went out to all our State organizations to see if we could get current information regarding our charitable works as to dollars and volunteer time. I have received current information from 35 States reflecting charitable contributions of over \$20,208,184 and well over 20,979,770 volunteer hours. Who knows what figure we might approach if all Elks State Organizations were factored into those figures?

In addition to those figures, the Grand Lodge of our Order disbursed \$1,691,814, paid out in scholarships principally, but also to State Major Projects and some Youth Programs.

Gentlemen, what I'm trying to say is that the Order of Elks is a totally unselfish, nonprofit organization that should not be considered under the Copyright Act. S. 2082 designed to exclude Fraternalism from paying licensing fees and royalties ought to have your favorable consideration. We are not promoters; we are not for profit; we are not in competition with entertainment groups. We do have dances for our membership and sometimes bonafide guests. Most of our dances are for the benefit of our many charities.

Fraternalism are not unlike other organizations, who in this time of inflation and diverse activity, are having trouble maintaining themselves. The impositions on our Lodges placed there by the Copyright Act are yet another "straw on the camel's back." On behalf of the entire membership of the Elks, I join with my colleagues from the other Fraternal Organizations to request your favorable consideration of S. 2082 and your support for its eventual passage.

I will be happy to try to answer any questions you might have about our Order.

BENEVOLENT AND PROTECTIVE ORDER OF ELKS—CHARITABLE CONTRIBUTIONS

State	Annual amount	Man-hours donated
Maine	\$149,136	
California-Hawaii	5,609,089	16,665,432
Honolulu	63,113	4,750
Hilo	3,912	
Utah	415,224	72,162
Maryland, Delaware, District of Columbia	269,079	48,400
Iowa	131,000	12,730
North Dakota	353,640	1,174
Alabama	923,250	48,720
Idaho	357,949	
Alaska	396,200	20,930
Kansas	86,000	5,600
Missouri	270,994	67,000
South Carolina	38,900	31,000
Pennsylvania	1,100,000	
Wisconsin	300,000	
New Jersey	1,308,455	
Nebraska	354,400	33,694
Massachusetts	1,183,919	
Nevada	616,066	875,000
South Dakota	171,416	5,000
Tennessee	193,000	34,000
Arizona	418,957	1,922,822
West Virginia	100,983	23,915
New York	713,300	
Connecticut	319,000	12,040
Oregon	1,437,656	
Colorado	524,374	72,828

PREPARED STATEMENT OF M. DANIEL SPLAIN

I appear before you today representing 1,800 local Aeries of the Fraternal Order of Eagles in the United States of America for the purpose of voicing our support of S. 2082, amending the Copyright Act of 1976 to grant relief to non-profit veterans' organizations and non-profit fraternal organizations for the performance of musical works in connection with their non-profit activities.

The Fraternal Order of Eagles is a non-profit fraternal, beneficial society exempt from income tax under Section 501 (c) (8) of the Internal Revenue Code as amended and has approximately 1,250,000 members in the United States of America.

In behalf of the entire American membership of the Fraternal Order of Eagles, we strongly urge this Subcommittee to favorably consider the amendment to the Copyright Act of 1976 that is proposed in S. 2082.

In 1835, Alex DeTocqueville, the noted French author, historian, and statesman, wrote in his epic book "Democracy in America" the following paragraph:

"Americans of all ages, all conditions, all dispositions, constantly form associations. They have not only commercial manufacturing companies in which all take part, but associations of a thousand other kinds—religious, moral, fraternal, serious, futile, general and restricted, enormous and small. The Americans make associations and organizations to give entertainment, to found seminaries, to build endowments, to construct churches, to aid hospitals, to diffuse books, to send missionaries abroad and in this manner they have founded most of the hospitals in America; have helped the prisoners, have built America's schools.

If it is proposed in the United States of America to inculcate some truth or to foster some feeling by the encouragement of a great example, the Americans form an association or organization or a society.

Whenever, at the head of some new undertaking in France you will see the head of government; or in the Country, the United Kingdom, you will see a man of title and rank; in the United States of America you will be sure to find an association or an organization heading or leading the way."

What DeTocqueville wrote in 1835 remains very true to the present day. Unfortunately, many of the burdens imposed by government on legitimate non-profit organizations like the Fraternal Order of Eagles and my colleague groups here today make it much more difficult for members of the Eagles and other similar organizations to lead the way to aid our society.

S. 2082, if passed by the Congress of the United States, will provide a great deal of relief to non-profit fraternal organizations in the pursuit of their charitable activities by relieving the organizations of the current requirement imposed by the Copyright Act of 1976 that they secure copyright licensing agreements for the performance of musical work in conjunction with our legitimate non-profit activities. The passage of S. 2082 is compatible in principle with Section 110 paragraph 4 of the Copyright Act of 1976, as currently written.

Non-profit fraternal organizations like the Fraternal Order of Eagles raise a great deal of their charitable funds through fund raising dances. These dances, at which live music is performed by a band, are restricted to members of the fraternal organizations and their bona fide guests.

According to reports filed by local Aeries of the Fraternal Order of Eagles with our International office, the local units of our Order in the United States are now paying approximately \$550,000 annually to copyright licensing organizations.

The current definition of the performance of a public work in the Copyright Act of 1976 indicates the following in Section 101 of the Act:

"To perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered . . ."

We feel that the Copyright Act of 1976 would be much fairer to non-profit organizations if the same definition of "public facility" were used in the Copyright Act as is used in the Civil Rights Act of 1964. There is presently a conflict in the definition of a public place between the Civil Rights Act of 1964 and the Copyright Act of 1976.

A legitimate non-profit fraternal organization is not a public accommodation as defined in the Civil Rights Act of 1964. Dances and other social events held under the sponsorship and on the premises of non-profit fraternal organizations are not functions that are open to the public. Admission is restricted by fraternal

law, state liquor laws, and coverage of the Civil Rights Act of 1964 to members, their families and guests.

If this is not the case in any given situation, as far as we are concerned, the organization is not operating as a legitimate non-profit fraternal organization and should be entitled to no favored treatment under the Copyright Act of 1976, the Internal Revenue Code of 1954, the Civil Rights Act of 1964, or any other federal, state, or municipal legislation.

However, as long as a non-profit organization operates for the exclusive benefit and enjoyment of its members, their families, and their guests, we strongly feel that the definition of a public act of a musical performance should be re-defined in the Copyright Act of 1976 to conform to the definition of a place of public accommodation in the Civil Rights Act of 1964.

We are confronted today with the strange situation of operating the Fraternal Order of Eagles as a place of private accommodation within the scope of the Civil Rights Act of 1964 while at the same time as being treated as a public place of accommodation by the Copyright Act of 1976.

If S. 2082 is passed and the Copyright Act is amended to exempt fraternal and veteran's organizations from the coverage provisions of the Act, copyright owners would still have remedy under Section 110 to object to any given performance of a musical work in a fraternal or veteran's organization by filing the Notice of Objection defined in Section 110 (4). In this way, the copyright owner would still be protected from organizations that he or she felt were not truly operating as non-profit organizations.

The six theatre owners who founded the Fraternal Order of Eagles in 1898 set forth as their basic goal for the organization the following ideals:

"To make human life more desirable by lessening its ills and by promoting peace, prosperity, gladness, and hope."

The Fraternal Order of Eagles have done a remarkable job over the last 82 years emulating those ideals set forth by our six founders.

In 1935, President Franklin Delano Roosevelt credited the Fraternal Order of Eagles for the passage of the Social Security Act. The Eagles sponsored the first Old Age Security Insurance Law in the country in Montana in 1923 and worked 12 years after the passage of that first piece of legislation until National Social Security became a reality in 1935.

Among the many other programs the Eagles have been given credit for over the years are the passage of Workmen's Compensation Acts, Mother's Pension Laws, the Age Discrimination in Employment Act, and a vigorous Liberty Under Law program to teach the young people of our nation respect for our country's laws and the people whose responsibility it is to enforce those laws.

In cooperation with CARE, the International Relief Agency, the Eagles have established 32 vocational training centers throughout the world to aid young children regardless of race, religion, color, and creed to learn a vocation in order that they may get a start in life.

When the late Broadway columnist Walter Winchell, launched the Damon Runyon Fund for cancer research, the Eagles were the first national organization to join the effort. One million dollars later, Winchell was to term the Eagles ". . . the Santa Claus of the Damon Runyon Fund."

Well over 12 million dollars has been raised and distributed by the Fraternal Order of Eagles nationally in the last five years alone for heart research, cancer research, gerontological research, and research into catastrophic diseases of childhood.

It is impossible to estimate total voluntary man hours that Fraternal Order of Eagle members devote to charitable activities. It is also impossible to pinpoint the exact amount of money that is donated by local Fraternal Order of Eagle Aeries in the 50 United States directly to charities and community services in the 1,800 localities that the Eagles call home in our great Republic. Without a doubt, both man hours and dollar volume locally would reach the 5 million mark.

Attached to our testimony, Mr. Chairman, are several pamphlets and brochures which describe in detail the goals and accomplishments of the Fraternal Order of Eagles for our nation.

We sincerely hope, Mr. Chairman, that your distinguished Subcommittee will favorably consider S. 2082 in order that the Fraternal Order of Eagles, and many other organizations like the Fraternal Order of Eagles, can continue to serve their communities and their fellow man as we have done rather capably for the last 82 years.

All we are really asking, Mr. Chairman, is some degree of relief under the Copyright Act of 1976 so that we may continue to emulate those very high standards established by our founders 82½ years ago in Seattle, Washington:

The favorable consideration of the legislation currently before you, can help 1¼ million Americans honor their constant commitment to fulfill the dreams of those six Seattle theatre owners who founded the Fraternal Order of Eagles.

We wish to thank you, Mr. Chairman, for the opportunity to appear before your Subcommittee today and we stand ready to provide any further information or assistance that you or the Subcommittee may need to answer any questions unresolved in your minds.

Senator DECONCINI. The next panel will consist of Phillip Riggini, Deputy Director, National Legislative Committee, American Legion, and Donald H. Schwab, Veterans of Foreign Wars.

You may put your statements in the record in full and highlight them for us.

Thank you for being here today, gentlemen. I know your national conventions are in process right now in Chicago. Is that correct?

Mr. SCHWAB. Yes; we are in Chicago and the American Legion is in Boston.

Senator DECONCINI. I appreciate your leaving those events to be here for this hearing. I am sorry we had to schedule it on this day. With the Billy Carter hearings and the Vesco hearings as well as other matters my time has been restricted.

Please identify yourselves and proceed.

STATEMENT OF DONALD H. SCHWAB, NATIONAL LEGISLATIVE DIRECTOR, VETERANS OF FOREIGN WARS

Mr. SCHWAB. I am Donald H. Schwab. It is my privilege to serve the 1.9 million men and women of the Veterans of Foreign Wars of the United States as their national legislative director.

I want to thank you, Mr. Chairman, for holding this hearing and giving us the privilege of presenting our views with regard to the pending legislation which has been identified.

The Veterans of Foreign Wars are in their 81st year. We are a non-profit organization, congressionally chartered by Public Law 630 of the 74th Congress on May 28, 1936, and codified as 36 U.S.C. 111 through 120.

The purpose of the VFW, the membership of which consists entirely of men and women who served in our Armed Forces overseas in active combat areas during periods of war and hostility, is set forth in 36 U.S.C. 113, which is herein quoted:

The purposes of this corporation shall be fraternal, patriotic, historical, and educational; to preserve and strengthen comradeship among its members; to assist worthy comrades; to perpetuate the memory and history of our dead, and to assist their widows and orphans; to maintain true allegiance to the Government of the United States of America, and fidelity to its Constitution and laws; to foster true patriotism, to maintain and extend the institutions of American freedom; and to preserve and defend the United States from all her enemies, whomsoever.

Mr. Chairman, because of the high and noble purpose of nonprofit veterans' and fraternal organizations, and the time and effort gratuitously given to help others, we have historically been given special consideration by the Congress of the United States as opposed to profitmaking organizations or enterprises established for the sole pur-

pose of the personal financial gain of individuals or groups. This is true with respect to tax treatment as enunciated for veterans' organizations in 501(c)(19) of the Internal Revenue Code and, also with respect to postal rates as enunciated in 39 U.S.C. 4359 and 4452. The same was true with respect to live performance of music in our VFW post homes until enactment on October 19, 1976 of the Copyright Act of 1976, which became Public Law 94-553, with an effective date of January 1, 1978.

Mr. Chairman, the VFW is made up of nearly 10,000 posts located in the 50 States and several overseas areas. Two-thirds of these posts consist of 200 or less members, 46 percent have 100 or less members and 8.5 percent have memberships between 500 and 3,000 veterans.

Under the provisions of Public Law 94-553, both the American Society of Composers, Publishers and Authors and Broadcast Music, Inc., have been actively pursuing the payment of licensing fees by our posts in which paid musicians perform or, if unpaid an admission fee is charged. Those who violate the law by copyright infringement subject themselves to Federal court action and a judgment against them for statutory damages.

Under the provisions of 17 U.S.C. 504(c), such judgment will ordinarily not be less than \$250 for each copyrighted musical composition performed without a license plus court costs and attorneys' fees. The license fees imposed on our VFW posts by both ASCAP and BMI are identical to those charged commercial enterprises, such as restaurants, taverns, nightclubs, and similar establishments operated solely for the personal financial gain of the owner or owners.

You will find appended to my testimony a license agreement between VFW Post 1769 in Effingham, Ill., and ASCAP wherein that post must pay ASCAP \$285 per annum for the right to perform live music in their post home. The rate schedule appended thereto lists the various criteria used to compute the license fee.

BMI, on the other hand, has a set scale with the minimum charge of \$75 annually if less than \$5,000 is paid for entertainment, a copy of which is also appended.

Mr. Chairman, the performance of live music at our VFW post homes is resorted to to enhance their fund-raising activities which are not for the personal financial gain of anyone, as is a commercial enterprise, but, rather, for the good of the order to support our rather extensive youth activities programs and community service programs. Among these worthwhile endeavors to assist others, but by no means a complete listing, are the following:

One, our Voice of Democracy scholarship scriptwriting program for senior high school students, participated in last year by more than a quarter of a million students in over 8,000 secondary schools through the efforts of 4,400 VFW posts and 3,600 ladies auxiliaries.

Two, Boy Scout troops, Cub packs, Explorer units and Girl Scouts and Brownie units, supported by 1,500 posts throughout the Nation.

Three, VFW teen-er baseball.

Four, VFW-NRA junior rifle matches.

Five, VFW-sponsored drum and bugle corps.

Six, VFW Lite-a-bike program.

Seven, VFW drive to survive programs.

Eight, VFW drug abuse seminars.

Nine, the donation by VFW posts and auxiliaries of wheelchairs and television sets, among other items, to Veterans Administration hospitals.

Obviously, not all VFW posts participate in all programs and some in other services, such as transporting senior citizens on shopping tours, to church, and to the polls to vote.

Mr. Chairman, the thrust of current law with respect to performance of live music is to protect the author and his or her heirs and assure them of recompense for the author's work during his or her lifetime, and for a period of 50 years thereafter. Be that as it may, there is little doubt in my mind that if authors and composers of music realized that the new law greatly reduced the ability of VFW posts to support youth and community activities, they would willingly waive this new found royalty source with respect to nonprofit veterans' and fraternal organizations.

Along this same line, there is absolutely no doubt in my mind that it is patently unfair and discriminatory to assess nonprofit veterans' and fraternal organizations licensing fees at the same rate as charged commercial enterprises operated only for personal financial gain.

In view thereof, I urge this subcommittee to advance S. 2082 expeditiously and shepherd it through this 96th Congress prior to adjournment sine die.

In conclusion, Mr. Chairman, we of the VFW thank you for holding this hearing to provide a forum for airing views perhaps not fully appreciated when S. 22 was considered, which became Public Law 94-553.

Thank you, Mr. Chairman, and I will be happy to respond to any questions you may have.

Senator DeCONCINI. Mr. Riggini?

STATEMENT OF E. PHILLIP RIGGIN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE COMMITTEE, AMERICAN LEGION

Mr. RIGGIN. My name is Phillip Riggini. I am deputy director of the National Legislative Commission of the American Legion.

I would like to state that I appreciate the opportunity on behalf of my organization to present testimony before this subcommittee on legislation to exempt nonprofit veterans organizations from the requirement of paying certain performance royalties to copyright-holders.

We appear before you today in support of S. 2082 because we believe that continuing to require local American Legion posts to pay royalty fees through the purchase of copyright licenses will seriously jeopardize our voluntary effort. We also believe the current law, as implemented, reflects an inconsistency with longstanding congressional recognition of veterans' organizations as clearly defined nonprofit groups which are routinely exempted from such obligations.

It should be stated at the outset that the American Legion does not dispute the right of any creator of music to protect his creation through the receipt of royalties. We recognize the need for a copyright mechanism and we do not quarrel with the principle of requiring com-

pensation from those who seek financial gain through the use of material created by someone else.

We, however, believe that the use of copyrighted material for the expressed purpose of promoting charitable activities differs significantly from that principle.

Our demonstrated support for copyright legislation is probably best illustrated by our long and friendly association with licensing organizations. In fact, we offered no resistance to their efforts several years ago when they sought enactment of Public Law 94-553. We believed then in the credibility of their argument that the line between some nonprofit organizations and commercial ventures was becoming increasingly difficult to draw and that stricter controls were necessary because there were groups which exploited copyrighted works under the guise of nonprofit status.

In addition, we accepted as valid their complaint that a liberal interpretation of the "not for profit" exemption contained in the 1909 statute was hurting authors and was creating a disincentive to write.

Of course, the intervening years have produced Public Law 94-553 and a very strict interpretation of the nonprofit exemption. This interpretation, as reflected in section 110, paragraph (4), of the act, allowed copyright organizations to begin planning in 1976 on how they would collect royalties from this new revenue reservoir.

The American Legion soon learned that it was at the top of the collection list when agents from the respective licensing organizations began to contact local posts across the country. When it was clear that there would be no early resolution of the payment controversy between these organizations and the Legion, our national convention unanimously adopted a mandate in 1979 seeking exemption legislation.

It is our sincere belief that neither Congress nor the creators of copyrighted musical works have ever intended copyright legislation as an impediment to legitimate nonprofit community service activity. Yet, Public Law 94-553 is having precisely that impact. Many posts, facing financial survival on a day-to-day basis, are simply not willing to risk the consequences of outright violation of the law and, therefore, have terminated all live musical performances. Without this source of fund raising they have simply been forced to curtail their community service activities.

A nationwide review of such activities reveals some rather astounding figures across the Nation for the American Legion. With 44 percent of our 17,000 posts reporting, we found that last year 355,101 veterans, widows, and orphans were assisted with their Veterans Administration claims by post service officers. Our members also contributed more than 1 million hours as volunteers in VA hospitals, assisted 28,422 veterans in finding employment, donated more than 113,000 pints of blood, and donated more than 2.2 million hours to a variety of community projects. These were strictly gratuitous services and involved no direct fundraising.

As we turn our attention to those activities which are sponsored as a result of fundraising, it is important to note that the average Legion post is a small town operation consisting of 157 members with an annual dues of \$11 per member. From the amount \$4.25 goes to the State organization and \$3.50 goes to the national organization. That leaves

\$3.25 per member, or \$510 per post, as dues income. It, therefore, is clear that fundraising is necessary and it has been a longstanding Legion practice to use music as an integral part of such fundraising.

Last year—again with 44 percent of all posts reporting—\$1.5 million was spent sending boys to the American Legion boys state program; \$1.4 million was spent in sponsoring drum and bugle corps groups; \$4.7 million was spent to sponsor Legion baseball teams; \$454,000 was spent on Scout troops; \$669,000 in academic scholarships were awarded; and \$2 million in cash assistance was given to needy children.

Our posts also purchased and donated more than \$3 million worth of clothing and essentials for needy children and distressed families. Donations to mental health programs amounted to \$96,000 with \$171,000 going to \$67,000 to the Red Cross; \$150,000 for cancer research; \$223,000 to crippled children; and \$1.5 million to many other miscellaneous community projects.

Mr. Chairman, it is not our intention here to imply that the amounts of money necessary to purchase copyright licenses at current rates are forcing Legion posts into bankruptcy. It is our intention, however, to advise you that some Legion posts are terminating those fund-raising activities in which music was previously used and that such termination has removed a major revenue source which had previously paid for a variety of community service projects.

It is also our intention to report a developing fear among Legion posts that the purchase prices of copyright licenses will rise dramatically if we recede from our position and accept the right of copyright organizations to demand payment from the American Legion as they would from any profitmaking activity.

If such prices did increase then license fees would, in fact, impose a financial and perhaps terminal hardship. These perceptions, whether accurate or inaccurate, are coupled with a developing attitude at the local level that the posts are being consumed by a combination of bureaucracies. The royalty payment obligation is perceived by many officers at the post level as another in the never-ending series of regulations which require more time than they, as volunteers, are willing to spend on preparing paperwork.

Our members, who willingly give their time and energy to participate in activities which benefit the community, are inclined to view the royalty payment obligation as they would a seemingly needless governmental regulation—both are sources of frustration. They serve to discourage volunteerism when individuals decide that personal satisfaction is not sufficient to compensate for the inconvenience of contending with such restrictions.

As stated previously, Congress has historically recognized the value of volunteerism and of community service. With the knowledge that many of the services provided through volunteer activities would otherwise be funded by taxes, Congress has enacted legislation which offers tax incentives on proceeds generated through such activities.

The American Legion convinced Congress long ago that its programs met the standards to qualify for such tax treatment. Our organization has enjoyed exemption from Federal income tax since its creation, an exemption which was made more specific in 1972 with the enactment of section 501(c)(19) of the Internal Revenue Code.

Since 1934 our national headquarters in Washington has been specifically exempted, by act of Congress, from District property tax.

Despite challenges from the Internal Revenue Service, Congress has consistently protected certain legion activities from taxation as "unrelated business income."

We, therefore, were disappointed over the enactment of Public Law 94-553 and its failure to exempt our organization and others like us from the royalty payment obligation.

The 1909 statute vividly illustrated congressional intent to exempt nonprofit organizations. Admittedly, the increased frequency of live performances and the changing nature of so-called nonprofit musical presentations demanded tighter controls through more precisely worded legislation. Yet, Congress remained convinced during its deliberations on Public Law 94-553 that exemptions from royalty payment were in order, by approving nine exemptions under section 101 of the act.

We offer no objection to those exemptions for educational, religious, or governmental activities—all of which are accompanied by nonprofit stipulations. We can, with some effort, even accept the rationale for exempting State fairs. But we find it difficult to understand how establishing criteria for these exemptions led Congress to the decision to exclude veterans' organizations. It appears as though Congress was particularly interested in protecting educational, religious, and charitable enterprises from the royalty payment obligations because of the social benefit derived from their activities.

In paragraph (4) of section 110 our exemption as a charitable organization would be assured except for the language which requires that no fee or compensation be paid to performers, promoters, or organizers of a musical performance.

The language contained in this paragraph is somewhat disappointing for several reasons. First, it appears as though Congress, in approving such language, was attempting to exclude from exemption those who promote, organize, and perform at live concerts under the guise of some nonprofit cause. Certainly, recent history has recorded frequent violations of the copyright principle by those who stage such concerts with the precise intention of making a profit. It is particularly unfortunate, however, that this exclusion also terminated our exemption.

Second, paragraph (4) of section 110 makes specific reference to "charitable purposes"—the same category of activity which until 1972 exempted veterans' organizations from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Our annual report to Congress clearly shows that, except for normal operating expenses, all proceeds are for charitable purposes.

Despite the requirement in paragraph (4) that no fee or compensation be paid to performers, promoters, or organizers of musical performances, paragraph (6) of section 110 seems to impose no such restriction on fee or compensation payment when the performance is associated with an agricultural or horticultural fair. The consistency of standards for which exemptions are granted therefore becomes somewhat vague at this point.

Mr. Chairman, we believe that our request for this subcommittee's approval of language to specifically exempt nonprofit veterans' organizations from the requirement of paying royalty fees to copyright holders for the live performance of copyrighted musical works is legitimate. We believe that your approval of such language would be in conformity with the intent of Congress when it passed the bill which became Public Law 94-553 because the standards for exemption qualification will not have been violated.

We appreciate the opportunity to present this statement and we will be happy to respond to any questions you might have.

Senator DECONCINI. Let me thank you for your fine statements. They will appear in the record in full.

You have demonstrated the contributions your organizations have made. There is a need to promote the organizations from the standpoint of less Government interference and providing an environment that supports those types of organizations.

Your testimony, Mr. Riggins, makes reference to Public Law 94-553. You did not take any active role in that legislation, for or against?

Mr. RIGGIN. I was not here then. The organization to my knowledge took no active role.

Senator DECONCINI. Why was that?

Mr. RIGGIN. We felt there was a protection which we enjoyed over the years.

Senator DECONCINI. Who made those representations? Do you recall?

Mr. RIGGIN. It would have been our legislative commission.

Senator DECONCINI. They substantiated that to you, that they thought you would be exempt?

Mr. RIGGIN. Yes, sir.

Senator DECONCINI. You are not involved in litigation now with BMI or ASCAP?

Mr. RIGGIN. No, sir.

Senator DECONCINI. But you are not paying any money they consider their due?

Mr. RIGGIN. We are not paying money? Yes; we are paying.

Senator DECONCINI. I thought you were just not paying.

Mr. RIGGIN. No, sir, we are paying. Our local posts are being contacted individually by both organizations.

Senator DECONCINI. And they are paying?

Mr. RIGGIN. I cannot say categorically they are all paying but I am simply saying that they are being approached by these two organizations. I do not have a percentage of who is and who is not paying, but they are paying.

Senator DECONCINI. Has the American Legion taken a position in recommending that they do not pay?

Mr. RIGGIN. No, sir, not at all. These posts are not advised not to pay by the national organization. We realize it is a violation of the law not to pay.

Senator DECONCINI. You are taking the position that you ought to be exempt?

Mr. RIGGIN. Yes, sir.

Senator DECONCINI. With the Veterans of Foreign Wars, Mr. Schwab, do you have any idea as to the amount of money paid?

Mr. SCHWAB. Overall I do not. I have appended to my testimony a contract with VFW Post 1769 with ASCAP. They pay ASCAP \$285 a year.

Based on their criteria, which is seating capacity, the seating capacity of the post is 210; drinks of nationally listed liquor are \$1 when there is music played; they have two or more instrumentalists one night per week, and they do charge admission. By their scale this comes to \$285 a year.

Then under BMI they have a scale based on the amounts spent for entertainment with a minimum fee being \$75 if \$5,000 or less is spent on entertainment.

Senator DECONCINI. Is there any lesser fee structured for veterans' groups?

Mr. SCHWAB. No, sir. We are charged the same rate as a nightclub, a restaurant, or anyone else, such as a bar.

Mr. RIGGIN. In respect to that question, I am aware of some introductory letters sent to some of our posts by the licensing organizations and contract holders. These were obviously form letters. They say, "This is to advise you we understand you are performing live music at your business establishment." There is no separation between the two types of organizations.

Senator DECONCINI. How do you answer the question if you have a VFW lodge, an American Legion lodge, and you are on a busy thoroughfare, as many of them are in Arizona, and you are next to or on the same block with a legitimate businessman who is having live entertainment?

If there were an exemption for your organization, how do you respond to being fair to the small businessman and not making it more attractive to join your lodge or your organization rather than helping the small businessman who has to compete, make a living, pay his taxes and support his family?

Mr. RIGGIN. Anyone who comes by who is of drinking age can go into a business establishment. The individual, to go to the American Legion post or a VFW post, has to comply with our membership criteria and would be given membership only and therefore access to that post if he complied with those criteria. We simply service the military.

Our membership definitions are different but they involve service in the military. There is a restriction, and therefore this is not purely a public facility.

Senator DECONCINI. Do you have any objection if nonprofit religious organizations were included in this exemption?

Mr. RIGGIN. No, sir. I thought they were already in.

Senator DECONCINI. Not if they raise funds, as I read the law.

Mr. RIGGIN. I don't know.

Senator DECONCINI. They are not included if they do this for fund raising.

Mr. RIGGIN. Our position is that it was felt exemptions were in order and some standard should be applied to granting this exemption. If

the organization can comply with that standard, the exemption would be in order.

Senator DECONCINI. Senator Zorinsky?

Senator ZORINSKY. When you received these notifications informing you that you might be in violation by playing live music in public performances, do you know where these notifications came from? Did they come from the Library of Congress?

Mr. RIGGIN. I think from ASCAP or BMI headquarters.

Senator ZORINSKY. Where? To the District of Columbia?

Mr. RIGGIN. New York, or I assume some regional offices.

Senator ZORINSKY. Are you aware whether you have ever had any corresponding with the Library of Congress with regard to application forms to be filled out or any informational forms being requested?

Mr. RIGGIN. I am not familiar. I am not saying it has not happened.

Senator ZORINSKY. Are you aware of any differential within your organization with regard to latitude being provided for negotiating the annual fee costs other than what is prescribed in the literature?

Mr. RIGGIN. We have had a rather long and friendly association particularly with the American Society of Composers, Authors and Publishers. There has been discussion of a possible negotiated settlement between that group and ours.

In fact, as I said in my statement, to some extent it was the result of not moving anywhere in that aspect of the issue that we decided to promote and seek exemption legislation. That is not the simple reason we do this because we think the exemption for our organization is in order.

Senator ZORINSKY. Have you talked to any of your club managers who have indicated an amount as specified by personal visit with comments such as, "Well, then, what would you be willing to pay?" would be acceptable?

Mr. RIGGIN. I am not aware of any such conversations. I am not sure any specific agent who goes into a post would have the authority to make that kind of offer and offer that kind of alternative. I cannot answer that question because we are talking about an ASCAP or BMI agent.

Senator ZORINSKY. The occupancy numbers prescribed in the table which equates to the annual fee, I assume, is accepted from the seating capacity maximum which is generally issued by the fire department of a local community?

Mr. RIGGIN. That is my understanding, sir. It is a rather simple standard.

Senator ZORINSKY. Thank you, Mr. Chairman.

Senator DECONCINI. Do either of your organizations do fundraising available to the public or for the benefit of your members in the organization?

Mr. RIGGIN. Not that I am aware of, Mr. Chairman.

Senator DECONCINI. How about the Veterans of Foreign Wars?

Mr. SCHWAB. If a post engaged in such activity, they would be subject to having their charter pulled.

Senator DECONCINI. How about bingo?

Mr. RIGGIN. The most recent exemption with regard to bingo was dealt with 2 years ago in Congress. That dealt with the unrelated business aspect and that clause under the Internal Revenue Code.

Senator DECONCINI. Your organizations do not sponsor a fund-raising dance for the benefit of your local chapter or local lodge, selling tickets to the public and letting anyone come in and dance?

Mr. RIGGIN. Not the public. It is for the members and perhaps some invited guests but it is not a public event.

Senator ZORINSKY. Do you ever pay twice? For instance, if you have dances during specified hours, and in the interim I assume most American Legion or VFW clubs or service organizations have an automatic phonograph, commonly referred to as a jukebox, and you own that piece of equipment yourselves, you have to pay, are you aware, on the automatic piece of music equipment in addition to the live performance on an annual basis?

Mr. RIGGIN. I am not sure of what the requirements are regarding jukeboxes, but there are payments made on that, and then the live performance requirement applies.

Senator ZORINSKY. In addition?

Mr. RIGGIN. Yes, sir.

Mr. SCHWAB. Fees required by ASCAP and BMI have hurt our smaller posts more than our larger posts in that the smaller posts—and most of our posts are smaller posts—have had to curtail activities or eliminate them.

Senator DECONCINI. You have posts as small as 100 members?

Mr. SCHWAB. Some fewer than 100 members.

Senator DECONCINI. A couple hundred a year means a lot to them?

Mr. SCHWAB. A good deal. Larger posts, which have memberships of 500 to 3,000, they will not go bankrupt.

Senator DECONCINI. Have you had negotiations with either of these organizations about their granting a waiver for the VFW?

Mr. SCHWAB. We have not. I would not look for much favorable consideration by the organization in view of the law which gives them this right. They have pursued payment of fees by our post.

Senator DECONCINI. You might try. You cannot tell. Perhaps they have a charitable feeling toward your organizations as well.

I would suggest that to you see what their reaction might be.

Mr. RIGGIN. I have a statement in my prepared text. We have 157 members. Annual dues to our organization average \$11. Of that amount, \$425 goes to State organizations of the American Legion, \$350 to the national organization. That leaves about \$3.25 per member, \$510 per post annually, as dues income.

Therefore, it is clear that the operation of any post will rely heavily on fundraising activities, and specifically entertainment and live performance of music is the primary source for that fundraising.

Senator DECONCINI. A good point.

Thank you very much, gentlemen.

[The prepared statements of Messrs. Schwab and Riggins follow:]

PREPARED STATEMENT OF DONALD H. SCHWAB

Thank you for the privilege of appearing before this most distinguished Subcommittee to present the views of the Veterans of Foreign Wars of the United States with respect to pending legislation.

My name is Donald H. Schwab and it is my privilege to serve the 1.9 million men and women of the Veterans of Foreign Wars as their National Legislative Director.

The bill before you, Mr. Chairman, S. 2082, was introduced by the Honorable Edward Zorinsky and would amend 17 USC 110 to exempt non-profit veterans' organizations and non-profit fraternal organizations from the requirement that certain performance royalties be paid to copyright holders. This bill is fully supported by current V.F.W. Resolution No. 301 entitled, "The Copyrights Act of 1976," passed by the voting delegates to our 80th National Convention, a copy of which is appended to my testimony.

Mr. Chairman, the Veterans of Foreign Wars are now in their 81st year. We are a non-profit organization, Congressionally chartered by Public Law 630 of the 74th Congress on May 28, 1936 and codified as 36 USC 111 through 120.

The purpose of the V.F.W., the membership of which consists entirely of men and women who served in our Armed Forces overseas in active combat areas during periods of war and hostility, is set forth in 36 USC 113, which is herein quoted:

"The purposes of this corporation shall be fraternal, patriotic, historical, and educational; to preserve and strengthen comradeship among its members; to assist worthy comrades; to perpetuate the memory and history of our dead, and to assist their widows and orphans; to maintain true allegiance to the Government of the United States of America, and fidelity to its Constitution and laws; to foster true patriotism, to maintain and extend the institutions of American freedom; and to preserve and defend the United States from all her enemies, whomsoever."

Mr. Chairman, because of the high and noble purpose of non-profit veterans' and fraternal organizations, and the time and effort gratuitously given to help others, we have historically been given special consideration by the Congress of the United States as opposed to profit making organizations or enterprises established for the sole purpose of the personal financial gain of individuals or groups. This is true with respect to tax treatment as enunciated for veterans' organizations in 501(c)(19) of the Internal Revenue Code and, also, with respect to postal rates as enunciated in 39 USC 4359 and 4452. The same was true with respect to live performance of music in our V.F.W. Post homes until enactment on October 19, 1976 of the Copyrights Act of 1976, which became Public Law 94-553, with an effective date of January 1, 1978.

Mr. Chairman, the V.F.W. is made up of nearly 10,000 Posts located in the fifty states and several overseas areas. Two-thirds of these Posts consist of 200 or less members, 46 percent have 100 or less members and 8½ percent have memberships between 500 and 3,000 veterans.

Under the provisions of Public Law 94-533, both the American Society of Composers, Publishers and Authors (ASCAP) and Broadcast Music, Inc. (BMI) have been actively pursuing the payment of licensing fees by our Posts in which paid musicians perform, or if unpaid, an admission fee is charged. Those who violate the law by copyright infringement subject themselves to Federal court action and a judgment against them for statutory damages.

Under the provisions of 17 USC 540(c), such judgment will ordinarily not be less than \$250 for each copyright musical composition performed without a license plus court costs and attorneys' fees. The license fees imposed on our V.F.W. Posts by both ASCAP and BMI are identical to those charged commercial enterprises, such as restaurants, taverns, nightclubs and similar establishments operated solely for the personal financial gain of the owner or owners.

You will find appended to my testimony a license agreement between V.F.W. Post 1769 in Effingham, Illinois and ASCAP wherein that Post must pay ASCAP \$285 per annum for the right to perform live music in their Post home. The rate schedule appended thereto lists the various criteria used to compute the license fee.

BMI, on the other hand, has a set scale with the minimum charge of \$75 annually if less than \$5,000 is paid for entertainment, a copy of which is also appended.

Mr. Chairman, the performance of live music at our V.F.W. Post homes is resorted to to enhance their fund-raising activities which are not for the personal financial gain of anyone, as is a commercial enterprise but, rather, for the good of the order to support our rather extensive youth activities programs and community service programs. Among these worthwhile endeavors to assist others, but by no means a complete listing, are the following:

1. Our Voice of Democracy Scholarship Scriptwriting Program for senior high school students, participated in last year by more than a quarter of a million

students in over 8,000 secondary schools through the efforts of 4,400 V.F.W. Posts and 3,600 Ladies Auxiliaries.

2. Boy Scout Troops, Cub Packs, Explorer Units and Girl Scouts and Brownie Units, supported by 1,500 Posts throughout the nation.

3. V.F.W. Teene-er baseball.

4. V.F.W.-NRA Junior Rifle matches.

5. V.F.W. sponsored drum and bugle corps.

6. V.F.W. Lite-A-Bike Program.

7. V.F.W. Drive to Survive Programs.

8. V.F.W. drug abuse seminars.

9. The donation by V.F.W. Posts and Auxiliaries of wheelchairs and television sets, among others items, to Veterans Administration hospitals.

Obviously, not all V.F.W. Posts participate in all programs and some in other services, such as transporting senior citizens on shopping tours, to church, and to the polls to vote.

Mr. Chairman, the thrust of current law with respect to performance of live music is to protect the author and his or her heirs and assure them of recompense for the author's work during his or her lifetime and for a period of 50 years thereafter. Be that as it may, there is little doubt in my mind that if authors and composers of music realized that the new law greatly reduced the ability of V.F.W. Posts to support youth and community activities, they would willingly waive this new found royalty source with respect to non-profit veterans' and fraternal organizations.

Along this same line, there is absolutely no doubt in my mind that it is patently unfair and discriminatory to assess non-profit veterans' and fraternal organizations licensing fees at the same rate as charged commercial enterprises operated only for personal financial gain.

In view thereof, I urge this Subcommittee to advance S. 2082 expeditiously and shepherd it through this 96th Congress prior to adjournment sine die.

In conclusion, Mr. Chairman, we of the V.F.W. thank you for holding this hearing to provide a forum for airing views perhaps not fully appreciated when S. 22 was considered, which became Public Law 94-553.

Thank you, Mr. Chairman, and I will be happy to respond to any questions you may have.

RESOLUTION NO. 301—THE COPYRIGHTS ACT OF 1976

Whereas, the Copyrights Act of 1976, Public Law 94-553, which became effective January 1, 1978, as written, permits Broadcast Music, Inc. (BMI) and/or the American Society of Composers, Authors, and Publishers (ASCAP) to require our V.F.W. Posts to pay an annual \$75.00 license fee when annual entertainment costs are less than \$5,000; and

Whereas, the penalty for copyright infringement subjects the violator to suit in federal court and, under the law, fines of \$250 for each piece of music played during an unlicensed performance may be levied, plus court costs and attorney fees; and

Whereas, the Veterans of Foreign Wars of the United States, including all of its Posts, is a Congressionally chartered, non-profit, fraternal and patriotic organization; now, therefore

Be it resolved, by the 80th National Convention of the Veterans of Foreign Wars of the United States, that we seek the introduction and passage of legislation in the Congress of the United States to amend Section 110 of Public Law 94-553, the Copyrights Act of 1976, to specifically exempt any and all musical performances within the Post homes of the Veterans of Foreign Wars of the United States, and all other Congressionally chartered, non-profit, fraternal and patriotic organizations.

(Adopted by the 80th National Convention of the Veterans of Foreign Wars of the United States held in New Orleans, Louisiana, August 17-24, 1979.)

American Society of Composers, Authors and Publishers

GENERAL LICENSE AGREEMENT - RESTAURANTS, TAVERNS,
NIGHTCLUBS, AND SIMILAR ESTABLISHMENTS

Agreement between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS ("SOCIETY"),

located at 10400 WEST HIGGINS RD., SUITE 235, ROSEMONT, ILLINOIS 60018
and V.F.W. THEODORE HOFFMAN POST 1769
("LICENSEE"), located at SOUTH 4th STREET ROAD EFFINGHAM, IL. 62401

as follows:

1. Grant and Term of License

(a) SOCIETY grants and LICENSEE accepts for a term of one year, commencing FEBRUARY 1, 1978, and continuing thereafter for additional terms of one year each unless terminated by either party as hereinafter provided, a license to perform publicly at V.F.W. CLUB POST 1769 SOUTH 4th ST. RD. EFFINGHAM, IL. 62401 ("the premises"), and not elsewhere, non-dramatic renditions of the separate musical compositions now or hereafter during the term hereof in the repertory of SOCIETY, and of which SOCIETY shall have the right to license such performing rights.

(b) Either party may, on or before thirty days prior to the end of the initial term or any renewal term, give notice of termination to the other. If such notice is given the agreement shall terminate on the last day of such initial or renewal term.

2. Limitations on License

(a) This license is not assignable or transferable by operation of law or otherwise, and is limited to the LICENSEE and to the premises.

(b) This license does not authorize the broadcasting, telecasting or transmission by wire or otherwise, of renditions of musical compositions in SOCIETY's repertory to persons outside of the premises.

(c) This license is limited to non-dramatic performances, and does not authorize any dramatic performances. For purposes of this agreement, a dramatic performance shall include, but not be limited to, the following:

- (i) performance of a "dramatico-musical work" (as hereinafter defined) in its entirety;
- (ii) performance of one or more musical compositions from a "dramatico-musical work" (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken;
- (iii) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation;
- (iv) performance of a concert version of a "dramatico-musical work" (as hereinafter defined).

The term "dramatico-musical work" as used in this agreement, shall include, but not be limited to, a musical comedy, oratorio, choral work, opera, play with music, revue, or ballet.

3. License Fee

(a) In consideration of the license granted herein, LICENSEE agrees to pay SOCIETY the applicable license fee set forth in the rate schedule printed below and made part hereof, based on "LICENSEE's Operating Policy" (as hereinafter defined), payable quarterly in advance on January 1, April 1, July 1 and October 1 of each year. The term "LICENSEE's Operating Policy," as used in this agreement, shall be deemed to mean all of the factors which determine the license fee applicable to the premises under said rate schedule.

(b) LICENSEE warrants that the Statement of LICENSEE's Operating Policy on the reverse side of this agreement is true and correct.

(c) Said license fee is TWO HUNDRED EIGHTY FIVE AND NO/100 Dollars (\$285.00) annually, based on the facts set forth in said Statement of LICENSEE's Operating Policy.

4. Changes in Licensee's Operating Policy

(a) LICENSEE agrees to give SOCIETY thirty days prior notice of any change in LICENSEE's Operating Policy. For purposes of this agreement, a change in LICENSEE's Operating Policy shall be one in effect for no less than thirty days.

(b) Upon any such change in LICENSEE's Operating Policy resulting in an increase in the license fee, based on the annexed rate schedule, LICENSEE shall pay said increased license fee, effective as of the initial date of such change, whether or not notice of such change has been given pursuant to paragraph 4(a) of this agreement.

(c) Upon any such change in LICENSEE's Operating Policy resulting in a reduction of the license fee, based on the annexed rate schedule, LICENSEE shall be entitled to such reduction, effective as of the initial date of such change, and to a *pro rata* credit for any unearned license fees paid in advance, provided LICENSEE has given SOCIETY thirty days prior notice of such change. If LICENSEE fails to give such prior notice, any such reduction and credit shall be effective thirty days after LICENSEE gives notice of such change.

(d) In the event of any such change in LICENSEE's Operating Policy, LICENSEE shall furnish a current Statement of LICENSEE's Operating Policy and shall certify that it is true and correct.

(e) If LICENSEE discontinues the performance of music at the premises, LICENSEE or SOCIETY may terminate this agreement upon thirty days prior notice, the termination to be effective at the end of such thirty day period. In the event of such termination, SOCIETY shall refund to LICENSEE a *pro rata* share of any unearned license fees paid in advance. For purposes of this agreement, a discontinuance of music shall be one in effect for no less than thirty days.

5. Breach or Default

Upon any breach or default by LICENSEE of any term or condition herein contained, SOCIETY may terminate this license by giving LICENSEE thirty days notice to cure such breach or default, and in the event that such breach or default has not been cured within said thirty days, this license shall terminate on the expiration of such thirty-day period without further notice from SOCIETY. In the event of such termination, SOCIETY shall refund to LICENSEE any unearned license fees paid in advance.

6. Notices

All notices required or permitted hereunder shall be given in writing by certified United States mail sent to either party at the address stated above. Each party agrees to inform the other of any change of address.

IN WITNESS WHEREOF, this agreement has been duly executed by SOCIETY and LICENSEE this 19th day of

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

V.F.W. THEODORE HOFFMAN POST 1769
LICENSEE

By _____
DISTRICT MANAGER

By _____

TITLE

(Fill in capacity in which signed
(a) If corporation, state corporate office held, (b) If partnership, write word "partner" under signature of signing partner,
(c) If individual owner, write "individual owner" under signature.)



RATE SCHEDULE

This rate schedule applies to Bars, Grills, Taverns, Restaurants, Lounges, Supper Clubs, Night Clubs, Piano Bars, Cabarets, Roadhouses and similar establishments where:

- (a) The highest price (when musical entertainment is provided) of a nationally advertised brand of bourbon, rye or scotch is 85¢ or more a drink; or
- (b) If the establishment does not sell liquor but sells beer, or if liquor or beer are not sold but the establishment sells set-ups, the highest price (when musical entertainment is provided) of a bottle, can, draught, or other serving of a nationally advertised domestic beer, or an individual set-up where beer is not sold, is 50¢ or more.

A rate schedule applicable to establishments charging less than the amounts set forth above will be furnished to such establishments.

ANNUAL RATE

Seating Capacity	No. Nights Per Week	LIVE MUSIC—SINGLE INSTRUMENTALIST					LIVE MUSIC—TWO OR MORE INSTRUMENTALISTS					NO LIVE MUSIC—MECHANICAL MUSIC ONLY		
		Base Rate	NO. OF VARIABLES*			If Mech. Music Used, Add	Base Rate	NO. OF VARIABLES**			If Mech. Music Used, Add	Base Rate	NO. OF VARIABLES***	
			One	Two	Three			One	Two	Three			One	Two
0-75	1	\$90	\$120	\$160	\$215	\$35	\$120	\$160	\$215	\$285	\$35	\$90	\$120	\$150
	2-3	125	165	220	295	45	180	240	320	425	45	90	165	220
	4-7	155	205	275	370	55	240	320	425	570	55	90	205	275
76-150	1	120	160	215	285	50	160	215	285	380	50	130	160	215
	2-3	180	240	320	425	65	240	320	425	570	65	130	240	320
	4-7	240	320	425	570	80	320	425	570	760	80	130	320	425
151-225	1	160	215	285	380	65	215	285	380	510	65	170	215	285
	2-3	240	320	425	570	85	325	430	575	765	85	170	320	425
	4-7	320	425	570	760	105	430	575	765	1020	105	170	425	570
226-300	1	200	265	355	475	80	270	360	480	640	80	210	265	355
	2-3	300	400	535	715	105	405	540	720	960	105	210	400	535
	4-7	400	535	710	950	130	540	720	960	1280	130	210	535	710
301-375	1	240	320	425	570	95	325	435	580	770	95	250	320	425
	2-3	360	480	640	855	125	490	650	870	1155	125	250	480	640
	4-7	480	640	855	1135	155	650	865	1155	1540	155	250	640	855
376-450	1	280	375	500	665	110	380	505	675	910	110	290	375	500
	2-3	420	565	745	995	145	570	760	1015	1350	145	290	560	745
	4-7	560	750	995	1325	180	760	1015	1350	1800	180	290	750	995
451-525	1	280	375	500	665	110	435	580	775	1030	125	330	425	575
	2-3	420	565	745	995	145	655	870	1160	1550	165	330	640	865
	4-7	560	750	995	1325	180	870	1160	1545	2060	205	330	850	1150
526-600	1	280	375	500	665	110	490	655	870	1160	140	370	475	650
	2-3	420	565	745	995	145	735	980	1305	1740	185	370	715	975
	4-7	560	750	995	1325	180	980	1305	1740	2320	230	370	950	1300
601-675	1	280	375	500	665	110	545	725	970	1290	155	410	525	725
	2-3	420	565	745	995	145	820	1090	1455	1935	205	410	790	1090
	4-7	560	750	995	1325	180	1090	1455	1935	2580	255	410	1050	1450
676-750	1	280	375	500	665	110	600	800	1065	1420	170	450	575	800
	2-3	420	565	745	995	145	900	1200	1600	2130	225	450	865	1200
	4-7	560	750	995	1325	180	1200	1600	2130	2840	280	450	1150	1600
751 and over	1	280	375	500	665	110	600	800	1065	1420	185	490	625	875
	2-3	420	565	745	995	145	900	1200	1600	2130	245	490	940	1315
	4-7	560	750	995	1325	180	1200	1600	2130	2840	305	490	1250	1750

*VARIABLES (Applicable to single instrumentalist):

- Show or act(s) or vocalist(s).
- Admission, minimum, cover, entertainment or similar charge.
- Alternate or relief music (live) by an instrumentalist except in those cases where the alternate music is provided solely at the time of a show or act(s).

**VARIABLES (Applicable to two or more instrumentalists):

- Show or act(s).
- Admission, minimum, cover, entertainment or similar charge.
- Alternate or relief music (live) by a band or an instrumentalist except in those cases where the alternate music is provided solely at the time of a show or act(s).

***VARIABLES (Applicable to mechanical music only):

- Show or act(s).
- Admission, minimum, cover, entertainment or similar charge.

SEASONAL RATES

For seasonal licensees, the rates for periods up to four months of operation are 1/2 the annual rate; for each additional month the rate is 1/12 the annual rate. The seasonal rate will in no case be more than the annual rate.

COMPUTATION OF RATE FOR MIXED POLICIES

1. Compute rate for the higher policy for the number of nights that the higher policy is in effect. The "higher policy" is the policy which generates the highest rate for any one day.
2. Note total number of nights entertainment is provided.
3. Compute rate for the lower policy using the total number of nights entertainment is provided under both the higher and lower policies.
4. Compute rate for the lower policy using the number of nights the higher policy is in effect.
5. Subtract rate computed in step 4 from rate computed in step 3.
6. Add rate computed in step 1 to rate computed in step 5 for total rate.

AGREEMENT, made at New York, N. Y., on _____, 19____, between
 BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (hereinafter called BMI)
 with principal offices at 40 West 57th Street, New York, N. Y. 10019, and

(Legal Name of Licensee)

Strike Out
 inapplicable
 lines

A corporation organized under the laws of the State of _____
 A partnership composed of _____
 An individual residing at _____

(hereinafter called LICENSEE) with offices located at _____
 City of _____ State of _____ Zip No. _____

1. BMI hereby grants to LICENSEE a non-exclusive license to perform publicly for profit by musicians, singers and other entertainers actually present and performing and by no other means whatsoever at the premises known as _____ located at (street address) _____

in the City of _____ in the State of _____ Zip No. _____ all of the musical works, the right to grant public performance licenses of which BMI shall during the term hereof control. Said license shall not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part; or the right to broadcast, telecast or otherwise transmit the performances licensed hereunder to persons outside of the premises.

2. LICENSEE agrees to pay BMI for each year of the term, the applicable fee listed opposite LICENSEE'S bracket of entertainment costs as defined in Schedule "A" hereinafter set forth and made a part hereof.

3. The term shall commence on _____ and end on _____ and shall be extended for additional periods of one (1) year unless cancelled by either party by written notice given to the other thirty (30) days prior to the end of the said term or of any subsequent period.

4. LICENSEE agrees to pay BMI for each contract year of the term an estimated fee as an advance on account of the actual fee for such contract year.

The estimated fee for the first contract year of the term shall be determined by LICENSEE projecting entertainment costs over a twelve month period pursuant to Schedule "A" hereof except that if LICENSEE was a music user for a period of twelve (12) months prior to the commencement of the term, the estimated fee shall be an amount equal to what the actual fee would have been pursuant to Schedule "A" for the immediately preceding twelve (12) months.

5. LICENSEE hereby estimates its fee for the first year of the term to be \$_____. based on entertainment costs of \$_____ for the immediately preceding year computed in accordance with Paragraph 4, which is due and payable upon the signing of this agreement and upon each anniversary date during the life of the agreement. At the option of the LICENSEE, payment of the estimated fee may be made in quarterly installments in advance of each quarter provided that said quarterly installments are made within ten (10) days after the first day of each quarterly period. If any quarterly payment is not timely made, the option herein granted to LICENSEE to make quarterly payments shall forthwith terminate. Payments are made subject to the following:

(a) Within twenty (20) days after the expiration of each contract year, LICENSEE shall furnish BMI a statement (on forms to be supplied by BMI), certified either by an officer or auditor of LICENSEE, setting forth LICENSEE'S total entertainment costs for such contract year.

(i) If the actual fee due BMI is less than the estimated fee already paid to BMI during the contract year, BMI agrees to credit the difference to the account of LICENSEE and, if such difference shall occur during the last year of the term hereof, BMI agrees to return the same promptly.

(ii) If the actual fee due BMI is greater than the estimated fee already paid by the LICENSEE to BMI during the contract year, LICENSEE shall pay BMI the difference between the actual and estimated license fee.

(iii) The estimated fee for each contract year, subsequent to the first contract year of the term hereof shall be the actual fee reported by LICENSEE for the previous contract year.

(b) If LICENSEE shall fail to furnish BMI with the statement described in sub-paragraph (a) hereof on or before the date set forth in such sub-paragraph, BMI may make written demand therefor by ordinary mail. In the event that LICENSEE fails to furnish such statement within twenty (20) days after the mailing of such written demand, then until such time as LICENSEE shall furnish such statement, LICENSEE'S entertainment costs and license fee for said contract year shall be the amount listed in the highest bracket of the Schedule "A" hereof.

6. In the event that LICENSEE shall discontinue the use of all music and entertainment at the premises during the term of this agreement, LICENSEE may give written notice thereof to BMI. Within twenty (20) days after the date of receipt by BMI of such notification of discontinuance, an adjustment shall be made for the part of such contract year preceding such discontinuance on the basis of the entertainment costs at the premises for such part of such year, but the amount due shall not be less than the minimum fee set forth in Schedule "A". After such adjustment has been made, LICENSEE shall not be obligated to make future payments to BMI until such time as LICENSEE shall resume the use of music at the premises during the term.

(a) It is agreed that the term "discontinuance" as used herein shall mean the total abandonment of the use of music and entertainment and shall not refer to a seasonal or periodic cessation of the use of music and entertainment.

(b) Notwithstanding such discontinuance, LICENSEE agrees to continue to furnish to BMI statements as provided in sub-paragraph (a) of Paragraph 5 hereof.

7. In the event that BMI, at any time during the term, shall, for the individual licensing of establishments of the same class and category as that of the LICENSEE, be issuing licenses granting rights similar to those conveyed by this agreement at more favorable rates of payment than are set forth herein, BMI shall, for the balance of the term, tender to LICENSEE an agreement containing such more favorable rates of payment.

8. BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, from and against any and all claims, demands or suits that may be made or brought against them or any of them with respect to the performance under this agreement of any or all musical works licensed hereunder at the time of LICENSEE'S performance thereof. BMI'S Index Department shall at any time, upon request, advise LICENSEE whether particular works are available for performance as part of BMI'S repertoire. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit, to deliver to BMI any papers pertaining thereto, and to co-operate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit.

9. Upon any breach or default of any of the terms or conditions herein contained, BMI may, at its sole option, and in addition to any and all other remedies which it may have, cancel this agreement upon ten (10) days notice in writing to LICENSEE, addressed to the premises. No waiver by BMI of full performance of this agreement by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this agreement thereafter or of the right to cancel this agreement.

10. Any controversy or claim arising out of, or relating to, this agreement or the breach thereof, shall be settled by arbitration in the City of New York, in accordance with the Rules of the American Arbitration Association, and judgment upon the award of the arbitrator may be entered in any Court having jurisdiction thereof.

11. All notices given by BMI hereunder shall be duly and properly given if mailed to the premises.

12. This agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. This agreement cannot be waived or added to or modified orally and no waiver, addition or modification shall be valid unless in writing and signed by the parties. This agreement, its validity, construction and effect, shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF: the parties hereto have duly executed this agreement the day and date hereinafore set forth.

BROADCAST MUSIC, INC.

By: _____
VICE PRESIDENT

LICENSEE (Legal Name)

By: _____
(Signature)

(Print Name of Signer)

TITLE OF SIGNER

SCHEDULE "A"—RATE OF ANNUAL FEES

*BRACKET OF ANNUAL ENTERTAINMENT COSTS		ANNUAL LICENSE FEE	*BRACKET OF ANNUAL ENTERTAINMENT COSTS	ANNUAL LICENSE FEE	
Less than	\$ 5,000.00	\$ 75.00	\$120,000.00 to \$139,999.99	\$ 700.00	
5,000.00 to	7,999.99	90.00	140,000.00 to	159,999.99	800.00
8,000.00 to	9,999.99	100.00	160,000.00 to	179,999.99	900.00
10,000.00 to	14,999.99	120.00	180,000.00 to	199,999.99	1,000.00
15,000.00 to	24,999.99	180.00	200,000.00 to	249,999.99	1,250.00
25,000.00 to	34,999.99	240.00	250,000.00 to	299,999.99	1,300.00
35,000.00 to	49,999.99	360.00	300,000.00 to	349,999.99	1,400.00
50,000.00 to	64,999.99	325.00	350,000.00 to	399,999.99	1,500.00
65,000.00 to	79,999.99	400.00	400,000.00 to	449,999.99	1,600.00
80,000.00 to	99,999.99	500.00	450,000.00 and over		1,700.00
100,000.00 to	119,999.99	600.00			

*"Entertainment Costs" shall mean all expenditures of every kind and nature (whether in money or any other form of consideration) made by LICENSEE, or on LICENSEE'S behalf, for the services of musicians and all other entertainers actually present and performing at LICENSEE'S premises. The services of LICENSEE as a musician or entertainer shall be included in "Entertainment Costs" at the prevailing rate for such services in the community. Included in "Entertainment Costs" is the agreed value of room and board where LICENSEE is obligated to provide accommodations to musicians and entertainers as part of the consideration for such entertainment services. The agreed

PREPARED STATEMENT OF E. PHILLIP RIGGIN

The American Legion appreciates the opportunity to present testimony before this Subcommittee on legislation to exempt nonprofit veterans organizations from the requirement of paying certain performance royalties to copyright holders.

We appear before you today in support of S. 2082 because we believe that continuing to require local American Legion posts to pay royalty fees through the purchase of copyright licenses will seriously jeopardize our volunteer effort. We also believe the current law, as implemented, reflects an inconsistency with longstanding Congressional recognition of veterans organizations as clearly defined nonprofit groups which are routinely exempted from such obligations.

It should be stated at the outset that The American Legion does not dispute the right of any creator of music to protect his creation through the receipt of royalties. We recognize the need for a copyright mechanism and we do not quarrel with the principle of requiring compensation from those who seek financial gain through the use of material created by someone else.

We, however, believe that the use of copyrighted material for the expressed purpose of promoting charitable activities differs significantly from that principle.

Our demonstrated support for copyright legislation is probably best illustrated by our long and friendly association with licensing organizations. In fact, we offered no resistance to their efforts several years ago when they sought enactment of Public Law 94-553. We believed then in the credibility of their argument that the line between some nonprofit organizations and commercial ventures was becoming increasingly difficult to draw and that stricter controls were necessary because there were groups which exploited copyrighted works under the guise of nonprofit status.

In addition, we accepted as valid their complaint that a liberal interpretation of the "not for profit" exemption contained in the 1909 statute was hurting authors and was creating a disincentive to write.

Of course, the intervening years have produced Public Law 94-553 and a very strict interpretation of the nonprofit exemption. This interpretation, as reflected in Section 110 paragraph (4) of the Act, allowed copyright organizations to begin planning in 1976 on how they would collect royalties from this new revenue reservoir.

The American Legion soon learned that it was at the top of the collection list when agents from the respective licensing organizations began to contact local posts across the country. When it was clear that there would be no early resolution of the payment controversy between these organizations and the Legion, our National Convention unanimously adopted a mandate in 1979 seeking exemption legislation.

It is our sincere belief that neither Congress nor the creators of copyrighted musical works have ever intended copyright legislation as an impediment to legitimate nonprofit community service activity. Yet, Public Law 94-553 is having precisely that impact. Many posts, facing financial survival on a day-to-day basis, are simply not willing to risk the consequences of outright violation of the law and, therefore, have terminated all live musical performances. Without this source of fund raising they have simply been forced to curtail their community service activities.

A nation-wide review of such activities reveals some rather astounding figures across the nation for the American Legion. With 44 percent of our 17,000 posts reporting—we found that last year 355,101 veterans, widows, and orphans were assisted with their Veterans Administration claims by Post Service Officers. Our members also contributed more than one million hours as volunteers in VA hospitals, assisted 28,422 veterans in finding employment, donated more than 113,000 pints of blood, and donated more than 2.2 million hours to a variety of community projects. These were strictly gratuitous services and involved no direct fund raising.

As we turn our attention to those activities which are sponsored as a result of fund raising, it is important to note that the average Legion post is a small town operation consisting of 157 members with an annual dues of \$11.00 per member. From that amount \$4.25 goes to the state organization and \$3.50 goes to the national organization. That leaves \$3.25 per member, or \$510 per post, as dues income. It, therefore, is clear that fund raising is necessary and it has been a longstanding Legion practice to use music as an integral part of such fund raising.

Last year—again with 44 percent of all posts reporting—\$1.5 million was spent sending boys to The American Legion Boys State program; \$1.4 million was spent in sponsoring drum and bugle corps groups; \$4.7 million was spent to sponsor Legion baseball teams; \$454,000 was spent on Scout troops; \$669,000 in academic scholarships were awarded; and \$2 million in cash assistance was given to needy children. Our posts also purchased and donated more than \$3 million worth of clothing and essentials for needy children and distressed families. Donations to mental health programs amounted to \$96,000 with \$171,000 going to the United Fund; \$223,000 for the mentally retarded; \$67,000 to the Red Cross; \$160,000 for cancer research; \$223,000 to crippled children; and \$1.5 million to many other miscellaneous community projects.

Mr. Chairman, it is not our intention here to imply that the amounts of money necessary to purchase copyright licenses at current rates are forcing Legion posts into bankruptcy. It is our intention, however, to advise you that some Legion posts are terminating those fund raising activities in which music was previously used and that such termination has removed a major revenue source which had previously paid for a variety of community service projects.

It is also our intention to report a developing fear among Legion posts that the purchase prices of copyright licenses will rise dramatically if we recede from our position and accept the right of copyright organizations to demand payment from The American Legion as they would from any profit-making activity.

If such prices did increase then license fees would in fact, impose a financial and perhaps terminal hardship. These perceptions, whether accurate or inaccurate, are coupled with a developing attitude at the local level that the posts are being consumed by a combination of bureaucracies. The royalty payment obligation is perceived by many officers at the post level as another in the never ending series of regulations which require more time than they, as volunteers, are willing to spend on preparing paperwork.

Our members, who willingly give their time and energy to participate in activities which benefit the community, are inclined to view the royalty payment obligation as they would a seemingly needless governmental regulation—both are sources of frustration. They serve to discourage volunteerism when individuals decide that personal satisfaction is not sufficient to compensate for the inconvenience of contending with such restrictions.

As stated previously, Congress has historically recognized the value of volunteerism and of community service. With the knowledge that many of the services provided through volunteer activities would otherwise be funded by taxes, Congress has enacted legislation which offers tax incentives on proceeds generated through such activities.

The American Legion convinced Congress long ago that its programs met the standards to qualify for such tax treatment. Our organization has enjoyed exemption from federal income tax since its creation, an exemption which was made more specific in 1972 with the enactment of Section 501(c)(19) of the Internal Revenue Code. Since 1934 our national headquarters in Washington has been specifically exempted, by act of Congress, from District property tax.

Despite challenges from the Internal Revenue Service, Congress has consistently protected certain Legion activities from taxation as "unrelated business income."

We, therefore, were disappointed over the enactment of Public Law 94-553 and its failure to exempt our organization and others like us from the royalty payment obligation. Of course, an exemption from taxes levied by government is not the same as an exemption from the requirement of paying a private citizen for a specific product. However, the difference between these exemptions becomes less clear cut when one reviews the legislative history of copyright law.

The 1909 statute vividly illustrated Congressional intent to exempt nonprofit organizations. Admittedly, the increased frequency of live performances and the changing nature of so-called nonprofit musical presentations demanded tighter controls through more precisely-worded legislation. Yet, Congress remained convinced during its deliberation on Public Law 94-553 that exemptions from royalty payment were in order, by approving nine exemptions under Section 101 of the Act.

We offer no obligation to those exemptions for educational, religious, or governmental activities—all of which are accompanied by nonprofit stipulations. We can, with some effort, even accept the rationale for exempting state fairs. But we find it difficult to understand how establishing criteria for these exemp-

tions led Congress to the decision to exclude veterans organizations. It appears as though Congress was particularly interested in protecting educational, religious, and charitable enterprises from the royalty payment obligation because of the social benefit derived from their activities.

In paragraph (4) of Section 110 our exemption as a charitable organization would be assured except for the language which requires that no fee or compensation be paid to performers, promoters, or organizers of a musical performance.

The language contained in this paragraph is somewhat disappointing for several reasons. First, it appears as though Congress, in approving such language, was attempting to exclude from exemption those who promote, organize, and perform at live concerts under the guise of some nonprofit cause. Certainly recent history has recorded frequent violations of the copyright principle by those who stage such concerts with the precise intention of making a profit. It is particularly unfortunate, however, that this exclusion also terminated our exemption.

Second, paragraph (4) of Section 110 makes specific reference to "charitable purposes"—the same category of activity which until 1972 exempted veterans organizations from federal income tax under Section 501(c) (3) of the Internal Revenue Code. Our annual report to Congress clearly shows that, except for normal operating expenses, all proceeds are for charitable purposes.

Despite the requirement in paragraph (4) that no fee or compensation be paid to performers, promoters, or organizers of musical performances paragraph (6) of Section 110 seems to impose no such restriction on fee or compensation payment when the performance is associated with an agricultural or horticultural fair. The consistency of standards for which exemptions are granted therefore becomes somewhat vague at this point.

Mr. Chairman, we believe that our request for this Subcommittee's approval of language to specifically exempt nonprofit veterans organizations from the requirement of paying royalty fees to copyright holders for the live performance of copyrighted musical works is legitimate. We believe that your approval of such language would be in conformity with the intent of Congress when it passed the bill which became Public Law 94-553 because the standards for exemption qualification will not have been violated.

Senator DeCONCINI. Our last panel will consist of Broadcast Music, Inc.; Edward Cramer, president, Broadcast Music, Inc.; Frank King, songwriter; L. Russell Brown, songwriter; and Irwin Levine, songwriter.

Please come forward, gentlemen.

Any statements you have will be printed in the record. Would you highlight them and identify yourselves?

PANEL OF BMI OFFICIALS:

STATEMENTS OF EDWARD CRAMER, PRESIDENT, ACCOMPANIED BY EDWARD W. CHAPIN, GENERAL COUNSEL, IRWIN LEVINE, L. RUSSELL BROWN, AND FRANK (PEE WEE) KING, SONGWRITERS

Mr. CRAMER. I am Edward Cramer. I am accompanied by Edward W. Chapin, general counsel for BMI.

To my right is Larry Brown. To his right we have Pee Wee King. I am president and chief executive officer of Broadcast Music, Inc., BMI, a nonprofit operation representing some 60,000 American composers, lyricist and publishers, located in every State.

I have submitted for the record statements by Gunther Schuller, who is the past president of the New England Conservatory of Music and the present president of the National Music Council, an organization representing millions of affiliates, and who is probably best known

to the public as the one who did the re-creation of the Scott Joplin music in "The Sting."

I also submitted for the record a statement by Felice Bryant, a professional songwriter who, together with her husband, wrote some of the great songs that are identified in her statement. The younger people will recognize them—"Bye, Bye Love" and many others.

There is another statement by Jerry Goldsmith, one of the most distinguished Hollywood composers, who won an Academy Award, Emmy Awards, and who did scores for the television series "The Waltons," "Barnaby Jones," and scores for such films as "Patton"; "McArthur"; "Tora, Tora, Tora;"; "The Sand Pebble;"; and "Blue Max."

I also have a statement by Sy Oliver, a BMI affiliate composer and writer of one of the great songs, "Opus One," and perhaps best known to some of the older members as the principal arranger for the great Tommy Dorsey Band and Jimmy Lunceford Band.

I have two other statements, one by Irwin Levine and L. Russell Brown, Harry Brown, who is here and who might say several words later and answer questions for the panel.

He is coauthor of many very famous songs—one that everybody knows and veterans are familiar with, "Tie a Yellow Ribbon Round the Ole Oak Tree."

Last, at the end of the panel, we have Pee Wee King, a long time BMI writer. You can identify some of his songs. The one everybody knows is "Tennessee Waltz."

BMI's main task is to collect—

Senator DECONCINI. Do you want those entered in the record?

Mr. CRAMER. Yes.

Senator DECONCINI. Without objection, they will be entered following the oral testimony of the panel.

Mr. CRAMER. Our main task is to collect royalties for these tens of thousands of affiliates whenever their music is performed around the world.

I am making this statement in opposition to S. 2082 on their behalf, and I am confident on behalf of every composer, writer, and publisher, whether or not affiliated with us.

The text of the amendment is clear. It would exempt nonprofit veterans' organizations and nonprofit fraternal organizations from paying royalties in the performance of music as now required by the Copyright Act.

This bill in my view is much more than a piece of narrow special interest legislation. Leaving aside serious questions about its constitutionality, its enactment in my view would create serious precedents which I am sure that those people who preceded me and who are well-intentioned did not have in mind.

Some of the questions basically are as follows:

If these organizations can hold dances and charge admission—remember the law requires that there be admission charges and that they pay the performers—they can be exempt from paying per performance, then why can't this Congress enact legislation which would require the owners of the dancehalls and other facilities to furnish their facilities rent free?

Why can't these organizations require the motion picture companies to furnish their films without charge?

I noted in a statement of one of the organizations the Eagles was founded by theater owners. There is no legislation which would require theater owners to give their facilities free to the Eagles.

Can these organizations then go, because they are of noble purpose, and I will say that once, twice, probably three times—none of us objects to their functions, and we think they have done great things and we support them, but can they go to the local newsstands and bookstores and say, "I want copyrighted books to put in the lounge and I don't want to pay."?

Going beyond the copyrighted area, can they go to the local plumber, the carpenter, and say, "We are a noble organization. You donate your services free."?

I give you these simple examples because it takes little imagination to expand the list to illustrate what is wrong with this legislation.

I think Senator Zorinsky stated, and I think I quote him correctly, that it is taking of private property, but only a small taking. That is a question of judgment. That is what we have been careful of, what is a small payment, whether you are a little pregnant or a little constitutional.

The composer of music and a writer of songs is a creator. What he or she creates is his or her property just as a machine dreamed up by an inventor is his or her property. The fact that one is tangible and the other intangible should make no difference. The patent law protects the property right of the inventor; the copyright protects the property rights of the musical creator. In some instances those rights are tangible and in some instances intangible.

If this bill is enacted it would be voting for discrimination against those Americans who make a living from writing music. This bill does not provide fraternal and veterans' organizations with a broad exemption from paying musicians who play at their functions, from paying other performers, for liquor, refreshments, paying utilities or cleanup costs. It is only the property of the songwriters which is taken away without compensation.

This bill would require the songwriter to contribute to organizations whether or not they are in favor of them, whether or not they approve them, and contribute to all of them. It is not a matter of choice that the rest of us have.

If a person in a community wants to join the Elks, the Moose, or wants to join an organization, and if they are eligible for membership, they can contribute financially, but this bill does not say that. This bill says that you as a composer must contribute, like it or not.

Personally, as a veteran, I believe that the veterans are deserving of benefits because of their service.

Again on a personal level, if it were not for the GI bill after World War II, I don't know whether I would have gone through law school.

However, this legislation really has nothing to do with the service of veterans to our country. Hundreds, maybe thousands, of our songwriters are veterans themselves. Except for the few stars in music performance, most songwriters do not make a great deal of money from their music. We are not talking about big performers but people who are songwriters. They don't make more than the average, perhaps far below. Should this committee vote to take from one group of veterans and give to another?

Hundreds, perhaps thousands of the Nation's songwriters belong to fraternal orders.

These organizations which appeared before you this morning provide a great deal of community service. Everyone can support their charitable activities. However, would we make it mandatory that members of the Eagles contribute to the Elks or that the Moose contribute to the Shriners? No. However, that is what this bill does. It says as a songwriter you must contribute.

I think we ought not to overlook something else. The music industry contributes millions annually to charitable causes, both directly through contributions and indirectly. You can see on your television screen and you know it locally. Not only the big names, not only star performers contribute their time and effort, but they do it voluntarily. I am sure that Mr. Brown and Mr. King can tell you from their own experience the time and effort where they have performed services. I am not talking about financial contributions but times where they have made appearances.

I do not think that is the issue. We are not disputing whether the Elks or the Moose have done that.

What is this royalty we are discussing here? Somebody is making money here and it is not coming to BMI. All I heard today—again I tell you, Senators—all this money being paid is not coming to us. We are talking about a small annual fee from each user of copyrighted music made even more modest when we negotiate a national or State arrangement with each of the nonprofit organizations.

When we issue a license it is for the use of all music of all of our affiliates.

First, as you know, the minimum rate for a small post that does not spend more than \$5,000 a year, and if it is small it will not spend more than \$5,000 a year, for entertainment is \$75 a year. It goes up gradually from that rate.

Recognizing the unique situation of these organizations, and again I think it was a suggestion of yours, we did attempt to see whether we could work out some kind of agreement which would recognize the unique status of these organizations and would provide special fees without abandoning the principle that our affiliates should not be required to give of their services free.

Our proposal was—I am embarrassed because our writers will know how long it was but I will tell you—on a bulk deal we were prepared to license for \$35 a year from these posts.

We were not party to it and I was not present, but we believe that in one State the American Legion, which has more Legion posts than anyone, solicited from posts an agreement to pay \$35 a year, a blanket deal for all of them in the State. Only seven indicated a positive response. Therefore, this cry of wolf that you hear that they will go out of business or won't play music because of the nominal fee we are charging. I suggest this is because of a lack of information that the spokesmen have, and I attribute it to no more than that.

I don't think they are aware of these facts or they would not have made the statement. We have not made anywhere near the kind of money that was related to you here earlier.

Congress has already given thought and had discussion with regard to the issues raised in bill 2062. These issues were debated for 13 years. Congress specifically eliminated the copyright exemption given for nonprofit performance of music under the original act of 1909.

In considering the new copyright legislation in 1976, Congress found that the line between commercial and nonprofit organizations had become increasingly difficult to draw, and that there was widespread exploitation of copyrighted music by the so-called noncommercial organizations.

Attached to my statement is a sample of ads run by some of these organizations which invited the public to attend by paying an admission charge.

A representative of the Elks said they do not invite the public. The first ad which appears in the exhibit attached here states, "Open to the public," Elks No. so and so.

There were at least 100 here. If you want to burden the record we can increase the number by manyfold.

"Open to the public." "Everyone is invited." "Come on in." "Everybody will be here." "Ladies' night every so and so," and on and on.

Because of time limitations I will not read them into the record but they are attached to my statement. You will see the words "open to the public."

Here is one from the Legion—"Public invited."

Congress found that many of the so-called nonprofit organizations were actually getting an unearned subsidy by not paying for the music they performed, and that the nonprofit organization should pay for the music just as they paid for all other property, goods and services.

It is important to recognize that the new Copyright Act already provides an exemption for nonprofit organizations, including the fraternal organizations and including veterans' posts. They are exempt from paying royalties for copyrighted music. They can play all the music they want for free as long as no admission is charged and no compensation is paid to musicians or to the producers or the promoters of the affair.

I noted that in the testimony of Mr. Weis he said it was unthinkable not to pay musicians, even if they happened to be members of a lodge. If that is unthinkable, even if they are members of the lodge, it follows it is unthinkable not to pay composers who are not.

There is this exemption, but if musicians are paid, if promoters and producers are paid, then the Copyright Act states the songwriters should not be discriminated against. They should not be singled out for this special treatment. They should be treated just as every other American is.

I applaud Senator Zorinsky's opening remarks when he defended the free enterprise system. In my judgment it is in keeping with the free enterprise system that we do not take away the property rights of one select group.

Thank you, Mr. Chairman and Senator Zorinsky.

With the permission of the Chair, I would like to have informally, either by questions or making brief statements, comment from Mr. King and Mr. Brown.

Senator DeCONCINI. Mr. King or Mr. Brown?

Mr. King, we welcome you here.

Mr. KING. Thank you, Mr. Chairman. I am a country style songwriter. As a long-time member of BMI, I've written and collaborated on over 300 songs, songs like "Tennessee Waltz," "You Belong to Me," "Bonaparte's Retreat," and "Slowpoke."

I have always been proud of my country associations and I think that country music is unique in many ways. I am kind of prejudiced when I say to you it is the world's most popular music.

I like to think that "Tennessee Waltz" is not unknown whether it is Bombay, Saudi Arabia, Ankara, or wherever you are in the world—you will find "Tennessee Waltz" is being played.

Country music fans are the most loyal and supportive people anywhere. In my case, I was born in Wisconsin. My father was a polka player. He played an accordion and concertina, and music fascinated me as a youngster.

I was destined to become a musician and songwriter. I played his music, polkas, and country and western music.

There are a number of stars who write their own material. Take people like Willie Nelson, Dolly Parton and Tom T. Hall. The public sees them as performers, but they got to be stars only because of some songwriters' efforts.

I remember being at a dinner once when Atlanta publisher Bill Lowery called the songwriter "the gem" because without the songwriter there is no music or song. That is how we feel about it.

Without songwriters—it all begins with a song—there would be no music.

That is my point, gentlemen. While we may be performers in your eyes, a great deal of our income is derived from the use of our music by those who feel it is a happy addition to the business.

Take the Saturday night dance or whatever, there is not a songwriter in the world who isn't happy knowing that his song is known and loved and being sung and played. Like everyone else, the songwriter has every right to be paid for his work, even after he or she no longer travels as a performer and remains a songwriter.

I would like to reiterate what Mr. Cramer said—it is unthinkable not to pay the musicians. As a member of the Elks and Lions and the Shriners, I feel the same way. It is unthinkable not to pay the songwriter for his efforts.

When you put yourself in my shoes, how would you feel if, when you went to a social function, you heard them play the "Tennessee Waltz" and the law specified that although the band leader and the sidemen were paid, it is said you don't have to pay for the use of the musical composition, it was free?

I don't think it would be fair or just, and speaking on behalf of all the songwriters I know, including my partner Red Stewart, we have talked about this so often, I must voice an opposition to the proposal that we curtail through special interest legislation any income derived from songwriting.

Senator DeCONCINI. Thank you, Mr. King.
Mr. Brown?

Mr. BROWN. I want to thank you for the opportunity for allowing me to speak with regard to 2082 which was brought to my attention not too long ago.

When I heard about this, being a veteran myself and performing special services and also performing when I was in Paris—I even sang for Lauris Norstad at the time—he paid me \$100 and he was happy about paying me because I put on a good show for him.

When I heard about this bill I said, "Well, I have a wife and three children. I am trying to get them through school and trying to feed them. We all know how things are today, not quite that easy."

I thought about my being blessed and fortunate to write songs like "Tie a Yellow Ribbon" and having the whole Nation get behind the song, like a "Yankee Doodle Dandy" song. I am overcome by how it has taken on a different feeling through the hostage situation. It made me feel great about it and I pray everything works out right.

Getting back to the point, the point is that I make a living from the music I write. With this living I buy clothes for my children and get my kids an education, and also I take my time. I do things which I feel I should do in terms of charity.

I played in a golf tournament last week for retarded adults. I sang to 350 people over the age of 65. I just sang three songs, but it was a great experience to do that. They were a great audience.

Then again it was my desire to take the money that I make and earn and put it where I felt it should go.

I think that the motives of the veterans are excellent and really on the money. However, I think I should have the right to put my charity where I feel my charity should be given.

If I sold cigars for a living, or if I sold drinks for a living, if I sold real estate for a living, and I sold my real estate to these organizations, I would feel I should be compensated for it, just as I give music to them and should be compensated.

Basically that is it in a nutshell. I give a service and I would like to feel I am getting paid like the next guy, whether he sells shoes or cigars.

Every time I can help I generally get around to singing a few tunes here and there for people.

Senator DECONCINI. Thank you, gentlemen.

Many members of your association have donated numerous hours for veterans' organizations and charitable organizations, and all of America thanks you. We thank you for your talent and for the fine songs you have written.

Mr. Cramer, I have a number of questions.

First of all, what is the amount of money that is collected by your organization from fraternal orders and from veterans' organizations?

Mr. CRAMER. I don't have that segregated, Mr. Chairman. That can be furnished for the record. I think we can break it down.

Senator DECONCINI. Would you please supply that to us?

Would you care to guess? Is it 10 percent of your income, 2 percent, 1 percent?

Mr. CRAMER. Let me do a little arithmetic. It is very small.

Senator DECONCINI. Give me an estimate. You can correct it once you have verified the figure from your records.

Mr. CRAMER. Probably at the moment from veterans and fraternal organizations, and this would be subject to confirmation for the record, I don't believe it is more than 1 percent. It is not the dollars involved but a serious principle of erosion for us.

Senator DECONCINI. I understand that. I want to talk about the money first. What does 1 percent amount to? What is your income?

Mr. CRAMER. For the past year probably about \$90 million gross. Therefore, when I said 1 percent I am talking about somewhere between \$90,000 and \$100,000. I could be wrong on that.

Pardon me, I mean one-tenth of 1 percent.

Senator DECONCINI. You mean one-tenth is \$900,000?

Mr. CRAMER. My decimal point was off. It is not 1 percent but one-tenth of 1 percent.

Senator DECONCINI. From the standpoint of money loss, then, it is minimal and of no great consequence. Is that a fair statement?

Mr. CRAMER. No immediate great consequence; that is correct.

Senator DECONCINI. Let's turn to the precedents you point out.

Mr. CRAMER. Yes, sir.

Senator DECONCINI. The present act does exempt agriculture and horticulture organizations when they have annual agricultural or horticultural fairs or exhibits. How does your organization feel about that?

Mr. CRAMER. There is a liability under the act on behalf of the promoter to continue to pay, so that while the fair is exempt, my recollection is that the promoter still has to pay for that. In other words, it is not an exempt performance. It is an exemption that extends to the fair rather than to the performance.

In other words, we get paid for the performance. The question is which organization pay us for it. Therefore, it is not an exempt performance.

Senator DECONCINI. When a county fair sponsors a group and hires a band which plays music which one of your members composed, you get paid; is that correct?

Mr. CRAMER. The act provides for it. There is a payment by the concessionaire, business establishment, or other person but shall not exclude such person from liability for the performance. Somebody is liable for that performance.

Senator DECONCINI. In other words, in my hypothetical case, if the county government or the county fair commission hires a local band to play music, and they play music at the fairgrounds and are paid for doing that, they will have to pay you? Is that right?

Mr. CRAMER. I will have to know more. Somebody has to pay us for that. The exemption goes to the governmental body for the nonprofit horticultural organization. but as the act says, the act does not excuse any such person from liability for the performance, meaning the concessionaire, the business establishment, or other persons at the fair. The analogy would be, then, that somebody will have to pay for that, so in the case of a producer, a performer, it might impose a liability on them.

We have not run into that question as a practical problem so far, but in answer to the theoretical I would have to know more. Many county fairs use an outside organization to get the talent for them.

In answer to your specific question, in a highly theoretical instance, I don't know what the answer to that would be.

Senator DECONCINI. The act makes specific reference to the concessionaire and business establishment. It would certainly seem to me that if a fairground leases a piece of its ground and permits an organization to come on and charge to have people come in and dance and listen to music, obviously that is a business to the concessionaire.

If a fair commission hires a local band to play for the general audience at the fair, that band is paid whatever the contract is. Do you look to the band to pay for playing the music?

Mr. CRAMER. Up to this point we have not, no.

Senator DECONCINI. Then as far as section 6 of 110 is concerned, you do not object to that as it relates to governmental bodies, agricultural and horticultural bodies and exhibitions.

Mr. CRAMER. It has not created a practical problem to date. If it did I would not know what my answer would be. Up to the moment it has provided no problem.

Senator DECONCINI. The question you raised about precedents is certainly one the committee has to consider. Your testimony makes the point that this may lead to further precedents. The Government could exempt the band, the plumber, the copyrighted book purchaser.

In essence, is it fair to say this is fairly restrictive legislation? We are talking about only charitable organizations, a small amount of money as it relates to your organization.

I can appreciate the concern of your members, but I wonder whether it is really legitimate when you talk about one-tenth of 1 percent. Is it a precedent if Congress enacts something for a charitable group?

Is that a precedent they will do it for a noncharitable group and start exempting other people? Are there any cases of that that you can point out?

Mr. CRAMER. Two objections I have. One is a matter of precedent not so much for us, but the question is whether this is precedential legislation and provide the basis for legislation where the same charitable organizations said they wanted an exemption for plumbers. That is an issue which is one side of the question. That is the example of the illustration I gave.

Senator DECONCINI. Are you making a comparison that if someone plays your members' music it is the same thing as hiring a plumber to work, forcing a plumber to do repairs and not paying him?

Mr. CRAMER. You say to the plumber this is only one-tenth of 1 percent of your income to fix a leaky faucet. That is the analogy.

Senator DECONCINI. Are you making the analogy it is the same as the plumbers being forced to fix it?

Mr. CRAMER. Yes, sir. Because it constitutes only one-tenth of 1 percent of that person's income, then—

Senator DECONCINI. You do not see a distinction between the artist who has created something and which is played by someone else versus the plumber who has to do the physical work himself and perform his own function? You see no distinction there? You say they are the same?

Mr. CRAMER. That is exactly the point. Whether one performs labor in one way or another, whether manual labor or the creative activity

which goes into writing a song, or you can take the local accountant not performing physical labor, that it constitutes only one-tenth of 1 percent of the income, do the lodge's books for nothing.

Senator DECONCINI. Let's go to the one-tenth of 1 percent. It is the principle involved. You make the analogy they are one and the same, the plumber versus the creative writer?

Mr. CRAMER. Absolutely correct. They all pay bills, all support their families. They have to eat and support families on their activities for income to do that. They are the same.

Senator DECONCINI. Referring to these artists who belong to your group, besides writing songs, do a number of them also sing and perform?

Mr. CRAMER. You have two examples before you—some do and some don't. Mr. King does at times. Mr. Brown generally does not. He did at one time but he does not now, so some do and some do not.

Senator DECONCINI. Would you say most of them have?

Mr. CRAMER. I don't think most of them are performers; no.

Senator DECONCINI. Or have performed?

Mr. CRAMER. Performed at one time or another, just as Mr. Brown performed. He would not classify himself as a performer now.

Mr. BROWN. Not at all.

Senator DECONCINI. When the law was passed in 1977, did you testify in favor of that, or did your organization take a position?

Mr. CRAMER. Those hearings were held over a period of 12 or 13 years and there were various hearings in support of the copyright bill. It went back to the early sixties. On parts of it, we testified, but to the best of my knowledge, we did not take a position overall as to the total bill. However, as to individual sections, we did, and when hearings were held, we appeared. We favored some and did not favor others.

Senator DECONCINI. You did participate in the process?

Mr. CRAMER. Yes, indeed.

Senator DECONCINI. Senator Zorinsky?

Senator ZORINSKY. In some of these clippings you have enclosed, it was stated previously by some members of the American Legion or the VFW that the economics forced some of the clubs to give up music.

Some of these ads you have here, "Serving 5:30 to 8:30"—they do not mention anything about music or dancing. What does that have to do with this?

Mr. CRAMER. We put all kinds of ads in there. These are the kinds of ads used.

Senator ZORINSKY. You are trying to point out that the music is played and open to the public and therefore it enables the law to be applicable to those posts.

Mr. CRAMER. Part of that is because it is open to the public, which indicates these organizations, some of whom appeared before you today, indicated they were not open to the public.

The reason for these ads is not only the question of music but generally the facilities are open to the public.

Mr. ZORINSKY. Are religious groups open to the public?

Mr. CRAMER. I personally don't know of any religious organizations which would exclude anybody if they wanted to enter a religious service.

Senator ZORINSKY. Why weren't their ads in there?

Mr. CRAMER. There is no legislation pending before this committee that I am aware of which is related to a religious exemption.

Senator ZORINSKY. But they are exempt and you are using that as a criterion for these ads as to whether or not a place is open to the public. You have an ad here saying, "Fish fry, walleye or cod, 5 to 8 o'clock at night."

What if they don't play music? There is nothing wrong with any nonprofit organization raising money selling fish to the public in order to contribute it to a needy group.

Mr. CRAMER. I am not arguing that point, Senator. We are not in disagreement.

Senator ZORINSKY. I am trying to rationalize the mixture of ads here.

You indicate in your testimony that nobody would expect a plumber not to charge for his services or a carpenter for VFW or the American Legion. You are aware many services do donate their services?

Mr. CRAMER. That is a matter of choice. That is the whole point. If a carpenter or plumber decides to donate his services, fine. You are saying to Mr. Brown and Mr. King they must donate their services.

Senator ZORINSKY. What if the band donates its services?

Mr. CRAMER. If there is no admission charge and if nobody is paid, then there is no charge.

Senator ZORINSKY. Both of them? What if there is an admission charge to raise money for a child, they want to pay for an operation, and the band donates its services and there is an admission charge?

Mr. CRAMER. If there is no payment then, and the money is used solely for charitable purposes, there is an exemption under the present act unless the copyright owners file an objection to that, so you do not have to change the law one sentence for that. That is my understanding. In my view, that is covered by the present act without a single amendment.

Senator ZORINSKY. As Senator DeConcini mentioned earlier, agricultural use of fairs was referred to. Can you cite any specific examples of where a band or an orchestra or a musical group has reimbursed your group in lieu of the agricultural group's nonpayment for that performance?

Mr. CRAMER. No, but I can say the promoters, the people who send that attraction out, have paid us many times. If you will keep the record open, I can give you examples of where they paid us repeatedly. That is a common occurrence.

Senator ZORINSKY. It was indicated there are many contributions made by members of the music-writing profession as there are by those who do not have those talents by writing out a check and sending it into charitable organizations. The difference is that one has latent talent and the other has overt talent to be able personally to make a contribution.

The bottom line, I have found, is generally that the contribution has a benefit to the person making the contribution, and, moreover, it has some applicable deduction in taxes.

I talked to entertainers myself. They figured it would cost more for the air ride than the time they would have to give and donate a performance, and therefore they contribute the performance in order to

write off the airline ticket to go to wherever they wanted to go, anyway. This is the way they explained it to me.

I know there are selfish motives as well for these contributions, not only in your industry but in all industries. I am not singling out any individual industry.

You indicated that the money we spoke of previously is not coming to BMI, these large sums of money we are talking about. We spoke of originally \$2 million coming from the charitable organization groups we are attempting to exempt from the current bill before us.

If it is not coming to you, and according to their records they are paying for it, and being very suspicious of governmental oversight, which is what happens with respect to your law, I think possibly we should have full hearings on what is happening to that money because it would not be the first time there were cracks as to what happened to money.

How do you get the money separated between you and ASCAP?

Mr. CRAMER. I don't think it is a matter for governmental intervention because the Government is in no way involved. It is a payment made by the post or the local chapter to BMI or ASCAP.

Senator ZORINSKY. Who keeps the records?

Mr. CRAMER. There is no intervening governmental agency.

Senator ZORINSKY. Who keeps the records?

Mr. CRAMER. We do or ASCAP does, depending upon who is licensing them.

Senator ZORINSKY. The Library of Congress?

Mr. CRAMER. They are not involved in this in any way except when the legislation was proposed they took a position in favor of this act, and specifically the way the section now is.

In terms of administration of the act, they are not involved at all. None of the money goes to the Library of Congress or any other governmental agency.

Senator ZORINSKY. Who pays the salary of the Tribunal?

Mr. CRAMER. Paid by the Government.

Senator ZORINSKY. By the taxpayers of this country.

Mr. CRAMER. Yes.

Senator ZORINSKY. What is the purpose of the Tribunal?

Mr. CRAMER. The Tribunal is involved in the distribution of royalties in certain areas and fixing those rates in other areas. Specifically they are involved in the distribution of cable royalties, public broadcasting income, and the distribution of jukebox royalties.

They are also involved in adjusting fees for jukeboxes and recording rates. They are not involved in the overwhelming percentage of activities that songwriters' organizations are engaged in. They play no role in our licensing commercial broadcasting, hotels, nightclubs. They have no role whatsoever in that.

Senator ZORINSKY. When a performer or artist is remunerated for his artistic ability, is it differentiated as to how many dollars came to him as a result of his music being played in a VFW club as opposed to "on the air" broadcasting on a radio station or on a jukebox, or does he get a lump sum check?

Mr. CRAMER. The writer and publisher, as they are paid from BMI with very limited exemptions, the income is distributed on broadcast performances. It depends on the number of broadcasts.

Senator ZORINSKY. They don't get paid for performances in a VFW club?

Mr. CRAMER. They get paid for it because all the money goes into one central pot. We use that and we distribute it all. There is no profit. However, we distribute it based on a formula which is predicated on radio performances for the most part.

There are certain incidental things which would confuse matters, but what we do is this:

We don't have a system as yet which is capable of determining performances in the nonbroadcast areas in the VFW halls or in a bar or a nightclub. To do that would be very, very costly. It would take far more than we receive.

If we were to license, say for \$35 a post, we could not afford to spend that kind of money in determining what is played there. Therefore, it is our judgment, until we come up with a better way, that we take all the money, but it into one pot, and distribute that money based on broadcast performances.

We do that because we think that in today's market in the United States, with 8,000 AM stations and broadcasting stations, that a representative sampling of commercial broadcasting stations gives us a pretty good idea of what is played generally around the country.

It is not completely accurate but it is pragmatic and at the present time it is the best system we know how to devise.

Senator ZORINSKY. I think you have a unique mechanism where you have gotten the taxpayers of the United States to pay the funds of a Tribunal to collect the money and distribute it, as you say, to artists.

Mr. CRAMER. They are not involved in that, Senator. There is a misconception.

Senator ZORINSKY. They are not paid by the taxpayers?

Mr. CRAMER. Yes; but part of the expenses come off the top. How much comes off the top of the distribution I cannot tell you the breakdown.

Senator ZORINSKY. Are the staffs not paid by taxpayers?

Mr. CRAMER. I don't know what the division is between staff and how much is paid there and how much comes off—

Senator ZORINSKY. You admit taxpayers are funding some portion of this operation?

Mr. CRAMER. Yes, sir.

Senator ZORINSKY. It is a mandatory collection whether it is from a profitmaking organization or nonprofit?

Mr. CRAMER. I am sorry that I am being confusing.

Senator ZORINSKY. The radio stations pay.

Mr. CRAMER. The Tribunal is in no way involved in the collection and distribution of royalties from veterans' organizations, from fraternal organizations, from broadcasting, from nightclubs. They have no role whatsoever to play in that. It is zero.

Senator ZORINSKY. What do they do?

Mr. CRAMER. They distribute the money that is collected from cable, for example. Right now that is where it is. The amount of money collected for the use of copyright programs on cable is paid over eventually to the copyright portion of the Tribunal.

Senator ZORINSKY. The copyright agency is a collection agency for you?

Mr. CRAMER. Not just for us. We got only 4.5 percent of the total amount of money which the copyright Tribunal has to distribute. The balance of that money, 95.5 percent, went to other interests outside of music.

Therefore, what the Tribunal decided was that there was an allocation, 75 percent of the money to broadcasters, so much to sports, so much to music, and so forth, that is one of their major functions.

The other function is to decide how much the royalty rights should be when a record company makes a record—how much should it pay the copyright owner.

There have been hearings for about 30 days on how much the record royalty should be that the record company pays, or the statutory rate. Should it be two and three quarters cents, a percentage, and so forth?

The amount devoted to the distribution of BMI and ASCAP is minimal. Four and a half percent of the total paid for cable is music. The rest involves primarily motion picture interests.

Senator ZORINSKY. Where would I go to find that information as to the total budget of that organization being funded with tax dollars?

Mr. CRAMER. I don't know.

Senator ZORINSKY. You do not have those figures?

Mr. CRAMER. I am not involved in that in any way.

Senator ZORINSKY. Can you as the representative of BMI or any of you agents—you said you were willing to make a \$35 a year deal, so to speak, and there are only four places?

Mr. CRAMER. We did it in bulk so we would not have to send members.

Senator ZORINSKY. Do you have the ability and authority to do that independent of ASCAP?

Mr. CRAMER. Yes. We compete.

Senator ZORINSKY. They have additional fees when they come around and make their own deals?

Mr. CRAMER. We act totally independently except for certain areas—

Senator ZORINSKY. That is where there is a misunderstanding as to the amount of money. You come around and make your deal and ASCAP makes its deal?

Mr. CRAMER. They are entirely independent.

Senator ZORINSKY. So when you say one-tenth of 1 percent you are talking about only BMI and not ASCAP?

Mr. CRAMER. Yes. Those figures are subject to confirmation. I am not privy to their data. Obviously we compete and there are certain legal restrictions against us.

Senator ZORINSKY. I thought the two were together.

Mr. CRAMER. No.

Senator ZORINSKY. Finally, I would like to make a comment with regard to your philosophy of a band being paid to play, and therefore the performer is being paid to sing or play an instrument and the composer should also be paid.

A band can be in only one place at a time. If a band plays tonight on the steps of the Capitol, physically their bodies will be on the steps of that Capitol tonight at 8 or 9 o'clock.

However, a composer can be at thousands of places receiving royalties constantly wherever his music is played. That is a tremendous

advantage and does not equitably express the ability of the human to get paid for a single performance.

Mr. CRAMER. If I were to write a book, my book can be sold in every bookstore and my magazine sold on every news counter, and I could be in more than one place at one time. I don't think you would advocate having every charitable organization go to the newsstand and pick up a magazine for nothing.

Senator ZORINSKY. You would be getting paid, though, by the publisher of that book.

Mr. CRAMER. Not if it is for free. That is based on royalty sales.

Senator ZORINSKY. If you were getting royalties based on the number of books published or produced—

Mr. CRAMER. No; sold.

Senator ZORINSKY. All right, sold—not on the number of books read. What if I buy a book and never read it? Would you give me back the royalty you received?

Mr. CRAMER. No; you are buying it.

Senator ZORINSKY. You are using a public performance. People are hearing the music as a criterion for paying the royalty. What if they sat there and you used that criteria?

Mr. CRAMER. I very much doubt admission charges would be paid. If no admission charges are paid there is an exemption. This is not a problem if looked at from a practical point of view.

I believe that much of this resulted in misunderstanding.

Senator ZORINSKY. Thank you.

Senator DECONCINI. Has your organization ever considered a blanket exemption for charitable groups?

Mr. CRAMER. I have been head of the organization since 1968 and I never considered it positively. In fact I would take a position to the contrary. I would be opposed to it.

Senator DECONCINI. You would not recommend to your members they be generous enough to give their works and their talents to legitimate nonprofit groups?

Mr. CRAMER. For the reasons I have indicated to you today I would say it is a matter of individual choice. If an individual member wants to take the money he earns for performance of his or her composition and wants to turn it over to the charity, good for them. That is their choice, not mine. I don't want to be in a position of dictating to them.

Senator DECONCINI. Do you set the policy or would that be a member's decision or a majority of the members' decision?

Mr. CRAMER. As to whether there should be an exemption?

Senator DECONCINI. Yes.

Mr. CRAMER. It would be a matter I would take before my board of directors.

Senator DECONCINI. They have the authority to do that if they wanted to?

Mr. CRAMER. I think they could. I don't know what the reaction would be.

Senator DECONCINI. Are you aware of precedents in other organizations where they perform and do services for certain charities and there is a policy such as the Fire Fighters of America, unions, and other organizations?

Mr. CRAMER. I do, too, for the organization. When we get a request and they want to use music in a commercial, and it is played, we do it.

We do it for announcements made by many charitable organizations. That is different from here because in those cases it is different from the cases we are talking about here. Musicians are being paid and we feel we should be paid.

Senator DECONCINI. The board of directors could consider a blanket exemption for charitable groups, veterans, or fraternal groups if they wanted to. Is that correct?

Mr. CRAMER. As far as I know there is no restriction on the board. They can decide whatever they want to.

Senator DECONCINI. They have not done that since you have been with them?

Mr. CRAMER. No, sir. In individual instances we have granted permission wherever requested. No question whatsoever.

Senator ZORINSKY. Would you have any objection to the nonprofit groups, such as we are attempting to exempt in this instance, being considered the same as the agricultural groups in this law and your group be paid through a promoter? That would leave them out of the bill and they would be exempt. However, the promoters getting their entertainment would be subject the same as the promoter would be in the agricultural example.

Mr. CRAMER. The situation is not quite analogous. I would think about it but it is not analogous. As you heard today, we are talking about small organizations where they have weekly performers, Saturday, Friday, Wednesday night, a couple times a week, using local musicians.

In most instances these are not big name acts brought before the local groups.

Senator ZORINSKY. There are many small fairs.

Mr. CRAMER. Usually those acts are brought into the fair through a promoter. There is no practical problem there. Where you talk about six people playing or three people playing 2 nights a week, it poses a practical problem.

I was careful to say to the chairman that the section poses no practical problem. That doesn't mean I like it. Since there is no practical problem now it may pose a practical problem if it were extended to the situation you suggested.

I have not considered it until you posed the question to me.

Senator ZORINSKY. Thank you.

Senator DECONCINI. Mr. Cramer and gentlemen, thank you for your testimony and for helping me understand the problem far better than I did before we started.

[The prepared statement of Messrs. Cramer, King, Levine, and Brown follow:]

PREPARED STATEMENT OF EDWARD M. CRAMER

My name is Edward M. Cramer, I am president and chief executive officer of Broadcast Music, Inc. (BMI), a non-profit operation representing some 60,000 American composers, lyricists and publishers, located in every state. BMI's main task is to collect the royalties for these thousands of affiliates wherever their music is performed around the world.

On behalf of BMI, and on behalf of our 60,000 affiliates whose music America plays and whose songs America sings every hour of the day, I am making this statement in opposition to S. 2082.

S. 2082 would exempt "non-profit veterans organizations and non-profit fraternal organizations from paying royalties" for the performance of music as required by the Copyright Act.

Senate Bill 2082 is more than a piece of narrow special interest legislation. Leaving aside questions about its constitutionality, its enactment would create serious precedents which I'm sure its well-intentioned supporters did not have in mind.

Simply stated, the questions it raises are the following:

If the organizations can hold dances and charge admission, but don't have to pay the owners of the music they play, then why can't the owners of the halls be required to furnish their facilities rent free?

Why can't these organizations require motion picture companies to furnish films without charge?

Can they go to the local newsstands and bookstores and demand free magazines and books for their lounges?

Should they be required to pay carpenters or plumbers?

I give you these simple examples and it takes little imagination to expand the list, to illustrate the basic flaw with the proposed legislation.

The composer of music and the writer of songs is a creator. What he creates is his property, just as the machine dreamed up by the inventor is his property. The patent law protects the property rights of the inventor; the Copyright Act protects the property rights of the music creator.

If this subcommittee votes to take away the property of the song writer in order to give fraternal and veterans organizations an exemption from royalties under the Copyright Act, it will be voting for discrimination against those Americans who make their living from the music they create.

This bill does not provide the fraternal and veterans organizations with a broad exemption from paying the musicians who play at their functions, from paying for the other performers and entertainment, from paying for the liquor, soft drinks and other refreshments, from paying for the utilities and the cleanup costs.

Only the property of the song writers is taken away, without compensation.

As a veteran, I believe that the veterans of our wars are deserving of benefits because of their service. However, this legislation has nothing to do with the service of veterans to our country. Certainly hundreds, and probably thousands, of the nation's song writers are themselves veterans, and except for the few stars in music performance, most song writers eke out a bare living from their music. Should this subcommittee vote to take from one group of veterans and give to another?

Hundreds, perhaps thousands, of the nation's song writers belong to fraternal orders. Should this subcommittee vote to take from one and give to the other? No! Of course not!

What is this royalty we are discussing? We are talking about a small annual fee from each user of the copyrighted music, made even more modest when we negotiate a national or state arrangement with each of the non-profit organizations. For this small fee, BMI issues a blanket license for the use of all of the music of all of its 60,000 affiliates.

Congress has already given intensive thought and discussion to the issue raised in S 2082. Congress debated the issues from 1965 into 1978, when the Copyright Law was enacted. Congress specifically eliminated the copyright exemption given for "non-profit" performance of music under the original act of 1909.

In considering the new copyright legislation in 1976, Congress found that the line between commercial and "non-profit" organizations had become increasingly difficult to draw, and that there was widespread exploitation of copyrighted music by so-called non-commercial organizations. Attached as an exhibit is a sample of ads by some of these organizations inviting the public to attend their functions by paying an admission charge.

Congress found that many of the so-called "non-profit" organizations were actually getting an unearned subsidy by not paying for the music they performed, and that the "non-profit" organization should pay for music just as they paid for all other property, for all other goods and services they used.

It is important to recognize that the new Copyright Act already provides an exemption for non-profit organizations—including the fraternal orders and veterans posts—from paying royalties on copyrighted music. These organizations can play all the music they wish for free, so long as no admission is charged and so long as no compensation is paid to the musicians, or to the producers or the promoters of the affair.

However, if the musicians are paid, if the promoters or producers are paid, then, says the Copyright Act, the song writers must also be paid a royalty for their music.

Surely this is fair to all concerned.

MTC service



"Something Exciting
Cookin' At
The Elks!"

**LUTEFISK AND
MEATBALL SUPPER**

Tuesday, Feb. 26

Serving At 4:45 P.M.

\$5.50 Per Person

OPEN TO THE PUBLIC

Limited Supply of Tickets

CALL FOR RESERVATIONS



ELKS LODGE

235-7556

N. Hwy. 71 Willmar

Live Music

Saturday, Oct. 13th

"HICKORY'S"

BIRTHDAY DANCE for Jim & Mona Ross
ANNIVERSARY - to Mr. & Mrs. Arnold Larson

BASMENT MUSIC BY

"Bobby Roberts Band"

AT THE NEW EDEN VALLEY

American Legion Club

2/25/80

WEST
Daily TR

Eden Valley
American Legion

FISH FRY

Friday, Oct. 12th

Serving starts at 5:00 p.m.

MUSIC BY:
"Mello-Tones"

American Legion Club



**New Years
Eve Party**

★ **Steaks for 2**
(5:30 - 8:00 p.m.)

★ **Hats & Horns**

Live Music

"Kountry Aires"

Advance Reservations

\$15.00 per couple

Table reservations till 9:00

Waconia VFW

442-9066



Servicemen's Club
 Blooming Prairie, Minnesota
DINNER-DANCE
 July 7, 1979
STEAK FRY
\$4.75
 Outside On Clubroom Grill
 Serving 6:30 to 8:30 P.M.
THE BAND IS
"RIDIN' HIGH"
 Playing from 8:30 to 12:30



Saturday, September 15th
 Music by **Mello-Tones**
 216 American Legion Club
 Eden Valley, Mn.

MNA Clipping Bureau
 HALSTAD
 VALLEY JOURNAL

SEP 19 1979

MNA CLIPPING SERVICE
 THIEF RIVER FALLS TIMES
 Pennington Co.
 SEP 19 1979

IT'S HAPPENING AT THE EAGLES

- FRI, JULY 6•
 LARRY'S CONCERTINA BAND
 Will Be Playing in The Main Lounge
- SAT., JULY 7•
 ANNIVERSARY DINNER FOR JULY
 Couples with Wedding Anniversaries in July will receive a Free Dinner. All others only \$4.00. Music by Larry's Concertina Band.

216 **DANCE**
Saturday, Sept. 22
 MUSIC BY
"All-In-The-Family"
 9:00 Closing
EAGLES CLUB

216 **Dance**
 AT THE FUN
Shelly VFW
 Dancing from 9:00 to 1:00 a.m.

Saturday, September 22
 DANCE TO THE MUSIC OF
"MEADOWS"
 Celebrate the harvest season by relaxing at Shelly VFW Saturday evening. Everyone will be there.

Wednesday, Sept. 26
"WIZARD"
ROCK AND ROLL
 Five Guys and A Gal
 Free Keg at 8:30 p.m.

ATTITUDE ADJUSTMENT PERIOD: Every day, 5:00-7:00 p.m.
 LADIES' NIGHT EVERY MONDAY: Ladies' drinks half price.
SHELLY VFW

WILLIAM ENTERPRISE-BULLETIN

Contact

SEP 18 1979

DANCE
 SAT., SEPT. 22
'D L & THE DRIFTERS' HAPPY HOUR 5:00 to 8:00 p.m. Mon. thru Thurs.
 Club OPEN FRIDAY & SATURDAY, 8 TO 11 P.M.
 Featuring **CHAR-BROILED RIBEYES**
 Club Hours: Mon-Fri - 3-12, Saturday - 12 Noon to 1 A.M.
 Nite Wed.
V. F. W. CLUB
 New York Minn.

MNA CLIPPING SERVICE

HASTINGS GAZETTE Dakota Co.

SEP 20 1979

MNA CLIPPING SERVICE

AUSTIN DAILY HERALD Menard Co.

OCT 2 - 1979

MOOSE LODGE
 1180

FRI., OCT 5
PIZZA & BEER
 Serving 6:30 - 10:00 p.m.
SAT., OCT. 6
 Dance 8:45-12:45
JUST COUNTRY

American Legion
 Post 47 Hastings
FISH FRY
 Friday, Sept. 21st
 6:00 - 9:00 p.m.
ALL YOU CAN EAT \$3.75
 Senior Citizens & children (under 12) -
 Take out orders available at \$3.75

MNA Clipping Bureau HOWARD LAKE HERALD

SEP 27 1979

Eagle
 1220 Vermillion, Hastings, MN 437-9
 Friday & Saturday, Sept. 21 & 22, 9:15
Garren Weaver
 Attention Members:
 Initiation and dinner
 Saturday, Sept. 22nd 6 p.m.

American Legion Post 145
 HOWARD LAKE
STEAK FRY
 AND ALL THE TRIMMINGS
Saturday, Sept. 29
 \$5.00 Per Person
 DOORS OPEN AT 5:30
 Beer and Setups Available

VFW CLUB

Fairmont

Saturday, May 12

WEDDING DANCE

Melvin Schultz, Jr

Teresa Wilcox

Music By

BLACKIE &

THE BLUE BOYS

Public Invited

FAIRMONT LEGION

Saturday, May 12

St. John Vianney

PTA Dance

Music by

BAKIN POWDER

BISCUIT-BAND

Admission at door

FAIRMONT LEGION

Friday, May 11

Fairmont Junior

Baseball Benefit

Music By

BAKIN POWDER

BISCUIT-BAND

Admission at door

FAIRMONT-VFW

Friday, May 11, 8-11 A.M.

DEPUTY DAWG

BAND

Featuring songs by

Wille Nelson

Pete Prairie Legend

MNA Clipping Bureau

WABASHA COUNTY HERALD, WABASHA.

SEP 20 1979

296

Mr. & Mrs. Don Gosse

25th Wedding Anniversary

DANCE

VFW - Wabasha

7 p.m. to 7 a.m.

NO ADMISSION

Music by

"The Rhythm

Masters"

Old Time, Modern & Country Western

MNA Clipping Bureau

RED LAKE FALLS GAZETTE

OCT 3 - 1979



MNA Clipping Bureau

NORTH STAR NEWS, KARLSTAD

OCT 4 - 1979



DANCE

Sat., Oct 6

"Alley Kats"

Greenbush Legion

American Legion

Red Lake Falls

MNA Clipping Bureau

TWIN VALLEY TIMES

SEP 26 1979



WEDDING DANCE

For Coralle Tommervik & Jay Farkas

Music By "Driftwood"

Saturday, Sept

Gary Legion Hall

MNA Clipping Bureau SAUK CENTRE HERALD

SEP 6 1979

WEEKLY SPECIAL **Lions Club Parties** EVERY FRIDAY NITE



SAUK CENTRE CITY HALL

296 October 6

the Torquays

October 13

Right Combination

Friday, October 19

Sidewinder

Saturday, October 20

The Rogues

Saturday, October 27

The Roadrunners



**THEY ARE BACK
THE V.F.W. - LITTLE FALLS**

will now be serving

Steak or Lobster

Fri., Jan. 11 - Club Basement

5:00-9:00 p.m.

*Come on down - Be a guest
Reasonable Prices*

MUSIC 9:00 p.m.-1:00 a.m. Country Polkateers



**Fraternal Order
of Eagles**

Elk River - 3264

824 Railroad Drive

COMING EVENTS

July 22 - Jam Session, 2-10 p.m.
Public Invited

July 24 - Meeting 8 p.m., Members only

July 28 - Anniversary Steak Fry and Dance
Leo Alexander Band - Public Invited.

WEDDING DANCE

in honor of

Barbara Fossvett and Layne Brase

Saturday, October 20, 1979

8:30 p.m.

AMERICAN LEGION CLUBROOMS

New Richland, Minnesota

Peter "Red" Mosler Band

Everyone Welcome

**Calendar of Events
at**

Cosmos Legion

Club

Wed. Oct., 24

Steaks, Ribs, Shrimp

Fri. Oct 26.

Chicken & Fish

Sat. Oct., 27

Wedding Dance

Jan Stanton & Jeff Wickland

Band

Happy Rangers

Steak Fry Every Wednesday
Serving 6-11 p.m.

For Reservations for Wedding &
Anniversary dances call 877-7525 after
4 p.m. - Catering Available

DANCE to your heart's content

LEGION CLUB - MAPLE LAKE

SATURDAY, OCT. 20

**353 U. S. Army
Reserve Unit
Military Ball**

**Open to
THE Public**

Music by the Harlanders

No. Adm. Charge



DANCING

Every Fri. & Sat. nite.
Old time, country
western, back to 50's &
60's, open to public.

BLAINE VFW

1374 100th Ave. NE

DANCE 

Saturday, Sept. 29th

DANCE MUSIC BY

Ferdie & Knights of Rythm

HALLOCK EAGLES

Hallock, Minn.
843-5801

MNA
CLIPPING SERVICE
THIR RIVER FALLS TIMES
Pennington Co.

FAIRMONT LEGION

Friday, July 20

Wedding Dance

KAREN KRUMWIEDE

ROBERT MATTIN

Music By

COUNTRY SIR

Open to Public

MNA Clipping Bureau
DULUTH BUDGET

SEP 20 1979

VFW 137 Clubrooms
2224 W. Superior St.

Friday, Sept. 21st

Dance 9-1

"Gaslighters"

Sat., Sept. 22nd

5-8 p.m.

Prime Rib & Salad Bar
\$6.00

Dance 9-1

"Gene Frey"

SEP 19 1979

MNA Clipping Bureau
PERHAM
ENTERPRISE-BULLETIN
SEP 20 1979

Now Appearing At:



AMERICAN LEGION POST 117
Thief River Falls

Fri.-Sat., Sept. 21-22

"Dave Kolle Show"

Featuring Jerry Peterson and his Elvis Impersonations

American Legion
David Wisted
Zenith
City Post
28
404 W. Superior St.
Live Music
Friday
September 21st
"Mike Meyers"

DANCE

SAT., SEPT. 22

"D L & THE DRIFTERS"

KITCHEN OPEN FRIDAY & SATURDAY, 5 TO 11 P.M.
Featuring CHAR-BROILED RIBEYES

Club Hours:
Mon-Fri - 3-12
Saturday - 12 Noon to 1 a.m.

V. F. W. CLUB
New York Mills

IT'S HAPPENING AT THE EAGLES

- THURS., JUNE 28 CHEF'S SPECIAL Plus Other Surprises \$1.25 Per Person Served 6:00-8:00P.
- FRI., JUNE 29 • THE WESTWIND BAND Will Be Playing In The Main Lounge
- SAT., JUNE 30 • BIRTHDAY DINNER FOR JUNE

Members with Birthdays in June will receive a FREE DINNER. All others only \$4.00
MUSIC BY: THE BABY BULL

MNA Clipping Bureau
RECORD,
EAST GRAND FORKS

SEP 27 1979



Fine Dining

Make Friday and Saturday Evening an Occasion. Then Sunday Morning Stop in for Breakfast. For the Best in Dining, in a warm atmosphere, visit us.

AMERICAN LEGION

POST 157

NW East Grand Forks

MNA Clipping Bureau
COTTONWOOD
COUNTY CITIZEN,
WINDOM

SEP 20 1979

LIVE MUSIC

Saturday, September 22

"Kraft Kountry"

9 p.m. - 1:00 a.m.

Westbrook V.F.W.

Calendar of Events
at

Cosmos Legio

Club

Wed. July 4... **CLOSED**

Fri. July 6... Anniversary Dance
Mr. & Mrs. Harold Kremer
Music By: Happy Rangers

Sat. July 7... Music By:
Dick Bischof

Mon. July 9...
Legion Meeting

Steak Fry Every Wednesday
Serving 6-11 p.m.

MNA Clipping Bureau Wedding &
EDEN VALLEY call 877-7525 after
JOURNAL ting Available

SEP 27 1979

Live Music

Friday, Sept. 28 -

Manannah Snow Blazer
Dance (2 Bands)

Sue & the
Grande Sentral Station upst
The Mello Tones - downst

Saturday, Sept. 29

Sue and The
Grande Sentral Station
AT THE NEW EDEN VALLEY

American Legion Club

CLIPPING SERVICE

WADENA PIONEER JOURNAL
Wadena Co.

SEP 20 1979



ENJOY A NIGHT OUT

DANCING

Friday, Sept. 21

Dance to

Dennis Zaviska

Saturday, Sept. 22

Dance to

Virg Blanchard

Mohs Wedding Dance



Dance from 8:45 p.m. to 12:45 a.m.

VFW Post 3922 Wadena

Polka Fest
Sun., Aug. 12

VFW Club

Luverne, Minn.

Bands playing plus

LITTLE JOE

DANCE
Sat., June 30
"Live Music"
Members & Guests Welcome



ST. CLOUD LEGION
POST NO. 76
1307 Lincoln Avenue S E

Steak Fry
Sat., June 30
Call for Reservations
251-9821

FAIRMONT
LEGION

Saturday, July 7

CLASS REUNION
Class of 1974

Music By

CITY PARK

Open to Public 9 p.m.

96

ADOM SHOPPER Mon., September 17, 1979, Wadena, Minn. PAGE 15

MNA Clipping Bureau
PAYNESVILLE PRESS

SEP 20 1979

LIVE MUSIC
Saturday, September 22
"Kraft Country"
9 p.m. - 1:00 a.m.
Westbrook V.F.W.



Friday,
September 21st
Music by
The Bradley's
American Legion Club
Eden Valley, Mn.

Sherburn American Legion Post No. 356

OSSED

Will Hold A
ILL SQUAD BENEFIT



**AMERICAN
LEGION NOW
HAS LIQUOR LICENSE,**

OPEN 3 TO 10 P.M.
MONDAY THROUGH WEDNESDAY,
THURSDAY 3 TO MIDNIGHT,
FRIDAY 1 P.M. TO MIDNIGHT.
- HALLOWEEN DANCE -
OCTOBER 27, OPEN TO THE PUBLIC

Steak Fry

Friday, April 21

10:00 p.m.

8 oz. Ribeye - Charcoal Grilled

Everyone Welcome

Donation \$8.00



DANCE
Sat., June 23
"The Blue Diamonds"
ST. JOE LEGION
St. Joseph, MN Post 328

DANCE
to the
Bee Kays
Sat., April 28 - 9:00 p.m.
honoring
Marian Headley
2nd District Legion Auxiliary President
Public Welcome
American Legion Club, Sherburn



at
**COSMOS LEGION
CLUB**

Wed. Sept. 26 Steaks, Ribs, Shrimp
Fri. Sept. 28 Chicken & Fish
Sat. Sept. 29 Wedding Dance
Ken Bohn & Lisa Lambert - "Midwesterners" Band

For Reservations for Wedding & Anniversary
Dances, Call 677-7525 after 4 P.M.
Catering Available

CLIPPING SERV.
HOUSTON GAZETTE &
COUNTRY JOURNAL
Houston Co.
SEP 27 1979

FAIRMONT
LEGION
Friday, October, 19
FAIRMONT
ATHLETIC BOOSTER
CLUB DANCE
Music by:
BAKIN POWDER
BISCUITS
Admission at the door
Open to Public

MNA Clipping Bureau
COTTONWOOD
COUNTY CITIZEN,
WINDOM
SEP 20 1979

Come out for an evening of fun!
Our Dining Room Features:
Steaks • Chicken
Seafood • Ribs
We also have "Early Bird Special" every Saturday night.
Windom Legion Bar & Supper Club
Morgan
MNA Clipping Bureau
MONTICELLO TIMES
SEP 26 1979

FAIRMONT
VFW
Friday, Oct. 19
25th Anniversary
Dance
MR. & MRS.
T. J. BORCHARDT
Music by:
BAKIN POWDER
BISCUITS
Public Invited
to one under 19 allowed

296
Dance
to the music of the
Buckaroos
American
Legion Club
Houston, MN

MILACA
MILLE LACS
COUNTY TIMES
SEP 27 1979

MNA Clipping Bureau
ZUMBROTA NEW
SEP 12 1979

296
FRI.-SAT., SEPT. 28-29
LONGHORNS
BECKER
AMERICAN
LEGION

Back To School Dance

50's THEME DANCE
Sponsored by the Jaycee Women
at Zumbrotas V.F.W.
Sept. 15, 1979 — 9 p.m.-1 a.m.
MUSIC BY: D.J. JERRY MORROW
CONTESTS AND PRIZES!
1st—Limbo—Bubble Gum Blowing—Spotlight Dance
Best Dressed (best dressed 20's man and woman receive
cash each)
PROCEEDS TO BENEFIT NEW
SOFTBALL FIELD
Tickets sold by members, softball teams, at the door and at
Argene Lanes, Zumbrotas Red Owl, Corner Dress Shoppe
and Zumbrotas Farm & Home.

HOMECOMING
Live Music
Friday, September 28
Mike Soderlund Band
Starting October 6, the Club Room
will be open at 1 p.m. every Saturday
American Legion Club
Milaca, Minnesota

ENTERTAINMENT
FAIRMONT
LEGION
Saturday, Oct. 27
WEDDING
DANCE
Nancy Lenor
Greg Nelson
Music by:
BAKIN POWDER
BISCUITS
Open to Public

PINE RIVER JOURNAL

SEP 20 1979

THE BOTH BARRELS BAND



Twin Cities Finest Band

COUNTRY-ROCK MUSIC FOR A REAL BLAS

MNA Clipping Bureau
PAYNESVILLE PRESS

SEP 27 1979

APPEARING AT

Pine River Legion Club

Two Nights
Friday and Saturday
September 21 and 22

Friday, September 28th
Mananah Snow Blazer Dance
Music by
Sue & The Grande Central Station
Mello Tones downstairs
American Legion Club
Eden Valley, Mn.

MNA Clipping Bureau
TWIN VALLEY TIMES

OCT 4 1979

296

WEDDING DANCE
For
Donna Coechmann
&
Robert Benke
Music By
"Vern Malafa"
Saturday, Oct. 6
9:00 p.m.
Gary Legion Hall

MNA Clipping Bureau
TRI-COUNTY RECORD,
RUSHFORD

OCT 4 - 1979

296
Rushford
America
Legio
DANCE
Music by "Mutiny"
Saturday,
must be 19 to be admitted

STEAK FRY

(Every Saturday night except first Saturday of the month)

SATURDAY NIGHT

Serving 6:00-9:00 p.m.

Choice Of: ★ Pork Chops **\$4.50**Request phone
reservations
(693-9064)

- ★ T-Bone
- ★ Rib-Eye
- ★ Sirloin

**PUBLIC
WELCOME****FRIDAY & SATURDAY****OCTOBER 19 & 20****WILLMAR DOES 15th Annual
STAGETTE****THURSDAY, JANUARY 10**

7:00 P.M.

OPEN TO THE PUBLIC

Fishes

\$1.00 Donation

Lunches

WILLMAR ELKS LODGE

North Hwy.

Willmar

DANCE SCHEDULE FOR THE NEW RICHLAND AMERICAN LEGION CLUBROOMS

FRIDAY, AUGUST 3

Ross & Weyhrauch
Wedding Dance
Melody Men Band

SATURDAY, AUGUST 4

Russell Fette & Debra Gelloff
Wedding Dance
Country Cadillac Band

THURSDAY, AUGUST 9

8:30 p.m.
American Legion meets

FRIDAY, AUGUST 10

Open

No charge for wedding or
anniversary dances

SATURDAY, AUGUST 11

Kelly Routh & Lori Amley
Wedding Dance
Melody Men

FRIDAY, AUGUST 17

Riemir & Johnson
Wedding Dance
Mr. & Mrs. Country Band

SATURDAY, AUGUST 18

Spooner & Johnson
Wedding Dance

FRIDAY, AUGUST 31

Jack Hargurth
45th Anniversary
Andy Lawrence Band

SATURDAY, SEPTEMBER 1

Schumacher & Smith
Wedding Dance
Melody Men

FRIDAY, SEPTEMBER 7

Jeff Thompson & Dawn Hendricks
Wedding Dance
Larry's Concertina Band

SATURDAY, SEPTEMBER 8

Krogsgaard & Kath
Wedding Dance
C.W. Express Band

THURSDAY, SEPTEMBER 13

Legion meets

FRIDAY, SEPTEMBER 14

Open

Legion membership is due

SATURDAY, SEPTEMBER 15

Neal K. Berg & Kahnke
Wedding Dance
Freddies Concertina Band

FRIDAY, SEPTEMBER 21

CLOQUET PINE KNOT-
NEWS GRAPHIC

Aug 27, 1979

PERHAM
ENTERPRISE-BULLETIN
Contact
Sept 25, 1979

296

Dancing 9-11
Friday, August 31
Sherman Swanson Band

Turkey and Dressing Dinner Served
Friday, August 31
from 5 to 7:30 p.m. \$3⁰⁰ per plate

Saturday, September 1
Rubber Band
Post 3979 - Everyone Welcome
CLOQUET VFW CLUB
210 Arch Street - Cloquet
ELMORE EYE

SEP 27 1979

296

DANCE
SAT. SEPT. 29
"HARMONAIRES"
We'll be Open Labor Day
Sept. 3, 2 to 12 p.m.
KITCHEN OPEN FRIDAY & SATURDAY 5 TO 11 P.M.
Featuring CHAR-BROILED P

V. F. W. CLUB
New York Mills

CROSBY
CROSBY-IRONTON
COURIER

SEP 20 1979

DANCE!
Every Fri. & Sat.
Old time, western, back in
60's, open to public
BLAINE VE
1374 108th St

296



We Have
"CROSBY"
BR
CHICKEN

Saturday, September 29, 5:30 to 9 p.m.

Chicken, Potato Salad, Baked Beans,
Cole Slaw, Rolls and Coffee **\$3** Per Person

AMERICAN LEGION
ELMORE, MINN.
"Open To The Public"

296

Monthly Fish Fry
Friday, Sept. 28, 1979
Serving 4:30 to 8:00 p.m.
Sponsored By
Waller Scott Erickson American Legion P
DEERWOOD
Everyone Welcome
All You Can Eat
\$3.00 per person—\$1.75 children under 12

12 Entertainment

FAIR
LEG
Friday,
Mr. & Mrs.
Annivers
Mus
HOO
BOHE

THIEF RIVER FALLS TIMES
Pennington Co.

SEP 19 1979

LEGION
MAY 18
ANNIVERSARY
& Mrs
Voelkers
MUSIC BY
S. TRIO
Open to Public
Free admission

FISH FRY DANCE

Friday, Sept. 21

MUSIC BY

"Foolish Pleasure"

9:11 Closing

V.F.W. CLUB

Thief River Falls

PIPESTONE FREE STAR
Pipestone Co.

SEP 13 1979

FAIRMONT
VFW

St. Patrick's
Day Dance

Saturday, March, 17

Music by

RALPH EDDIE
TRIO

Open to Public
Free admission

FAIRMONT
LEGION CLUB

Saturday, Nov. 3

Legion Post
Benefit Dance

Music by:

SANDY LEE
&
THE VELVETS

Open to Public
Admission at door

MNA Clipping Bureau
MISSISSIPPI VALLEY
STAR, HASTINGS

SEP 20 1979



16th ANNUAL V.F.W.

TURKEY BAR-B-QUE

Saturday, Sept. 15th
at the Pipestone VFW Club

SERVING 5 to 8 P.M.

Adults \$3.50 - Children Under 12 \$1.50

EVERYONE VERY WELCOME

DANCE AT 9 P.M.
DAKOTA COUNTRY 4

American Legion in Hastings

FISH FRY

Friday September 21, 5-9 p.m.

ALL YOU CAN EAT \$3.75

Senior Citizens &
Children Under 12 \$3.25

American Legion Post 47

Hastings Club Room

12 Entertainment

FAIRMONT LEGION

Saturday, July 28

WEDDING DANCE
Kris Baumhoefner
David Boerner

Music By
WHITE LINE FEVER

Open to Public

Legion Auxiliary

Everyone Welcome

Steak Fry

Saturday, May 19

at the Legion

8 oz. Ribeye
Charcoal Grilled

\$8.00 Donation



MNA Clipping Bureau
WABASSO STANDARD
SEP 27 1979

DANCE



WEDDING DANCE
Fri., Sept. 28

Joyce Kremer and Leon Platz
Music by the Cards

BENEFIT DANCE
Sat., Sept. 29

Lamberton Sportsmen's Club
Music by Country Express

Dress Code in Effect

1. No blue jeans or jean jackets
2. No bare feet
3. No bare midriffs, bare back or halter tops
4. No part of U. S. Armed Forces uniforms
5. No short shorts
6. Shirt tails tucked in
7. Personal dress must be neat and clean at all times

Wanda Legion Hall

Reservations Call 752-7400 or 343-2376

EVENTS

Lamberton Legion Clubrooms

For Reservations Call 752-9985

Dress Code In Effect

Sat., Sept. 29
Underwood-Nelson
Wedding Dance

Sherburn American Legion

Steak Fry

At The Legion

Saturday, June 23

6-11 p.m.

10 Oz. Ribeye
Charcoal Grilled

\$6 Donat

Everyone Welcome

DANCE

Sat., June 30

"Majestic Music Kings"

ST. JOE LEGION

St. Joseph, MN Post 328



MNA Clipping Bureau

KASSON
JUDGE COUNTY
INDEPENDENT

OCT 4 - 1979

MNA CLIPPING SERVICE
AUSTIN DAILY HERALD
Mower Co.

OCT 3 - 1979

American Legion #

296
**Steak or Shrimp
Dinner**

Saturday, October

Steak \$4.00 Shrimp

Dinner - 6:00-9:00 p.m.

FAIRMONT

VFW

Friday, Sept. 22

Wedding Dance

BUCHANAN

GERHARDT

Music by

POWDER

SCOUTS

Open to Public

Under 19 allow

FAIRMONT

LEGION

Friday, Sept. 22

Country

SIRS

1st schedule

MNA Clipping Bureau

CHISHOLM
TRIBUNE-PRESS

SEP 19 1979

Fish Fry

Walleye or Cod
Every Friday
296 At The
**Chisholm
Service
Men's
Club**
5:00 To 8:00 P.M.
Take Out Orders

ENTERTAINMENT

VFW CLUB

Fairmont, MN.

Free Wedding Dance

TINA BIEHLER

JAY BERGLUND

Music by

THE LAST
CHANCE

Open to Public

FAIRMONT
LEGION

Saturday, Aug. 11

Wedding Dance

CAY YURCEK

LARRY SCHULTZ

Music by

COUNTRY SIRS

Open to Public

IT'S HAPPENING
AT THE
EAGLES

FRI., JUNE 29

THE WESTWIND BAND

Will Be Playing In The Main Lounge

SAT., JUNE 30

BIRTHDAY DINNER FOR

JUNE

Members with Birthdays in June will receive

a FREE DINNER. All others only \$4.00

MUSIC BY

THE BABY BULLS

THE WESTWIND BAND

Will Be Playing In Main Lounge

MNA Clipping Bureau

APPLETON PRESS

SEP 20 1979



Magnifique!

Hunter's Dinner

SATURDAY, SEPT. 29

Ham & All The Trimmings

13 Adults .. 2 Under 12

VFW Club Rooms

Appleton, Mn.

NORTH STAR NEWS,
KARLSTAD

OCT 4 - 1979

Jackson Fire Department's

86th Annual

Benefit Ball

**Saturday,
April 21**

2 Locations

★ VFW Ballroom

Music By

**Blackie & the
Blueboys**

★ Legion Ballroom

Music By

Ozone Rangers

8:30 p.m.

The Jackson Volunteer
wishes to thank t
for its support in



MNA CLIPPING SERVICE

WADENA PIONEER JOURNAL
Wadena Co.

SEP 5 1979

DANCE

²⁹⁶
Saturday, Oct. 6th



**'Ferdie and The
Knights of Rhythm'**

Lake Bronson Legion



ENJOY A NIGHT OUT

DANCING

Friday, Sept. 7

Dance to
The Three of Us

Saturday, Sept. 8

Dance to
Prairie Rangers
25th Anniversary Dance for
Dale Anderson's

**FRIDAY
Sept. 7**

- Turkey
- Shrimp
- Polish Sausage

\$275

Serving 5 to 9 p.m.

Dance from 8:45 p.m. to 12:45 a.m.

VFW Post 3922 Wadena

**Calendar of Events
at the
COSMOS
LEGION CLUB**

nd. Nov. 28 11:55-12:45 Steaks, Ribs, Shrimp
t. Nov. 30 Special: Chicken & Fish "Nite"
Band "Ravens"
t. Dec. 1 Chili Supper Nite 5:30-9 p.m.
Wedding Dance - Mary Olson - Gaylen Inselmann
Band - "Prairie Five"

For Reservations for Wedding & Anniversary
Dances, Call 877-7525 after 4 P.M.
Catering Available



MNA Clipping Bureau

MADELIA
TIMES-MESSENGER

SEP 27 1979

BABBITT WEEKLY NEWS

SEP 26 1979

296

Come one, come all
to the 10th annual
Rescue Squad
DANCE
Saturday,
Sept. 29



COMPLETELY LOCAL!
At the combined floors of
The Legion and VFW, with
our fine local Andy Lawrence
Orchestra.

Support three local org
at one time--Legion, VF
Rescue Squad!

MNA Clipping Bureau
BLUE EARTH POST
SEP 27 1979

DANCING AT ITS BEST

296

SEPTEMBER 28 AND 29
FRIDAY AND SATURDAY
9:00 P.M. - 1:00 A.M.

"BUCKSKINS"

Wedding Dance
SATURDAY, SEPTEMBER 29
for
PENNY WARREN
and
ROCKY BIELEJESKI

CRIBBAGE EVERY
TUESDAY NITE

Wednesday
HAPPY HOUR
9:30 P.M. - 5:30 P.M.
11:30 P.M. - 12:30 A.M.



BABBITT FOREIGN LEGION
BARRITT, MN

Blue Earth V.F.W. Post 4580

296 **STEAK FRY**
Saturday, September 29
Serving from 5:30 p.m. - 8:30 p.m.

**BASSETT
AMERICAN LEGION POST 11**

Proudly Presents
**BOBBY ATKINS AND
COUNTRYMEN**

FEATURING
TOREY

Singles \$3.00; Couples \$5.00

8 HI 12 — Every Saturday Nite

10:00 — DRAWING FOR RECORD

ALBUM & 4 FREE PASSES

11:30 — DRAWING FOR \$10.

VFW POST No. 4637

Chatham Heights Road

DANCE

Rock 'n Roll and Country Music

By **RENEGADE DEMOLITION**

2 Cash Jackpots — 3 Free Passes and Steak Dinner
Given Away Every Week

**Western Steer
Family
STEAKHOUSE**

Hwy. 220 S., 638 7152, Martinsville, Va.

(Near K Mart)

Open Sun., Thurs. 11 a.m. - 9 p.m.

Fri. & Sat. 11 a.m. - 11 p.m.

FOR BUDGET-MINDED PEOPLE!!

CHOICE CHOPPED

1/2 LB. SIRLOIN STEAK

Large
Baked Potato
(Or FF)
Texas Toast

\$1.99

Special Good Fri., Sat. & Sun.

TALK OF THE TOWN



**Friday Nite
Seafood Buffet**

New England Clam Chowder
30 Item Salad Bar
Fried Shrimp
Broiled Trout
Fried Oysters
Shrimp Creole
Fried Flounder
Corn Fritters
Fried Scallops
Baked Potato
French Fried Potatoes

6.25

All You Care
To Eat

Children Under 10 \$3.50

5:30 P.M. TH 9:30 P.M.

**Saturday
Prime Rib
Buffet**

New England Clam Chowder
30 Item Salad Bar
Prime Ribs Of Beef
Sliced To Order
Baked Chicken
Baked Lasagna
Swedish Meat Balls
Rice Pilaf
Baked Potato
Oven Browned Potatoes
Garden Vegetable

7.25

All You Care
To Eat

Children Under 10, \$3.95

6 P.M. TH 9:30 P.M.

**Sunday
Buffet**

French Onion Soup
Help Yourself Gourmet Salad Bar
Steamship Round Of Beef,
Sliced To Order
New Orleans Style Shrimp Creole
Roast or Fried Chicken
4 Vegetables
2 Potatoes
Assorted Fancy Dessert

4.75

All You Care
To Eat

Children Under 10 \$2.75

12 Noon TH 3:00 P.M.

Party Facilities
For 200

AL GRODEN'S
DUTCH INN
Collinsville, Va.

Regular Menu
Also Available

PREPARED STATEMENT OF FRANK PEE WEE KING

I'm Frank Pee Wee King and I'm a Country songwriter and one time performer. As a long-time member of BMI, I've written and collaborated on over 300 songs, songs like "Tennessee Waltz," "You Belong To Me," "Bonaparte's Retreat" and "Slowpoke."

I've always been proud of Country associations and I think that Country music is unique in a number of ways. First, it's the world's most popular music. I like to think that "Tennessee Waltz" is not unknown in Ankara, Mombasa or Bombay. Country music fans are the most loyal and supportive to be found anywhere. And Country music boasts a great number of performer/writers. I guess we all grew up close to the music. I know that as a boy in Wisconsin, I was fascinated by my father's concertina and accordion—he was a polka player—and I grew up learning to play them.

Any number of Country figures write much of their own material. Take people like Willie Nelson, Dolly Parton and Tom T. Hall, for instance. Often, the public only sees the performer, but the base is the writer. Atlanta publisher Bill Lowery called the songwriter "the gem" because without the songwriter there is no song.

That's my point, gentlemen. While we may be performers in your eyes, a great deal of our income is derived from the use of our music by those who feel it is a happy addition to the business, the Saturday night dance, or whatever. There's not a songwriter in the world who isn't happy knowing that his song is known and loved and sung, but like everyone else, the songwriter has every right to be paid for his work, even after he or she no longer travels as a performer.

Put yourself in my shoes. How would you feel if, at a social function, you heard the band play "Tennessee Waltz" and realized that although the bandleader and sidemen were being compensated, the law specified that your contribution was free. It wouldn't be fair or just and speaking for all songwriters. I must voice opposition to a proposal that will curtail income through special interest legislation.

PREPARED STATEMENT OF IRWIN LEVINE AND L. RUSSELL BROWN

We are the writing team of Levine & Brown . . . Irwin Levine and L. Russell Brown. We're both affiliates of BMI and natives of Newark, N.J., and you probably never heard of us. But you may know at least one of our songs: "Tie a Yellow Ribbon Round the Ole Oak Tree." We both started out as performers (Levine as part of a singing duo called The Naturals, Brown as a soldier. He joined the Army at 18, learned to play guitar and wound up touring for Special Services) but today we're songwriters and publishers of our own music.

We started writing together in 1970 and we've had success with songs like "Ribbon," "Knock Three Times," "Sweet Gypsy Rose" and others, most of them recorded by Tony Orlando.

As family men, we're concerned about our children and their futures. We each have three youngsters and we look upon the income we receive from the performances of our songs as a guarantee that they will have some of the things we never had as kids.

If our songs remain popular, we may even be able to help out the next generation—our grandchildren. They haven't arrived as yet, but we'd like to spoil them when they do. Unfortunately, we're songwriters. Thinking and planning and putting something aside for future generations would be perfectly reasonable and even laudable, if we were manufacturing bricks or merchandising a line of housewares.

For songwriters, however, the rules change and the misconceptions flourish. For instance, songwriters are thought to be inordinately wealthy and even a little greedy about their copyrighted songs. First, although many songwriters earn a comfortable living from their creations, the vast majority struggle and do the best they can. True, they do jealously guard their copyrights. At every turn, someone wants to take them away, as could be the case with the bill before you.

Speaking for thousands upon thousands of American songwriters, we must point out the basic injustice of proposing that our creations may be used without compensation. Why should music be singled out for free use by veterans organizations? These veterans would never suggest that the man who supplies the sound system, or the one who cleans up after the Saturday dance, or the one who stocks the bar offer his services without charges,

Someone once said, "Well, music is different . . ." Music certainly is different, but not when you consider it in the only way you can. To those thousands of writers we've mentioned, music is their bread and butter. It's how they earn their living. Income from music pays the rent and sends the kids to college. Songwriters are not so different.

Senator DECONCINI. The record will remain open for the clarifications suggested earlier.

We will have another partial day of hearings to be set sometime in September or early October.

I would suggest that the fraternal orders and the veterans' groups take a look at the exhibits which have been presented by BMI. I would appreciate some response regarding some of these ads. Certainly some of them indicate there are charges being made and they are open to the public. I am sure there is some explanation.

We will adjourn subject to call.

[Whereupon, at 12:08 p.m., the subcommittee recessed, to reconvene at the call of the Chair.]

TO AMEND THE COPYRIGHT ACT, S. 2082

WEDNESDAY, NOVEMBER 19, 1980

U.S. SENATE,
SUBCOMMITTEE ON IMPROVEMENTS IN
JUDICIAL MACHINERY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, at 10:05 a.m., in room 2228, Dirksen Senate Office Building, Senator DeConcini, chairman of the subcommittee, presiding.

Present: Senators DeConcini and Zorinsky.

Staff present: Robert Feidler, counsel; Adrian Hall, staff assistant; and Pamela Phillips, chief clerk.

Senator DECONCINI. The subcommittee will come to order.

OPENING STATEMENT OF SENATOR DECONCINI

Senator DECONCINI. Today we are having our second and final hearing on S. 2082, a bill to amend the Copyright Act by creating an exemption for nonprofit fraternal and veterans organizations from obligations to pay performance royalties.

We have been very fortunate to have this issue well briefed and discussed by those organizations favoring and opposing the bill, and I would like to take this opportunity to thank all of you for being here today and for submitting your statements and testimony. I hope that we can continue to call upon you for help in the future.

I thank Senator Zorinsky for bringing this matter to the attention of the committee.

I note that a good friend of mine, Ben Zelenko, is here today. We welcome you here, Ben.

You will be appearing with the American Society of Composers; is that correct?

Mr. ZELENKO. Yes.

Senator DECONCINI. I hope to be able to stay for the entire hearing. There is a conference committee on appropriations which is convening at 10 o'clock, and I have several matters to take up with those conferees. However, I shall remain here for some time.

Senator Zorinsky, have you an opening statement?

Senator ZORINSKY. Inasmuch as this is the second part of our hearings, and I presented my statement at the first hearing, I think it is best that we proceed.

Senator DECONCINI. Very well.

We will now hear from a panel consisting of Mr. Richard Carroll, Mr. Eugene Resnick, Mr. George A. Hamid, Jr., and Mr. Robert Chapman.

I see those gentlemen are all present. Please come forward and be seated at the witness table.

Mr. Carroll, will you begin?

PANEL OF BENEVOLENT ASSOCIATION OFFICIALS:

STATEMENTS OF RICHARD CARROLL, COUNSEL, KNIGHTS OF COLUMBUS; EUGENE RESNICK, COUNSEL, AND GEORGE A. HAMID, JR., VICE PRESIDENT, CIRCUS PRODUCERS OF AMERICA; AND ROBERT CHAPMAN, PRESIDENT, KANSAS CITY, MO., POLICE BENEFIT ASSOCIATION

Mr. CARROLL. Mr. Chairman, you have my prepared statement. I will brief it.

Senator DECONCINI. The complete statements will be made part of the record of this hearing.

Mr. CARROLL. Mr. Chairman, I am counsel of the Knights of Columbus, an international fraternal benefit society whose membership includes more than 1 million Americans. I appear before you today on behalf of the Knights of Columbus to voice its support of Senate bill 2028, legislation which would amend the Copyright Act of 1976 to exempt both veterans' organizations and fraternal benefit societies from the requirement that royalties be paid for the performance of copyrighted music.

There are approximately 6,000 local Knights of Columbus councils located throughout the United States. They are engaged in very worthwhile activities which are of great benefit to their communities.

The members of the Knights of Columbus make substantial donations of both time and money to assist the sick, the handicapped, and victims of disaster.

I have attached to my written statement a summary of the 1979 expenditures of the Knights of Columbus for various charitable activities. This summary shows that our membership donated more than \$20 million in 1979 to a variety of very worthy causes.

I will not detail the numbers which are involved here, but I would like to point out that I have also attached two copies of our most recent newsletter. These newsletters contain articles concerning donations of a Birmingham, Ala., council to a shelter workshop, a grant given by a Ohio council to a school which serves mentally retarded and handicapped children, and a Knights of Columbus road race for Boysville sponsored by a Michigan council. This is what the \$20 million donated is all about. It is work done at a local level in the community of benefit to everyone in the community.

Most Knights of Columbus councils hold at least one event each year. Of course, music is usually performed at such events. Also, of course, some of our larger and more active councils hold dances as a means of raising funds as a worthwhile youth activity. Here, too, the performance of music is important. Because of the nonprofit and essentially private nature of this performance of music, our councils were exempt from the license fee requirement. However, since the passage of the 1976 act, such musical performances have been deemed public and the councils have been subjected to the same form of license fee requirement that formerly applied only to profitmaking ventures.

It is very difficult to determine the extent of the financial impact of the Copyright Act of 1976 on the Knights of Columbus. However, we believe it is potentially very significant.

As I said, there are approximately 6,000 active councils in this country. If we assume that Broadcast Music, Inc., will allow the Knights of Columbus to pay a flat rate of \$35 per council rather than contacting each council individually and charging it a much higher rate, then the annual payment by the Knights of Columbus to BMI alone will be nearly \$250,000.

Thus, even if the ASCAP and SESAC were willing to offer the Knights of Columbus similar reduced bulk rates, the potential expenditure by either the Knights of Columbus central organization or its local councils could amount to \$11 million each year. This is the burden that the Copyright Act of 1976 has placed on the Knights of Columbus and its programs of service to the community and Nation, and it is for this reason that we are urging you to pass S. 2082.

Finally, I would like to address myself to the question which has been raised by the opponents of this bill. The question they ask is this: When a Knights of Columbus council holds a dinner-dance, it pays the band, it pays the caterer; why, then, should it not pay the composer who writes the music performed at the dance?

There are, of course, important differences between musicians and caterers and composers. Their time—and, therefore, their ability to make a living—is, in a sense, used up by the council that employs them. They cannot provide musical and catering services for a private, non-profit event for no compensation, and during the same time period offer their services for compensation, to entertain or cater a public, profitmaking event. Music, however, is not used up when it is performed at a Knights of Columbus council social event. It may be performed publicly in conjunction with profitmaking enterprises at the same time that it is being performed at a council dinner-dance.

If the argument of the opponents of S. 2082 were carried to its logical conclusion, then all uses of music, even the most private—such as playing the piano for one's own entertainment—would subject the user to liability for the payment of a royalty. If we assume that the composer's creation can be equated to a musician's services, then it follows that music should not be used by anybody for any purpose without compensation to the composer.

However, the composition of music cannot be equated to its live performance. After the initial publication of a musical composition, the composer has such property rights in the music only to the extent provided by statute, since he has given up his common law right to his intellectual property by the act of publication. Under this statutory authority, private performances of music have been exempt from royalty requirements since at least 1909. The Copyright Act of 1976 continued this exemption for private performances of music.

However, the 1976 act unreasonably broadened the definition of "public" to mean any place where a substantial number of persons outside the family and its social acquaintances are gathered. It is the heart of our position that private, nonprofit fraternal organizations, like the Knights of Columbus, should not be required to pay royalties on music provided for noncommercial purposes to their members,

their families and guests. For this reason, we support passage of S. 2082.

Thank you for the opportunity to appear before you this morning.
Senator DECONCINI. Thank you, Mr. Carroll.

Mr. Resnick?

Mr. RESNICK. I am Eugene Resnick. I represent the Circus Producers' Association of America. My offices are in Chicago, Ill.

I am here today with Mr. Robert Chapman, seated on my left, and Mr. George Hamid, Jr., seated on my right, both of whom will testify in favor of S. 2082, to amend title 17 of the United States Code to exempt nonprofit veterans' organizations and nonprofit fraternal organizations from the requirements of certain performance royalties being paid to copyright holders.

Mr. Robert Chapman is president of the Kansas City, Mo., Police Benefit Association, a nonprofit fraternal organization which has been in operation for over 40 years.

Mr. Chapman is a retired officer of the Kansas City, Mo., police force, having served for many years.

Mr. Chapman will testify as to the purposes of the Police Benefit Association which include, but are not limited to, payment of life insurance covering retired and active police officers, maintenance of blood banks, family counseling in times of emergency and stress, overview of all matters legislative and otherwise affecting police officers.

Mr. Hamid, seated on my right, will also testify. He is the vice president of Hamid Morton Circuses of New York, and for over 50 years he has been the owner of the Hamid Morton Circus, which is primarily a sponsored circus working for the purpose of nonprofit fraternal organizations. He is also president of the New York State Fair and is very active in Shrine affairs. Mr. Hamid is a member in good standing of the Crescent Temple Shrine of Southern New York and within that Shrine temple is a member in good standing of the Legion of Honor.

Mr. Chapman will now present his statement to the committee.

Senator DECONCINI. Please proceed, Mr. Chapman.

If you have a lengthy statement we will put it in the record in full, and you may summarize it orally.

Mr. CHAPMAN. Our organization was started on the 11th day of April 1938. That is even before my time.

One reason for starting it was that a lot of officers did not have insurance. They would more or less pass the hat to take care of the families of these officers. They then started this benevolent association. We have a membership of 1,196 law enforcement officers, of which 265 are retired officers.

I understand that a lot of these retired officers are up in age now, and the only insurance they have is what we can provide them.

The board of trustees we have is made up of Kansas City officers entirely. We furnish this insurance to the officers and their families at no cost to them. All we ask them to do is to support the annual police circus where the proceeds underwrite this insurance program.

We also underwrite a blood bank for our members and their families, where many times blood is needed for an officer who has been shot.

We also have a monument that we are very proud of. I have a picture of it here. The names of officers killed in the line of duty are in-

scribed on this monument. We maintain this monument ourselves, and regretfully, when an officer has been killed, we have the names placed on the monument.

Another function we do—we don't do it too often but we have done it in the past—the wife of a member had a lot of hospital bills, a large number of children, sickness in the family and a large number of doctor bills. We loaned this officer \$7,800 interest-free. He pays it back at the rate of about \$50 a month.

Mr. RESNICK. Mr. Hamid would now like to make his statement, Mr. Chairman.

Senator DECONCINI. Mr. Hamid, you may proceed.

Mr. HAMID. I am here, first of all, as vice president of the Circus Producers Association of America, Inc. We are a group of circus producers which has spent the better part of our professional life presenting circuses for nonprofit fraternal organizations, police benefit associations, Knights of Columbus, and so forth. We also present our circuses for the Shriners of North America.

I would like to point out that the primary purpose of each and every one of these sponsored circuses is to render a service either for the community, for a person, or for the direct beneficiaries of the association, such as Bob Chapman just spoke to you about, members of the Police Benefit Association of Kansas City, Mo., in that case.

I am a Shriner. Just recently the Shriners made an agreement with ASCAP and BMI on very modest terms to present their circuses in the areas where they have been presenting them for upward of 50 to 60 years without paying any music copyright fees.

Senator DECONCINI. You say without payment?

Mr. HAMID. Without payment until just recently.

I would like to point out that Shriners, and there are 180 Shrine temples in this country, put on these circuses, and they are the primary fundraising effort of their organization.

Many of you may know it, but it bears repeating; that is, the Shriners maintain by themselves 18 crippled children's hospitals throughout the United States and three burn centers for children. Children up to the age of 18—rich, poor, black or white—are admitted merely upon request if they require treatment for crippling diseases or if they require burn treatment. They do not pay.

All of the money that maintains and supports the Shriners' hospitals comes either directly through requests by Shriners or money that the Shrine raises. No outside funds are gotten for that purpose.

In addition, the Shriners' circuses provide entertainment to well over 2 to 3 million young people in the United States who can't afford to go to a circus and who are brought there free of charge by the Shriners. In many cases they go out with buses, many times private vans. They see the circus and then are taken back to where they came from.

The main purpose of fraternal organizations being exempted from these fees is precisely what is written into the law, and that is that no one—be he a fraternal organization or otherwise—is exempted from the enormous actual and potential pressure of the two copyright giants.

In this booklet alone—I have studied this for many years and I testified at the original hearings for the bill. I was involved in a lawsuit back in the sixties by BMI regarding this.

The law is designed so that the Copyright Society at its pleasure—not at the pleasure of the defendant—may take legal action against a defendant, whoever he or she may be, in an amount so grotesquely disproportionate to the damages that the defendant has no recourse whatsoever but to accede and knuckle under.

Even ASCAP tells you, "ASCAP licensing procedure is simple." I am reading now from the ASCAP Bulletin.

When we learn of a new user of music, we advise him of the need for license and the applicable license fee. Almost all establishments then become licensed since their owner recognize that composers are entitled to be paid and because of their potential liability if they infringe under the copyright law.

Relatively few refuse a license and if they persist in rendering infringing performance they are sued for copyright infringement in Federal court. Violations of the copyright law are expensive.

Even ASCAP says this.

The law provides for an injunction prohibiting further infringements. Damages of not less than \$250,000 or more than \$50,000 for each song infringed plus court costs, and in the court's discretion a reasonable attorney fee is paid by the defendant for ASCAP's or BMI's attorneys.

I note in a statement that you probably have either read into the record, or perhaps they are already there, that approximately 400 American Legion posts are licensed, which comes to about \$1,110 to \$1,120 per legion post.

Sitting to my right is counsel for the Knights of Columbus. What I am about to say is perhaps not familiar to him.

Anyway, they recently presented a circus in San Francisco for 10 days. They were not asked to pay \$1,100 or \$1,110. They were asked to pay \$5,000 for that 10-day circus.

In the situation in which the circus producer and the Knights of Columbus were placed under that condition, having been advised in no uncertain terms of the powers of ASCAP in the event they did not comply, they are now in the process of endeavoring to resolve this for a sum in the amount of something in the neighborhood of \$2,500, not \$100 per year per unit.

As I understand it, the settlement has not been signed, but it is in the process of being completed. It is being completed because they have no other choice.

Why are we asking that this bill be passed? In Mr. Cleary's statement he says that we expect to be charitable in dealing with charitable organizations. However, that is their decision. It is not our decision and not the decision of the public.

If they chose not to be charitable—and I don't think they were charitable in San Francisco—if they chose not to be charitable we are dead because what they have—and it is written explicitly in the law, and I begged 5 years ago that it be changed—what these people have is the power.

No. 1, they are a monopoly. If you play licensable music you have to play something copyrighted by BMI or ASCAP. You have no second choice.

Furthermore, if you go into the public domain there is a problem because BMI and ASCAP will not give you a list of the songs that they have copyrights to. Some, yes, but not the whole library. Public

domain is a last resort if you try to please the public which brings money into the children's hospitals, into the blood banks, and so forth.

We ask this bill be passed because pending any alternative to the present potential liability that exists, I grant you the first time around the Shriners just signed to pay a total of \$2,500 for all the 1,180 items to the combined ASCAP and BMI contracts.

What we Shriners are asking each other is—what will it be the next time? Where will it end? How can it end?

Under the conditions of the pressures which exist by reason of this law we urgently ask that these extremely worthy causes, these organizations which render incalculable numbers of people, be spared the pressures that can arise under the act.

We think this exemption makes sense. We do not think it will hurt BMI or ASCAP because, if you look at the figures of Mr. Cleary, they make only \$150,000 from the Eagles and the American Legion combined. When you think of the \$50, \$60, \$100 million they make this is not very important. However, what these charities do is important.

I submit, sir, these points hopefully will be taken under serious consideration by your committee.

Senator DECONCINI. Mr. Hamid, do you put on the circuses?

Mr. HAMID. I have a circus which I own which plays for an assortment of sponsor organizations.

Senator DECONCINI. Is that a profitmaking organization?

Mr. HAMID. That is my business.

Senator DECONCINI. So you contract with Shriners or whomever to put on performances?

Mr. HAMID. Correct.

Senator DECONCINI. They sell the tickets then, is that right?

Mr. HAMID. Yes.

Senator DECONCINI. They pay you, and whatever is left is their profit?

Mr. HAMID. That is correct.

Senator DECONCINI. Do you pay the BMI and ASCAP or does the organization with which you contract pay them?

Mr. HAMID. We don't pay BMI or ASCAP.

Senator DECONCINI. What would be the problem of having you pay them, inasmuch as you are in the profitmaking business?

Mr. HAMID. Senator—

Senator DECONCINI. Wait a minute. It seems to me that if you use their product for profit that there is an obligation for you to stand that as part of your expense.

I am very sympathetic as to the charitable aspects of this. You might argue that, "I charge a little bit less." However, you are in the business of making money. You do not put on those circuses as a charity but to make money, which is very legitimate.

Why should that not be part of your expense?

Mr. HAMID. In all of the cases where we function, the circus itself is either purchased or taken on a conditional contract where maybe we make money or not, depending on the outcome of it.

Bands almost invariably and music almost invariably is provided by the charitable organization.

We are merely one function of their cost. Of course, we try to keep the cost down as low as we can. That is our business.

If we didn't make money running the circus there would be no circuses for the Shriners or police. You have to make a living.

Senator DECONCINI. I am not questioning your making a living. It seems to me that from the standpoint of a profitmaking organization, which is what you yourself are when you put on a circus, that a copy-right use fee is a legitimate cost because you are not a charity. You obviously have to make a living, and rightfully so.

I see a distinction from the standpoint of your having to pay it or being exempt as opposed to the Shriners, Knights of Columbus, the Eagles, and others.

Mr. HAMID. The question really is that it is a cost.

Senator DECONCINI. Sure, it is a cost.

Mr. HAMID. And it is a cost which has to be borne by someone.

Senator DECONCINI. So are all your other costs; is that right?

Mr. HAMID. That is true. The cost of musical copyright, if we had to pay it, whoever pays it, for example in San Francisco, the cost has to be borne by someone. It is just as if we hired an extra act we don't need for an extra \$3,000 or \$4,000.

Senator DECONCINI. What bothers me is this: if we exempt you; that is, if you would not have to pay it or the organization would not have to pay it, it seems to me we are giving you a preferential treatment as a businessman. As long as you are in the profitmaking business but contract with charitable organizations you then do not have to pay that cost, which puts you in a far more competitive position than the circus operator who does not do it for charity. That does not seem to me to be quite fair.

Understand that I am sympathetic to helping the charitable and fraternal organizations being exempt from some of these costs. However, we have a problem with the idea of subsidizing a profitmaking business.

Mr. HAMID. The copyright societies invariably license the building in which you play, and they pay the fee.

Senator DECONCINI. The building does?

Mr. HAMID. Buildings in general pay a fee for copyright licenses. Usually the producer of the event, whatever it may be, is then called upon to pay a license fee.

In the case of the circuses themselves, our circus for example, if the copyright societies come to our circus and say to us—"All right, you are a circus. You are using such and such an amount of music. Sit down and negotiate"—obviously we would have to do so.

Senator DECONCINI. Do you do that now?

Mr. HAMID. Until the present time, Senator, to be perfectly frank with you, until this law was passed, until the copyright law was passed, the society never paid attention to sponsored circuses. They never bothered with one.

Senator DECONCINI. Do you deal with those societies?

Mr. HAMID. We have recently started to get letters from them. We have not entered into any negotiations because you cannot negotiate. They tell you how much it is or what it is.

Senator DECONCINI. Do you pay fees to them yourself?

Mr. HAMID. My circus?

Senator DECONCINI. Yes.

Mr. HAMID. Not at the present time.

Mr. RESNICK. There are two things that the Chair should consider with respect to profitmaking. In our free enterprise system circuses as well as any other business is entitled to a profit. However, the profit we are talking about is a reasonable profit.

If I understand these license fees which are charged, it is solely at the discretion of ASCAP.

In their booklet, they say that if you complain about the copyright fee—let me read it—

These factors work to prevent any discrimination or inequality. If you think ASCAP's rate is unreasonable, you have the right to apply to the U.S. District Court for the Southern District of New York to determine a reasonable rate.

Senator DECONCINI. Are you suggesting that they not charge any rate?

Mr. RESNICK. I am not suggesting that at all. However, people who have to pay this rate have no voice in what the amount of rate would be.

Who is to say the rates will not be doubled or tripled? Who is to say those rates will not put circuses out of business?

Senator DECONCINI. I think the existing law was an inside job. I don't know many businesses that have such a license to charge whatever they want. However, that is not really where I am coming from.

Where I am coming from is trying to find some equity for charitable organizations so they do not have to pay.

However, it bothers me that what is in the law is there already. I will not go into the entire subject of trying to repeal the entire law.

What bothers me is that a business person who is in business to make money—not your Shriners and not the fraternal orders and not the Knights, the Moose, or the veterans who are in business to make money for charity—it seems to me that license, reasonable or unreasonable, is a cost of business, just like taxes, wages, insurance, interest payments, everything else.

I see a distinction between that situation and charitable efforts to raise money where you have to pay it at the lodge or you have to pay it because you want a dance, or if you were really putting the circus on yourself.

Mr. RESNICK. I think both you and I agree—I hope we do—circuses are entitled to a reasonable profit.

Senator DECONCINI. Sure.

Mr. RESNICK. They are entitled to a reasonable profit. If they do what I believe all other businesses in this country do, Illinois Bell is taxed, and they pass this on to the consumer.

Senator DECONCINI. Sure.

Mr. RESNICK. For the circuses to make a reasonable profit, we then would have to pass that on to the charitable organization. Once they do that, who is the person being hurt? It is the blind child, the crippled child? It is a person who ultimately needs this exemption.

You just cannot divorce the profitmaking aspect of the circus from the ultimate person being charged, and that's again the blind, the crippled child, people in the burn centers, police widows, orphans.

Senator DECONCINI. Can't you use that same argument with any legitimate business with which you might have contact?

Mr. RESNICK. I am using that.

Senator DECONCINI. If you hire a painter to paint one of the temples, you can say,

Gee, you should not be able to make 20 percent profit because we are a charity. You should be restricted to a 5 percent profit.

That precedent troubles me, trying to exempt circus people because they are in the profitmaking business.

Mr. RESNICK. We have to look at positive factors. We are not the ones charging the license fee. That is a charge to us. We are in business to make a reasonable profit. If it is put to us in such a state that we cannot make a reasonable profit, that has to be passed on to the not-for-profit organization.

If it is passed on to them, the ultimate consumer—for want of a better word—is the one who will suffer.

We are in no different position from any other business except we are dealing in our situation with not-for-profit organizations. That is the difference. We had testimony here at our last hearing from several organizations. These were clubs for the most part which had to pay a license on a yearly basis, based on the number of seats or the number of people who could be in the house or in the hall for their dances or jukebox.

Quite frankly, that is really objectionable to me because those small organizations—or big ones for that matter—are charitable or fraternal organizations. There is nobody to pass it on to.

The band does not pay it, the band which plays the music for the Saturday night dance for the Moose. The Moose have to pay it because they have a hall which seats 400 to 500 people.

I can see the direct relationship there. That group will not have that extra money for their charitable interest, such as the Elks Hospital for the Aged or insurance for their members.

However, when you deal with a business, I find a different problem there. Where do you stop from passing on the cost?

If I may approach it from another point of view.

Senator DECONCINI. Sure. I am interested in finding a distinction without trying to regulate or deregulate all business.

Mr. RESNICK. Let's put it in this context. I hope I can articulate this as I want it to come out.

Basically, what we have is a situation where, if the circuses are charged a license fee and it is not passed on, and they find they are not in a profitmaking business, they will not do business with fraternal organizations.

If they don't do business with fraternal organizations who will put on the circus, where is the money coming from to support these organizations?

Senator DECONCINI. I understand that argument. However, would you carry that to the city in which they do business, that they should not charge a fee if they have an ordinance which says you have to have a license to run a circus, or a State which says you have to have a health license to put on a circus?

You can say, "Look, Arizona, you should not have a fee you would charge a profitmaking circus because they will do something for the

Shriners or the Knights of Columbus and thereby let's exempt us from that."

Would you carry that on that far, or would you carry it on to the utility company?

Mr. RESNICK. With the utility company, I can see the relevance. I cannot see relevance with respect to the other problems you mentioned.

With the utility company, a public service type of organization, they pass the rate on to the ultimate consumer. I look at this in the same light and the same context.

Although the circuses are hopefully profitmaking, they are in effect presenting a public service.

Senator DECONCINI. Perhaps we should think about permitting the circuses to make only so much profit and exempting them from this; that is, we could say that they cannot make above a certain profit so we can assure that the bulk of the profits go to the charitable organization.

Mr. HAMID. If I may interrupt.

Mr. RESNICK. There are some State laws.

Senator DECONCINI. Perhaps that is the approach.

Mr. HAMID. There are several points. No. 1, in terms of municipalities, in most cases they have what they call a charitable rate if you rent a building or license fees. Usually for a charitable endeavor the rates are lower.

I want to call your attention to the fact that in most cases the cost to the circus is a reasonably small part of the operation.

There is not a circus producer in America who would not be happy to limit the amount of profit because they are not making much. In some cases we take a gamble and frequently lose money.

I would like to direct your attention to the thrust of what I was saying, which is the exposure not to the \$100 per temple per year charge or fee, not to the \$110 per Legion hall fee, or let's say per circus \$125 to \$150. However, there is no limit. This is the only aspect of our whole operation that can immediately put us out of business.

Senator DECONCINI. I agree with you. I cannot understand why these organizations do not have a policy exempting all charitable groups. However, they do not. They want to make money for their members, and I understand that. However, that is my own opinion.

If they did that I probably would not be holding these hearings today.

Mr. HAMID. I don't know how it could be done, but if it could be done it would be super.

I have been in many aspects of show business in my life, not only circuses.

Back in the early sixties we had an agreement with BMI to operate on a 3-month basis. A new man came in to head BMI.

He said, "We are changing our fee charges. We will charge a 6-percent amount of your gross amount of business." It would have raised our fee 50 times what we were paying.

I sat down with this man and said, "This is unconscionable. We are negotiating."

He said, "We will not negotiate. You will pay what we charge. If you don't pay it we will sue you." He sued me. If that is the attitude of those organizations, I daresay a Republican or Democratic Congress

will not tolerate that. I do not think that is the intent of that act or the free enterprise system.

I am not addressing myself to that. That is another aspect and the day for that may come.

Mr. HAMID. That is the reason I have requested the only defense posture available to any of us involved in this business.

Senator DECONCINI. For charitable groups it is amazing to me that these organizations have not granted a blanket exemption, particularly when they testified last time the amount of money they collect from these organizations is miniscule compared to the total amounts they collect.

Mr. HAMID. How can they get the exemption?

Senator DECONCINI. What amount of money does your organization pay to ASCAP or BMI?

Do you know, Mr. Chapman?

Mr. CHAPMAN. None.

Senator DECONCINI. You pay none now?

Mr. CHAPMAN. That is right.

Senator DECONCINI. How about the Knights of Columbus? Did your statement give an estimate?

Mr. CARROLL. We have been contacted by BMI. They mentioned a flat rate of \$35.

Senator DECONCINI. Is that what they are talking about negotiating with you now?

Mr. CARROLL. That is right. Up to date we have not gone along that route. I don't know what contacts they are making with the local councils.

I assume some councils are paying without letting the home office know.

Senator DECONCINI. That is my next question.

I am under the impression from talking to people in my State that some of them have had local contacts making payments because they are presented with excerpts from the law and they pay whatever they are billed.

Mr. CARROLL. We will hear from the councils occasionally. Some will call the home office and tell us about it.

Senator DECONCINI. What advice do you give, Mr. Carroll, if a lodge in Nevada or in California or Arizona calls you and says, "We have had a letter from BMI or ASCAP. They want to charge us \$135 a year." What do you tell them to do?

Mr. CARROLL. Frankly we advise them to contact our own State lawyer. Each State organization has a lawyer. They all have copies of the materials involved.

In a sense we try to divorce ourselves from the situation because we are afraid ultimately there will be a ground swell request that this kind of cost be assumed by the central organization, that is, by the national Knights of Columbus.

At that stage we can be talking about \$1 million a year.

Senator DECONCINI. Mr. Resnick, regarding the Shriners, you have many social and charitable events. I have been to many of them, and they are worthy causes. These are events other than circuses.

Do the Shriners pay these directly from the temple? Do you know?

MR. RESNICK. I will have to defer that to Mr. Hamid. He is a Shriner. I am not.

Senator DECONCINI. Mr. Hamid?

MR. HAMID. I have been on the Music Copyright Committee for the Imperial of the Shrine. If you understand the Shrine, it is governed by the Imperial.

Senator DECONCINI. Yes.

MR. HAMID. We transmitted to all of the temples approximately a year and a half ago a directive from the Imperial Potentate referring all inquiries or all threats or whatever from any music copyright organization to the Imperial.

This was done. The Imperial Committee negotiated, as I said, a charitable agreement with the two copyright societies.

Senator DECONCINI. What is that?

MR. HAMID. It came to \$35 per temple for BMI, and \$100 a temple for ASCAP, a total of \$25,000 paid by the central organization.

Senator DECONCINI. This is the first year you have done that, 1980?

MR. HAMID. Yes. The Imperial pays and not the individual Shrine temples.

The reason for this was that Shrine temples themselves, knowing nothing about this—for example, the temple in Wilkes-Barre, Pa., they got frightened and recapitulated to have stern demands.

Once the Imperial told them they could not—I don't know how strong the Knights of Columbus organization is, but once the Imperial said they could not negotiate, that took a load off their shoulders.

Senator DECONCINI. So the Imperial takes on that obligation and liability?

MR. HAMID. Yes. The Imperial did this because first of all he felt it was not that awful, except \$25,000 is \$25,000.

Senator DECONCINI. Sure.

MR. HAMID. The main concern now is the next go-around. What will happen?

Senator DECONCINI. The \$25,000 you are talking about has nothing to do with circuses?

MR. HAMID. Yes.

Senator DECONCINI. What about other charitable events?

MR. HAMID. I will give you a specific example. Osmond Temple in St. Paul, Minn., they have what we call a temple headquarters which also has a restaurant in it. Occasionally the restaurant plays music or once in a while they have a dance.

The fee negotiated is for all the functions of Osmond Temple, music and incidental music.

Senator DECONCINI. That is what I wanted to know.

MR. HAMID. And every temple, even the one which does not have a circus.

Senator DECONCINI. They still have a band in under this fee arrangement you negotiated?

MR. HAMID. Yes. No one is concerned about fees of this nature.

Obviously, however, where they have \$25,000 individual chapters, \$35 or \$100 becomes a very big number.

Where we have 180 it is a different matter.

Senator DECONCINI. You understand with the VFW and the American Legion you have the same thing.

Thank you, gentlemen. I appreciate your presentations.

Mr. RESNICK. Two housecleaning matters. One is that inadvertently the statement was made that the Knights of Columbus were threatened with a suit. It was Getty Charles Circus threatened for playing a Knights of Columbus date. That matter was settled for \$2,500 purely on an economic basis on the theory it would cost them that much to defend. If they lost they would have to pay ASCAP attorneys.

The second item, basically various States—I am not familiar with them all—I will notice do have a statute which limits the amount of administrative costs and expenses which can be used in connection with charitable affairs, so there is a limitation.

What I am driving at is that that limitation makes it unprofitable for circuses to put on shows for fraternal organizations such as police benefit shows. They may not happen. That is where we are directly affected.

Senator DECONCINI. Thank you very much, gentlemen.
[The prepared statement of Mr. Carroll follows:]

PREPARED STATEMENT OF RICHARD B. CARROLL

My name is Richard Carroll and I am the counsel of the Knights of Columbus, a Catholic international fraternal benefit society whose membership includes more than 1 million Americans. I appear before you today on behalf of the Knights of Columbus to voice its support of Senate bill 2082, legislation which would amend the Copyright Act of 1976 to exempt both veterans' organizations and fraternal societies from the requirement that royalties be paid for the performance of copyrighted music.

There are approximately 6,000 local Knights of Columbus councils located throughout the United States. By exempting them from the license fees now imposed by the Copyright Act, Senate bill 2082 will assist these councils in carrying out their many worthwhile activities which are of great benefit to their communities.

Members of the Knights of Columbus make substantial donations of time and money to assist the sick, the handicapped, and victims of disaster. They also make significant contributions to hospitals, schools, libraries and other institutions, and to a variety of civic and community projects. I have attached to my written statement a summary of the 1979 expenditures of the Knights of Columbus for charitable activities. This summary shows that our membership donated more than \$20 million in 1979 to a variety of worthy causes, including \$7 million to the poor, the sick, and the disabled; \$3 million to orphanages, hospitals, and homes for the aged; and \$4 million for cancer research, scouting, and other community projects.

To give you a better idea of what these numbers really mean in terms of service to the community, I have attached a copy of two of our weekly newsletters to my written statement. The October 31, 1980, newsletter contains articles describing a \$1,700 donation of a Birmingham, Ala., council to a sheltered workshop, a \$7,000 grant given by an Ohio council to a school which serves mentally retarded and handicapped children, and a Knights of Columbus road race for Boysville sponsored by a Michigan council. The October 17, 1980, newsletter describes a project of a Perth Amboy, N.J., council to provide bulletproof vests to the police department. This newsletter also contains articles about a Wisconsin council's scholarship program, and a variety of donations made by a North Dakota council.

These are the types of worthwhile activities that the 6,000 American Knights of Columbus councils are engaged in, and we believe that passage of Senate bill 2082 will assist these councils in carrying out this good work.

Most Knights of Columbus councils hold at least one dinner-dance or other social event each year. Naturally, music is usually performed at such events.

These social gatherings serve a useful purpose in our fraternal organization by helping to attract new members and encouraging the active participation of old ones. Thus, the performance of music plays a significant role in the development and vitality of our councils. Also, of course, some of our larger and more active councils hold dances as a means of raising funds and as a worthwhile youth activity. Here, too, the performance of music is important.

Prior to the passage of the Copyright Act of 1976, our councils were able to hold their dinner-dances and other non-profit social events without being subjected to a license fee for the performance of music. Because of the non-profit and essentially private nature of this performance of music, Knights of Columbus councils were exempt from the license fee requirement. Since the passage of the 1976 act, however, such musical performances have been deemed "public" and the councils have been subjected to the same form of license fee requirement that formerly applied only to profitmaking ventures.

While it is difficult to determine the extent of the financial impact of the Copyright Act of 1976 on the Knights of Columbus, we believe that it is potentially very significant. If we assume that there are 6,000 active Councils in this country, and if we assume that Broadcast Music, Incorporated will allow the Knights of Columbus to pay a flat rate of \$35 per Council, rather than contracting each Council individually and charging it a much higher rate, then the annual payment by the Knights of Columbus to BMI alone will be nearly \$250,000. Thus, even if the ASCAP and SESAC organizations were willing to offer the Knights of Columbus similar reduced bulk rates, the potential expenditure by either the Knights of Columbus central organization or its local Councils could amount to \$1,000,000 each year. This is the burden that the Copyright Act of 1976 has placed on the Knights of Columbus and its programs of service to the community and nation, and this is the burden we are urging you to remove through the passage of Senate Bill 2082.

Finally, I would like to address myself to the question that has been raised by the opponents of Senate Bill 2082; i.e. When a Knights of Columbus Council holds a dinner-dance, it pays the band, and the caterer; why, then, should it not pay the composer who writes the music performed at the dance? There are, of course, important differences between musicians and caterers and composers. The musician and the caterer provide services at a specific time and place. Their time—and, therefore, their ability to make a living—is, in a sense, used up by the Council that employs them. They cannot provide musical and catering services for a private, non-profit event for no compensation, and during the same time period offer their services for compensation, to entertain or cater a public, profit-making event. Music, however, is not used up when it is performed at a Knights of Columbus Council social event. It may be performed publicly in conjunction with profit-making enterprises at the same time it is being performed at a Council dinner-dance.

If the argument of the opponents of Senate Bill 2082 were carried to its logical conclusion, then all uses of music, even the most private—such as playing the piano for one's own entertainment—would subject the user to liability for the payment of a royalty. If we assume that the composer's creation can be equated to a musician's services, then it follows that music should not be used by anybody for any purpose without compensation to the composer. However, the composition of music cannot be equated to its live performance. After the initial publication of a musical composition, the composer has such property rights in the music only to the extent provided by statute, since he has given up his common law right to his intellectual property by the act of publication. Under this statutory authority, private performances of music have been exempt from royalty requirements since at least 1909. The Copyright Act of 1976 continued this exemption for private performances of music, however, the 1976 Act unreasonably broadened the definition of "public" to mean any place where a substantial number of persons outside the family and its social acquaintances are gathered. It is the heart of our position that private, non-profit fraternal organizations, like the Knights of Columbus, should not be required to pay royalties on music provided for non-commercial purposes to their members, their families and guests. For this reason, we support passage of Senate Bill 2082.

Thank you for the opportunity to appear before you this morning.

1979 Fraternal Survey - Money Expended

STATE	MEMBERSHIP	YOUTH	CHARITY	TOTAL	PER MEMBER
Alabama	3,459	\$ 4,176.00	\$ 88,414.00	\$ 92,590.00	\$26.77
Alberta	8,679	57,336.00	265,045.00	322,381.00	37.15
Arizona	5,724	13,863.04	116,669.30	130,532.34	22.80
British Columbia	4,712	14,229.00	278,387.00	292,616.00	62.10
California	43,413	64,890.00	664,465.00	729,355.00	16.80
Colorado	7,235	10,529.00	155,760.00	166,289.00	22.98
Connecticut	30,099	18,216.00	243,681.83	261,897.83	8.70
Delaware	1,857	2,146.00	18,333.00	20,479.00	11.03
District of Columbia	1,076	2,141.00	20,279.00	22,420.00	20.84
Florida	21,365	36,331.00	503,759.00	540,090.00	25.28
Georgia	3,455	5,960.00	147,134.00	153,094.00	44.31
Idaho	2,413	2,656.00	19,813.00	22,469.00	9.31
Illinois	72,219	125,157.00	1,620,327.00	1,745,484.00	24.17
Indiana	30,490	29,468.00	498,311.14	527,779.14	17.31
Iowa	27,992	22,841.00	611,594.00	634,435.00	22.67
Kansas	26,356	29,389.00	275,648.00	305,037.00	11.60
Kentucky	7,547	9,986.00	192,955.00	202,941.00	26.89
Louisiana	26,488	153,449.30	668,696.50	822,145.80	31.04
Maine	8,955	10,255.00	186,675.00	196,930.00	21.99
Manitoba	5,858	12,626.00	129,722.00	142,348.00	24.30
Maryland	19,620	35,127.00	571,452.00	606,579.00	30.92
Massachusetts	60,031	57,654.44	996,775.00	1,054,429.44	17.57
Mexico	8,161	7,724.00	176,548.00	184,272.00	22.58
Michigan	65,923	92,264.00	1,119,675.00	1,211,939.00	18.38
Minnesota	45,927	50,687.87	444,430.00	495,120.87	10.78
Mississippi	3,609	6,529.70	135,005.07	139,534.77	38.66
Missouri	26,660	21,777.00	694,939.39	716,716.39	26.88
Montana	5,415	4,154.00	23,839.34	27,993.34	51.69
Nebraska	13,879	16,546.77	163,761.55	180,308.32	12.99
Nevada	1,631	1,562.00	19,369.80	20,931.80	12.83
New Brunswick	9,978	10,106.00	127,685.00	137,791.00	13.81
Newfoundland	4,274	8,121.22	156,480.56	164,601.78	38.51
New Hampshire	6,732	6,946.00	72,260.97	79,206.97	11.77
New Jersey	63,650	70,603.00	744,389.00	844,992.00	13.28
New Mexico	4,034	10,747.83	88,638.21	99,386.04	24.64
New York	119,532	123,257.00	1,533,907.00	1,657,164.00	13.86
North Carolina	2,995	9,835.00	231,675.00	241,510.00	80.64
North Dakota	14,177	14,255.00	233,740.00	247,995.00	17.49
Nova Scotia	4,079	5,197.00	73,282.00	78,459.00	19.24
Ohio	62,951	188,566.68	1,022,899.29	1,211,465.97	19.25
Oklahoma	4,444	9,257.00	113,200.00	122,457.00	27.56
Ontario	40,585	84,803.00	1,359,867.00	1,444,670.00	35.60
Oregon	6,160	6,212.00	76,302.00	82,514.00	13.40
Pennsylvania	60,114	2,302.47	432,201.00	434,503.47	7.23
Philippines	37,296	6,248.00	113,978.00	115,003.00	3.08
Prince Edward Island	836	1,025.00	9,965.00	10,990.00	13.15
Puerto Rico	2,860	5,103.00	122,135.00	127,238.00	44.49
Quebec	117,705	204,141.00	848,435.00	1,052,576.00	8.94
Rhode Island	10,445	20,784.00	113,843.00	134,627.00	12.88
Saskatchewan	10,216	48,976.00	302,027.06	399,979.06	39.15
South Carolina	3,015	4,686.00	107,475.00	112,161.00	37.20
South Dakota	6,007	10,116.00	78,499.21	88,615.21	14.75
Tennessee	4,775	6,506.00	208,940.00	215,446.00	45.12
Texas	43,064	144,817.00	957,268.00	1,102,085.00	25.59
Utah	1,118	1,068.00	8,815.00	9,883.00	8.84
Vermont	4,827	2,248.00	27,200.80	29,448.80	61.01
Virginia	9,338	15,455.67	274,844.33	290,300.00	31.30
Washington	9,479	13,843.00	188,496.00	202,339.00	21.35
West Virginia	4,678	3,444.00	103,268.34	106,712.34	22.81
Wisconsin	40,421	58,101.00	608,691.00	666,792.00	16.50
Wyoming	2,176	2,448.00	33,137.00	35,585.00	16.15
TOTAL	1,314,819	2,026,678.99	24,061,009.67	26,087,688.66	19.84

Senator DECONCINI [continuing]. Our next witness is Ms. Dorothy Schrader, General Counsel, Copyright Office.

**STATEMENT OF DOROTHY SCHRADER, GENERAL COUNSEL, U.S.
COPYRIGHT OFFICE, LIBRARY OF CONGRESS**

Ms. SCHRADER. Thank you, Mr. Chairman. I am Dorothy Schrader. I am General Counsel of the Copyright Office, which is a department of the Library of Congress. I do thank you for the opportunity to appear here today to give the views of the Copyright Office on S. 2082.

I should also like to convey the regrets of the Registrar of Copyrights, Mr. David Ladd, that a prior conflicting commitment to participate in an international meeting on copyright prevented him presenting these views personally.

The Copyright Office opposes S. 2082 on the ground that the present exemption for nonprofit organizations in section 110(4) of the Copyright Act, title 17 of the United States Code, representing an equitable balance between the right of creators to be compensated for performances of copyrighted music and the reasonable needs of the nonprofit users for royalty-free access to copyrighted music.

Section 106 of the Copyright Act gives copyright owners the exclusive right to perform music in public, continuing a property right that has been part of the copyright statutes since 1897.¹

This exclusive right is, however, subject to exceptions and limitations, the most significant of which appear in section 110 of the act. S. 2082 proposes an amendment to section 110 that would add a 10th exemption and would have the effect of exempting "performance of a musical work in the course of the activities of a nonprofit veterans' organization or a nonprofit fraternal organization."

The Copyright Office respectfully submits that Congress adequately provided for the reasonable needs of nonprofit organizations for royalty-free performance of copyrighted nondramatic music in clause (4) of section 110. This general exemption, while narrower than the exemption of the statute in effect before 1978, in its essentials exempts performances of nondramatic music by nonprofit organizations provided the performers, promoters, and organizers are not paid and provided proceeds from admission charges, if any, are used for educational, religious, or charitable purposes.

If a nonprofit organization performs nondramatic music by mechanical means such as records, tapes, cassettes, and so forth, the performance is potentially royalty free under section 110(4).

If a nonprofit organization performs nondramatic music and the performers, promoters, and organizers are unpaid, the performance is potentially royalty free under section 110(4).

In passing the current Copyright Act, Congress drew this new line separating for-profit and not-for-profit performances. It decided that if a nonprofit organization has the money to pay the singer or musician who performs copyrighted music, it is only fair and reasonable that the same nonprofit organization budget enough funds to pay copyright performance royalties to the author-copyright owners of the music

¹ Act of Jan. 6, 1897, 29 Stat. 481.

performed. Without the creative effort of composers and lyricists, the music would not exist because performers would have nothing to perform.

Since copyright is an intangible property interest, it is sometimes easy to forget that it is property. Creators of copyrightable works and copyright owners derive income by licensing various uses of the works. These are not licenses comparable to municipal licenses. These are the ways one grants permission to use a profit. Any significant unauthorized use interferes with the legitimate expectation of creators and copyright owners that they will be compensated for uses of their property. The public performance of music is one of the most significant sources of royalty income for composers and lyricists.

Copyright is of course a statutorily created property right, and Congress both defines the scope of the right and sets limitations on its exercise. However, any such limitations should be consistent with the fundamental purpose of the copyright system, as established by the copyright clause of the Constitution. This purpose was expressed by the Supreme Court in *Mazer v. Stein*, 347 U.S. 201 (1954) in this way:

The economic philosophy behind the [constitutional] clause empowering Congress to grant . . . copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in "science and useful arts." Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered. (347 U.S. at 219.)

We are all enriched by the creative spirit that animates composers and authors. We encourage authors to utilize this creative spirit to its maximum potential by assuring them of adequate control over, and compensation for, uses of their creative output. We submit the interest of nonprofit organizations in royalty-free performances has already been accommodated in the current Copyright Act. This accommodation which Congress legislated only recently has been in effect just short of 3 years, and it should not be disturbed.

Thank you. I shall try to answer any questions you might have.

Senator DECONCINI. I take it from your statement that you do not feel a public interest is served by exempting charitable groups even if they hire someone to play the music?

Ms. SCHRADER. We do not believe the public interest is served by broadening the exemption which has already been given.

Senator DECONCINI. How do you answer the tough question when the Shriners pay \$25,000 a year which would go toward helping disadvantaged children if that money were not paid for royalty use?

Do you still come to the same decision that it is better to pay that than having that money available for disabled or crippled children or disabled veterans and other charitable purposes?

Ms. SCHRADER. As you say, it is a tough question and a tough policy decision Congress must make. I can only suggest that Congress recently decided that if authors and composers contribute the use of their music free, performers and musicians and organizers of events should also contribute their services free. In a sense that is the balance which was struck.

If the music is to be performed without any royalty, then also those who do the performing should be expected to make this charitable contribution.

The authors are willing to make their contribution to charity if those who are doing the performing also make the same contribution.

Senator DECONCINI. Yes, but the author might be having his music played at 300 places that evening, or perhaps even on television, having 40 million people viewing it and having 400 stations paying for it; whereas, the band which is playing at the local place is one single unit and it cannot spread itself.

Is there not a distinction there?

Ms. SCHRADER. Well, it is true that the music may be performed more than once at a given time. However, the rates usually take that into account so that when you have a blanket license, part of the license is permission to perform the music an unlimited number of times.

Senator DECONCINI. Thank you very much for your testimony.

[The prepared statement of Ms. Schrader follows:]

PREPARED STATEMENT OF DOROTHY SCHRADER

Mr. Chairman, I am Dorothy Schrader, general counsel of the Copyright Office, a department of the Library of Congress. I should like to thank you and the Subcommittee for giving me the opportunity to appear before you today to present the views of the Copyright Office on S. 2082. I should also like to convey the regrets of the Register of Copyrights, Mr. David Ladd, that a prior conflicting commitment to participate in an international meeting on copyright prevented him from presenting these views personally.

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Section 106 of the Copyright Act gives copyright owners the exclusive right to perform music in public, continuing a property right that has been part of the copyright statutes since 1897. [Act of January 6, 1897 (29 Stat. 481).]

This exclusive right is, however, subject to exceptions and limitations, the most significant of which appear in section 110 of the Act. S. 2082 proposes an amendment to section 110 that would add a tenth exemption and would have the effect of exempting "performance of a musical work in the course of the activities of a nonprofit veterans' organization or a nonprofit fraternal organization."

The Copyright Office respectfully submits that Congress adequately provided for the reasonable needs of nonprofit organizations for royalty-free performance of copyrighted nondramatic music in Clause (4) of section 110. This general exemption, while narrower than the exemption of the statute in effect before 1978, in its essentials exempts performances of nondramatic music by nonprofit organizations provided the performers, promoters, and organizers are not paid and provided proceeds from admission charges, if any, are used for educational, religious, or charitable purposes. [However, the copyright owner may object to the performance where an admission charge is made by an appropriate advance notice in writing.]

If a nonprofit organization performs nondramatic music by mechanical means such as records, tapes, cassettes, etc., the performance is potentially royalty-free under section 110(4).

If a nonprofit organization performs nondramatic music and the performers, promoters, and organizers are unpaid, the performance is potentially royalty-free under section 110(4).

In passing the current Copyright Act, Congress drew this new line separating for-profit and not-for-profit performances. It decided that if a nonprofit organization has the money to pay the singer or musician who performs copyrighted music, it is only fair and reasonable that the same nonprofit organization budget enough funds to pay copyright performance royalties to the author-copyright owners of the music performed. Without the creative effort of composers and lyricists, the music would not exist because performers would have nothing to perform.

Since copyright is an intangible property interest, it is sometimes easy to forget that it is property. Creators of copyrightable works and copyright owners derive income by licensing various uses of the works. Any significant unauthorized use interferes with the legitimate expectation of creators and copyright owners that they will be compensated for uses of their property. The public performance of music is one of the most significant sources of royalty income for composers and lyricists.

Copyright is of course a statutorily created property right, and Congress both defines the scope of the right and sets limitations on its exercise. However, any such limitations should be consistent with the fundamental purpose of the copyright system, as established by the Copyright Clause of the Constitution. This purpose was expressed by the Supreme Court in *Mazer v. Stein*, 347 U.S. 201 (1954) in this way:

"The economic philosophy behind the [constitutional] clause empowering Congress to grant . . . copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in 'Science and Useful Arts.' Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered." [347 U.S. at 219].

We are all enriched by the creative spirit that animates composers and authors. We encourage authors to utilize this creative spirit to its maximum potential by assuring them of adequate control over, and compensation for, uses of their creative output. The interests of nonprofit organizations in royalty-free performances of copyrighted music have been accommodated in the current Copyright Act. This accommodation, which Congress legislated only recently, should not be disturbed.

Thank you. I shall try to answer any questions that you may have.

Senator DECONCINI [continuing]. Our next witness is Mr. Al Ciancimino, SESAC, New York City.

Your full statement will be printed in the record.

Mr. CIANCIMINO. I have a brief statement I would like to summarize. Senator DECONCINI. Fine.

STATEMENT OF ALBERT F. CIANCIMINO, COUNSEL, SESAC, INC.

Mr. CIANCIMINO. I am Albert F. Ciancimino. I am an attorney duly admitted to practice before the bar of the State of New York. I have been counsel for SESAC for 21 years. I participated from the year 1964 up until the very recent passage of the Copyright Act of 1976, in all of the deliberations and hearings before both the House and Senate.

I did not count the number of times I participated but the appearances are quite numerous.

SESAC is the second oldest music rights organization in the United States but we are the smallest of the three. ASCAP and BMI are referred to as the giants, and rightfully so. They are the two giants of our industry. However, SESAC's contribution in the area of music and our representation of publishers' rights is substantial and significant.

We represent more than 300 publishing accounts and thousands of writers. As I said before, on behalf of the individuals, I have taken part in all of the hearings before both the House and Senate on the copyright bill.

The subject of private performances by nonprofit fraternal lodges and veterans' organizations was carefully considered by Congress when it enacted the 1976 Copyright Act. It was not done in a slipshod manner.

In this area, Congress handled it in two major ways. The first was that it eliminated the for-profit limitation that theretofore had existed on public performances under the 1909 act.

In its place it substituted very specifically defined areas of exemption in section 110.

Also it defined the term "public" much more broadly than it ever had been defined before by either the courts or Congress.

What was the net result of Congress' efforts in this area? It is clear that under section 110(4), Congress has allowed an exemption for performances which are truly of a charitable nature. That is to say, these have organizations that are proponents of this bill who may perform music without payment of royalty under certain conditions. These conditions have been clearly set forth by Ms. Shrader from the Copyright Office, and I will not reiterate them.

However, we can also see that Congress took great pains to define the word "perform."

Let me quote the definition for a moment as it appears in the bill:

To perform or display at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered.

Clearly, Congress intended certain performances to be exempt. I read in the record there are allegations made that the father of the bride would have to pay for performances at a daughter's wedding. That is clearly not true under the statute. There is an exemption under this language.

I heard it said this morning that perhaps the playing of a piano alone by a person would cause it to be subject to liability. That is clearly not true under the definition of the word "perform" in the statute.

There was a delicate balance Congress struck between true charitable performances and performances by so-called private clubs or charitable organizations.

To amplify and clarify their intent, in both the Senate and House reports, this language appears:

One of the principal purposes of the definition was to make it clear that performances in "semi-public" places, such as clubs, lodges, factories, summer camps and schools, are "public performances" subject to copyright control.

We therefore submit that the intention of Congress is quite clear.

Turning now to an area which the proponents urged as the reason for enacting this legislation, they claim that were it not for the moneys paid to licensing organizations they would be able better to use such moneys for the charities with which they are involved.

Might I suggest to the subcommittee that there is no worthier charity than the impoverished American author and composer of music, the overwhelming majority of whom would qualify for the Federal low-income credit given by the U.S. Government to taxpayers in need of financial assistance.

It was somewhat amusing to hear the testimony preceding mine by the representative of the circus group and to hear cries of anguish when it was suggested by the chairman of this subcommittee that perhaps he should forgo payment of his services as a circus.

He said, "Without those payments, I cannot stay in business."

We submit, Mr. Chairman, that without payment to the writers of music, they also cannot stay in the business of writing.

The record of hearings before Congress is replete with evidence and testimony from author and composer groups of their inability, except for a very small percentage, to earn a living solely from their writings. The typical creator of music must work at it in his spare time while he devotes his primary time to earning a living in another field.

Indeed, we again urge the proponents of S. 2082 to consider the creator of the kind of music that has made America great in the same category as a young teenager who may benefit from one of their financial grants or to any other charitable group worthy of their attention.

My final point, Mr. Chairman, is simply to reiterate a point which already has been made on the record.

To state it simply, why punish the writer and composer of music? Of all the services supplied to charitable organizations, why single out music as the one service to be given free of charge?

Surely veterans' posts and other such organizations pay rent, pay for electricity and heat, pay for their telephone, pay for their repairs, and they also pay for their periodicals.

Why is music, among all the services, the only one earmarked for nonpayment by them? The obvious answer is that there is no justification for this piece of narrow, special interest legislation, and we respectfully ask the subcommittee to come to this conclusion.

Thank you, Mr. Chairman, for the opportunity to appear before you. I will answer any questions you might have.

Senator DECONCINI. Thank you. How large is SESAC? How do you rate your organization? Is it by volume or numbers of members?

Mr. CIANCIMINO. We are the smallest of the three. We do represent more than 500 publisher catalogs and thousands of writers either directly or through a writer agreement or indirectly through agreement with publishing houses.

Senator DECONCINI. How do you approach charitable organizations? Do you have any exemption built into your rules or bylaws?

Mr. CIANCIMINO. We follow the policy of the statute, Mr. Chairman. We feel Congress has amply provided for guidelines.

Senator DECONCINI. What do you do for a fraternal order or a club which will hire a band and they have capacity for 250 people in their hall? It is for a charitable purpose and they have a Saturday night dance.

Do you charge them the same as you would a restaurant, a bar, or someone down the street which is in the business solely to make money? Is the charge the same or is there some preferential treatment for the one which is doing it for charitable purposes?

Mr. CIANCIMINO. Our rates are based on entertainment expenditures, Mr. Chairman. There are blanket license rates.

Senator DECONCINI. There is no special—

Mr. CIANCIMINO. In other words, a licensee would contract with us. For example, if there are expenditures of less than \$5,000 a year, they contract with us for payment of \$60 per year.

For that \$60 they can use as much of our music as they wish during that year.

Senator DECONCINI. You mean if \$5,000 is the amount they have spent on bands or entertainment?

Mr. CIANCIMINO. Yes. I believe the same policy applies to ASCAP and BMI.

Senator DeCONCINI. So as you use less you pay less. Is that fair to say?

Mr. CIANCIMINO. No. You are free to use as much as you wish. As you pay for entertainment expenditures the fee would increase. That is how we gage the size of the license.

Senator DeCONCINI. As you spend more for entertainment then the fee goes up?

Mr. CIANCIMINO. Yes.

Senator DeCONCINI. Thank you very much. We appreciate your appearance.

[The prepared statement of Mr. Ciancimino follows:]

PREPARED STATEMENT OF ALBERT F. CIANCIMINO

Mr. Chairman, Members of the Subcommittee, my name is Albert F. Ciancimino and I am duly admitted to practise before the Bar of the State of New York. I appear here as Counsel for Sesac Inc., an organization which represents the performing rights, among others, in the catalogues of more than five hundred (500) music publishers and in the musical works of thousands of writers and composers.

Sesac is the second oldest music rights organization in the United States, having been organized in the year 1931. Sesac's main headquarters are at 10 Columbus Circle in the Coliseum Tower, New York and we also maintain regional offices in the Sesac Building, 11 Music Circle, Nashville, Tennessee and 9000 Sunset Boulevard, Los Angeles, California.

As a music rights organization representing approximately 150,000 musical compositions, we have a vital interest in any legislation such as S 2082 which would affect our right to license performances of the musical compositions which we represent. Sesac therefore is making this statement in opposition to S 2082 which would exempt non-profit veterans organizations and non-profit fraternal organizations from paying performance royalties as is now required by the Copyright Act of 1976.

The subject of "private performances" by non-profit fraternal lodges or veterans organizations was carefully considered by Congress when it enacted the 1976 Copyright Act. Under the 1909 Act a performance royalty could only be earned by an author of music if the performance was both public and for profit. In a sweeping reversal of this 1009 concept, Congress, in the 1976 Act, eliminated the for profit limitation on performances, and in its place set forth clearly defined and limited instances in Section 110 when certain performances would be exempt from the payment of copyright royalties. It also indicated its clear intention as to the meaning of "performance" by expressly defining the word "perform" more broadly than those terms had previously been construed by the court and the 1909 Act.

What was the net result of Congress' efforts in this area? It is clear that under Section 110(4) Congress has allowed an exemption for performances which are truly of a charitable nature, that is to say fraternal orders and veterans posts can play music without payment of copyright royalties as long as there is no compensation paid to the musicians or producers or promoters of the event. In short, if there is a charitable event where admission is charged and there is no commercial advantage either directly or indirectly to anyone but the charity, music may be performed free of charge as long as no objection to the performance has been made by the author of the music. Even if an objection is made by an author, the music may still be used free of charge as long as there is no admission charge.

We therefore can readily see that Congress has taken pains to outline, in detail, rather strict circumstances under which non-profit fraternal and veterans organizations may perform copyrighted music without liability. As a complement to the language of Section 110(4), Congress has defined the term "perform . . . publicly" as meaning, "to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered."

This broad definition in the statute goes well beyond the definition of public performance as has been set forth by various courts since the 1909 Act. Fur-

ther, in order to be sure that its intention was clear and that there would be no mistake with regard to the parameters of liability, Congress stated the following, in both the Senate and House reports concerning the 1976 Copyright Act:

"One of the principal purposes of the definition was to make it clear that . . . performances in 'semi public' places, such as clubs, lodges, factories, summer camps and schools, are 'public performances' subject to copyright control."

We therefore submit that the intention of Congress in the 1976 Act was clear in that it committed to copyright liability all non-profit organizations which did not meet the strict exemption requirements for the performance of music set forth in Section 110(4). The proponents of S. 2082 would now have Congress reverse itself in this area by adding another exemption to Section 110 for non-profit veterans organizations and fraternal organizations.

One of the primary reasons given by proponents of this Bill for the need of an exemption is that copyright royalty payments diminish the amount of money that they, as non-profit groups could raise for charity. May I suggest to the Subcommittee that there is no worthier "charity" than the impoverished American author and composer of music, the overwhelming majority of whom would qualify for the Federal Low Income Credit given by the United States Government to taxpayers in need of financial assistance.

The record of hearings before Congress on the 1976 Copyright Act is replete with evidence and testimony from author and composer groups of their inability (except for a very small percentage) to earn a living solely from their writings. The typical creator of music must work at it in his spare time while he devotes his primary time to earning a living in another field. Indeed, we urge the proponents of S. 2082 to consider the creator of the kind of music that has made America great in the same category as a young teenager who may benefit from one of their financial grants or to any other charitable group worthy of their attention.

Finally, I would like to simply reiterate a very important point that has already been placed on the record by Ed Cramer, president of Broadcast Music, Inc. To state it simply—why punish the writer and composer of music? Of all the services supplied to charitable organizations, why single out music as the one service to be given free of charge. Surely veterans posts and other such organizations pay rent, pay electric and heat, pay for their telephone, pay for their repairs, pay for their periodicals. Why is music, among all the services, the only one earmarked for non-payment by them? The obvious answer is that there is no justification for this piece of narrow, special interest legislation, and we respectfully ask the Subcommittee to come to this conclusion.

Senator DeCONCINI. The last panel we will hear from is the American Society of Composers; Messrs. Korman, Cleary, Holyfield, and Drake. Your statements will be printed in the record in full following the complete oral presentation of the panel. Please highlight your statements now.

Mr. Korman, you might start.

PANEL OF ASCAP AND AGAC OFFICIALS:

STATEMENTS OF BERNARD KORMAN, GENERAL COUNSEL, AND JAMES CLEARY, MANAGER OF GENERAL LICENSING, ASCAP; WAYLAND HOLYFIELD, MEMBER, ASCAP, AND DIRECTOR, NASHVILLE SONGWRITERS ASSOCIATION, AND ERVIN DRAKE, SONGWRITER AND PRESIDENT, AGAC, AS PRESENTED BY ALVIN DEUTSCH, COUNSEL

Mr. KORMAN. Thank you, Mr. Chairman.

To my left is Mr. Holyfield, a songwriter and a member of the board of the National Songwriters Association.

To my right is Mr. James Cleary, manager of general licensing activities.

To Mr. Cleary's right is Mr. Alvin Deutsch, who is here in place of Ervin Drake and who will speak for Mr. Drake. Mr. Deutsch is counsel to the American Guild of Authors and Composers.

Mr. Chairman, the president of ASCAP wanted to be here today but because of a conflict he was unable to be here. I would like to summarize his statement.

He points out that ASCAP is an unincorporated membership association. It consists of more than 28,000 writers and publishers who come from all the States.

Like other Americans they join organizations—fraternal, veterans and others—and make contributions, in many cases well beyond what normal Americans do.

I think of Irving Berlin. "God Bless America" royalties go to the Girl Scouts. He never talks about it, but we know. Also, "This Is the Army in World War II," I think of the USO.

Mr. David goes on to speak of the fact that he was fortunate to write songs that the public liked. He named some of them—"Raindrops Keep Falling on My Head;" "Do You Know the Way to San Jose;" "The World Is Now in Love;" "I'll Never Fall in Love Again."

He also makes the point that like all other songwriters, even Irving Berlin, he has written many songs that have failed. Indeed, for all songwriters they have written far more which fail than succeed.

Mr. David points out in today's world the principal source of income for a writer or publisher of music is from nondramatic performance rights. It used to be from sheet music many years ago, but people don't buy sheet music very much any more. Television long ago replaced the piano as the center of home entertainment in America.

Next Mr. David talks about ASCAP and its role as a clearinghouse. It is important to focus on that for a moment, particularly in light of Mr. Hamid's remarks.

Through ASCAP members are able to issue licenses which grant the right to perform all the works in their repertory, the works that exist at the time the license is entered into plus those created during the term of the license and works of literally hundreds of thousands of foreign writers and publishers as well. The user can go to one place and get a single license which grants him the right to perform hundreds of thousands of works.

Without such a clearinghouse, I suggest, the postage involved in trying to locate the owners, trying to work out agreements with individuals, would far exceed the license fees.

Indeed, one of the statements made, I think by the representative of the Eagles at the first hearing, referred to how Americans like to form associations. ASCAP is as good an example of that as you will find anywhere. The performing right of music first granted in 1897 did not mean anything until there was a mechanism to enforce that right. That mechanism was ASCAP, originally formed in 1914.

Folks did not just line up to pay licenses and pay fees. They preferred the old system where they paid nothing.

Even restaurants and hotels took the position that because they did not charge separately for music from charges for rooms or food, they said they were not performing for profit. It took a U.S. Supreme Court decision in 1917 before the matter was settled.

It was not until 1921 that there was enough money around for any royalty distribution. It was a long haul.

After that the broadcasters resisted paying. They said performances were in the privacy of studios and in the privacy of homes. In those days you did not have the kind of advertising you have now.

I have interpolated, as you might have noticed, from Mr. David's statement. He then says there are many different forms of licenses.

With respect to Mr. Hamid's comments about fees, how users are at the mercy of any fee ASCAP chose to quote, the statement implies knowledge that is not inherited, and I would refer to Mr. Hamid's father in the 1950's.

The Hamid family long owned the famous Steel Pier in Atlantic City. Mr. Hamid's father and Mr. Hamid are traders as shrewd as you will find anywhere. He knew that all ASCAP can do is quote the fee it thinks is reasonable. If the user thinks that fee is unreasonable he has an absolute right to have a Federal court determine a reasonable fee, so the fear expressed here today—"very charitable," I think was the term used by the representative of the Shrine—a fee of \$18,000 that got worked out for ASCAP, might one day go through the roof, this is really not a genuine fear. I think that statement is made out of ignorance rather than any intention to mislead.

However, ASCAP must quote reasonable fees because a Federal judge stands by to fix a reasonable fee in the event that the fee we quote is considered to be unreasonable.

In those proceedings, and there have been many, the burden of proof is on ASCAP to establish the reasonableness of the fee quoted.

I am sure as a lawyer the chairman knows that it would be a terrible risk for ASCAP ever to quote unreasonable fees and have a Federal judge say ASCAP is out to gouge somebody because, with a stroke of the pen, his ruling setting a fee lower than it should be can hurt us forever. We are careful always to quote reasonable fees.

I think much has been said about the study Congress made before it drew the line where it did. This is mentioned by Mr. David. I will skip over it quickly and point out there is a separate document outlining the legal issue involved here.

The fees we have been talking about are nowhere near those that fraternal organizations have referred to. The amounts are in Mr. David's statement on page 6.

We have tried to work out a national agreement because it saves us money and it saves the user money as well. We have been successful with the Shrine. We are talking to the American Legion. We believe we will be successful there. Rates are well below those we normally would charge for other types of worthy users.

Let me turn to the second statement we have filed dealing with the legal issues very quickly to point out that the original grant of the performing rights did not have a full profit limitation. The 1909 law did.

My recollection is that what Congress was concerned about in 1909 was to put the for-profit limitation into the law, and that was the criminal provision of the law. There was some reference that I remember reading, which was amusing at the time, that the Senate-House committee, which met together in those days, expressed a concern that

if the law were passed without such limitations as a for-profit limitation, if a child watching a parade were to whistle or sing a copyrighted song that child might be hustled off to jail. There was similar concern about performance in church.

I think that is where the for-profit limitation originally came from rather than any thought that organizations which are able to pay for performance would not pay people who create the music that performers need to play.

The legal memorandums point out all the study and care taken to draw the line. I will not go into that.

Let me stress that Congress knew what it was doing. In the report it stated quite precisely that it intended lodges and private clubs to be liable under the new law. This was no oversight. Indeed, we learned this morning that Mr. Hamid argued 5 years ago to have the law changed.

I think the American Legion representative might have indicated that they may not have noticed it. Truly the Shrine noticed that because Mr. Hamid called it to the attention of the committee and the committee did not buy the argument.

There has been tremendous concern expressed here that the term "public" in the copyright law does not square with the term "public" in the Civil Rights Act. We deal with that in our memorandum and conclude that the fraternal organizations need not fear the loss of their exemption from nondiscriminatory treatment under the Civil Rights Act because of their copyright liability under the Copyright Act.

Mr. Chairman, we think it is very important that this committee view copyright in the context that the Copyright Office has suggested it be viewed. It is a property right.

As the chairman put the issue at page 33 of the prior hearing, once you realize you are dealing with a question of whether to take an existing right away, I think the argument has to be very, very strong that there is some real public need to do it. I submit to you there has been no such case made here. The fees are very modest.

Sure, every penny that can go to a charity would be a good thing, but why only music? Why not take 1 percent of the telephone company's revenues? Then you really would have some money to talk about.

Fact 2, it is a mistake to think of ASCAP as some big organization. Yes, we are collectively large in that we collect a lot of money, but that money is distributed to all of our members. We are nonprofit in the sense that every penny we have left over after paying the cost of running ASCAP gets distributed each year to the members. They are the people who create something which didn't exist before it came out of their minds and their talents.

Sure it may be used in many places, but it is valuable to each user. If you view it as property, no one under the free enterprise system can use somebody else's property without permission.

In the case of a copyright or patent that is given by a license, there is nothing wrong with someone who has written a successful song used by a number of different people being paid for each use. I submit it would be wrong if it were not so.

I realize, Mr. Chairman, you have heard a lot of testimony on this issue. Let me not belabor any of these points.

I wish to refer briefly to a statement of a member of ASCAP named Paul Wendell. Wendell is a member of the Legion and a past commander of the John Philip Sousa Post.

John Philip Sousa happens to have been a founding member of ASCAP. He is the writer, as you know, of America's great marches. He would be spinning, as a former Commander of the United States Marine Corps Band, in his grave to know people wanted—people who are veterans—to seek this legislation.

Mr. Wendell, as an American Legion member and as a member of the post consisting only of musicians, opposes this bill.

Mr. Chairman, I would like now to introduce Mr. James Cleary. Senator DECONCINI. Please go ahead, Mr. Cleary.

Mr. CLEARY. I am Jim Cleary. I would like to thank you for the opportunity to testify in opposition to Senate bill 2082.

I am the ASCAP's national sales manager for general licensing. It is my job to supervise licensing through 18 district offices located throughout the country.

Of all the nonbroadcast public performances, I have the responsibility of overseeing licensing of fraternal and veterans' organizations.

Before I speak to the issue of the bill, I would like to tell you of my background for I think it will put my remarks in some perspective.

I started to work for ASCAP in 1939 in Cincinnati, Ohio, as a field representative. My job was to go from town to town visiting establishments using music, explaining the copyright law and licensing them for performances of our members' music.

In 1941, before Pearl Harbor, I took a leave of absence from ASCAP and enlisted in the Army Air Corps. After a stint as a test pilot, at Wright Field, I flew combat mission in the Middle East in B-25's with the 12th Bomber Group, 83d Squadron, over North Africa.

In late October of 1942 I was shot down. For the next 2½ years I was a guest of the Third Reich.

I left the service in 1946 and returned to ASCAP where I made my career, eventually becoming national sales manager in 1973. I should also like to add I am a member of the American Legion.

Our president, Hal David, notes in his statement some of the things ASCAP has done in the past to support the Legion's charitable efforts. He also mentioned ASCAP's willingness to offer a special license to fraternal and veterans' groups which takes into account their unique position in our society.

I would like to comment on some of the statements made by those advocating this bill regarding ASCAP's licensing activities, for those statements are distortions—I am sure unwitting—of the facts.

Most amazing are the dollar figures quoted in regard to license fees. Senator Zorinsky testified that the Moose pay "over \$500,000 a year in fees to copyright owners." and the American Legion "pays over \$1.5 million a year in fees to copyright owners." The spokesman for the Moose later said this group's figure was "projected." Daniel Splain, representing the Eagles, said his organization is now paying about \$550,000 annually to copyright licensing organizations. These claims have no basis in fact that I can see.

The facts are these: 753 Moose lodges are licensed, for a total annual amount of \$140,907.38, not \$500,000. We have licensed 400 American

Legion posts for a total annual amount of \$51,506.27, not \$1.5 million. And 335 Eagles aeries are licensed, for a total annual amount of \$54,630.68, not \$550,000. BMI's representative has testified that the amounts these organizations say they are paying in license fees are not going to BMI. They are certainly not going to ASCAP. There is a factual error somewhere and I know it is not ASCAP's error.

As to the ability of these groups to pay reasonable license fees, I have obtained a copy of the most recent audited financial report of the American Legion National Headquarters, which was filed with the House Judiciary Committee. It shows an excess of income over expenditures in 1978 of \$1,129,221 in 1978 and \$964,824 in 1979. These groups are not in any danger of going bankrupt if asked to pay the modest license fees we suggest.

You have also received in evidence copies of advertisements taken from newspapers which demonstrate that, contrary to the representations of the spokesmen for the fraternal and veterans' organizations, many of their places are open to the general public. I know, from personal experience, that many of these lodges and posts are the social centers of many communities throughout the country. As such, they compete with commercial ventures, many of which hold ASCAP music licenses. I know, too, that many admit the public, unaccompanied by any member, even if the ads say "members and their guests only."

Mr. Chairman, you suggested at the previous hearing that these organizations sit down with us and try to work out a licensing arrangement. You said we might have "a charitable feeling" toward them. We do have that kind of feeling.

As ASCAP's national sales manager, I would be delighted to discuss licensing arrangements with all of these groups. Indeed, we have begun to do so, and were able to reach agreement with the Shriners. Our negotiations and dealings with the Shrine were very cordial. The amount of the license fee was \$18,000, which included circus performances. I believe both sides are pleased with the outcome. We are now talking to the Legion and I believe an agreement will result.

Let me be clear, Mr. Chairman and members of the committee. We cannot and shall not simply give our members' valuable property away. We shall continue to offer licenses that take account of the role these organizations play in America. These hearings should improve the chances that agreement will be reached, for which we thank you.

Mr. KORMAN. Mr. Cleary mentioned ads. We have several thousand. Many say "members and guests only."

As Mr. Cleary indicated, that is not necessarily dispositive of the question as to who is admitted. That includes event the Moose, who seem to be the most careful to have only members and guests appear in their ads.

Whether that term appears or not, as the chairman pointed out in questioning one of the proponents today, the fact is that many of these places do compete with our commercial licensees.

Indeed, in that connection we took a lot of heat from Barnum & Bailey and other circuses because they were not licensing the Shrine circuses. The Shrine circuses were competitors of Barnum & Bailey.

Circuses have assorted entertainment that one does not go to every other day. If you go to a Shrine circus you are apt not to want to go to anyone else's circus in the future.

Our next witness, Mr. Chairman, is Mr. Wayland Holyfield, of Nashville.

Mr. HOLYFIELD. Mr. Chairman and members of the subcommittee, my name is Wayland Holyfield. I appreciate the opportunity to appear here today to oppose Senate bill 2082.

I am a professional songwriter. My music is country music primarily. My songs include: "Nobody Likes Sad Songs," "If I had a Cheating Heart," "No, No, No," "I've Got a Winner in You," "I'm Gonna Love You Tonight," "I've Never Seen the Likes of You," "Lovely Lonely Lady," "New York Wine and Tennessee Shine," and many others. I hope they are familiar to you. I'm sure they are familiar to all those who hear them played by bands or on jukeboxes in places like fraternal lodges all across America.

I am an ASCAP member, and also serve on the board of directors of the Nashville Songwriters Association. The association represents over 2,000 songwriters of all types of music, nationwide and even worldwide. We are a nonprofit organization, and our goal is the advancement of music.

I support charitable causes such as those espoused by the fraternal and veterans' organizations as much as anyone else, but I am deeply troubled by the thought that these groups ask for a law that would let them use my property without payment. I toiled as long and as hard on my work as anyone else does on his. If these groups pay for everything else, let them pay for my music. Don't single me out because I make my living by writing songs.

I have reviewed the testimony at the prior hearing, and I was surprised by one of the supposed justifications for this bill: the notion that income from these groups would represent a tiny percentage of total collections for performing rights.

The amount of money may be small, but please don't belittle my work by calling it insignificant. Many sources of royalties are individually small. That does not justify exempting those uses from payment.

Indeed, the person who supplies food or drink to an individual fraternal lodge may find a minuscule portion of his revenues come from that source. Is that any reason to force him to give away his property for nothing? I think not.

I urge you to remember that we songwriters must make a living from our creations. Income from performing rights such as these is the largest single source of our living.

In response to the argument that the uses this bill would exempt are charitable, many of the songwriters I represent would say, "charity begins at home."

If we wish to contribute our music, or discount its price, we may do so ourselves, directly or through ASCAP. Please don't single us out and force us to do so with this discriminatory legislation.

Mr. KORMAN. Finally, Mr. Alvin Deutsch.

Mr. DEUTSCH. I am here today on behalf of the president of the American Guild of Authors & Composers and National Songwriters Association, Mr. Ervin Drake. Unfortunately, a medical incapacity which occurred last night prevented his being here.

Our members are all songwriters, some 6,500, and members of 3 songwriters' societies.

You have Mr. Drake's statement before you. I will not repeat it. I will highlight only four aspects of it.

"The songwriter lives in the economic backwaters of time."

That statement is not based on hearsay. It is based on a survey done by Rinfret Associates, Inc., in connection with testimony in hearings, 45 days of hearings, concluding at this moment before the Copyright Royalty Tribunal determining the royalty rate to be paid songwriters and music publishers. I will leave a copy of the survey with the committee.

Some of the facts you have heard today will highlight what the life of the songwriter is about. All songwriters are not Cole Porter, Irving Berlin, and Rodgers and Hammerstein. The survey proves the following:

Twenty-eight percent of all of our members received a total income of \$5,200 from all sources in the year the survey was completed.

Fifty-five percent of those respondents received an average total income per year from music-related source covering the 5 years preceding the survey of \$5,200. Seven percent received income from \$5,200 to \$8,500, and 6 percent reported that their income from music-related sources was between \$8,500 and \$11,500.

The profile of our members indicates the following:

About 58 percent of all respondents have no dental insurance.

About 33 percent of all respondents do not have disability insurance.

About 15 percent of all respondents have no hospitalization insurance.

About 21 percent of all respondents have no major medical insurance.

About 43 percent of all respondents have no insurance against unemployment.

About 43 percent of all respondents have no workmen's compensation.

When this committee discusses the paltry sum paid by these various organizations, you must remember that ASCAP, BMI, and SESAC do not keep any of this money. After they pay for their own expenses it comes to our members, and those members, as you can see from these economic statistics, are in dire need of every cent. That is the reason we are participating and have participated for 45 days before the copyright tribunal, in an attempt to maximize the royalties paid by record companies when they perform our songs.

You have heard testimony concerning our support for the worthy activities of these organizations. Indeed, it is our position that if they were not performed by these organizations they would have to be performed by the U.S. Government.

In our opinion, these are worthwhile endeavors. However, remember, each of our members pays income taxes on the moneys they receive. Once money is exempt, no further income tax will be paid by our members.

In short, Mr. Chairman, I believe that no one should be forced to play our members' music. They don't have to pay and they don't have to play the music and they don't have to pay for it.

Indeed, they can play all public domain music, and contrary to the statements made earlier, there are many documents prepared by the

Copyright Office itself which would easily leave someone to play all of the public domain music if they sought to do so.

However, do not burden the already economically burdened songwriter with this further problem.

I would like to point out one discrepancy, Mr. Chairman, which I find in the hearings which were previously conducted.

In the course of those hearings, it was stated that no performance royalty is paid for the use of religious music.

The Copyright Act provides that no performance royalty is payable if music is used in the course of the service at a place of worship or religious assembly.

Accordingly, if a church or other organization of a religious nature were holding a social event which is not a religious service, they would be covered by the provisions of the act. If Mr. Drake were here, he would relate how personal this position is to him.

Ervin Drake wrote a song called "I Believe." Many people consider that song to be semireligious in nature. It is one of his most important copyrights.

However, if every religious organization were exempt from paying royalties on that song, then, indeed, Mr. Drake's income would be seriously deteriorated and he indeed would become possibly someone who, like so many other members, would be required to rely upon the State for financial aid during the later years in life when they are no longer able to support themselves from the writing of their music.

Members of AGAC and the National Songwriters Association have contributed much to the country. I can point out that one of our deceased members wrote a song called, "I Am An American." You may well remember that that song became the cornerstone for "I Am An American Day" which meant a lot to this country during the forties.

Our members have written such songs as "76 Trombones," "I Love a Parade," "I'll Be Home for Christmas," and "There She Is, Miss America."

We make our contributions. We make them willingly. However, we feel that, as anyone else, it is important that our music be paid for when it is performed.

It is not true that merely because a song is performed on several occasions in one night a member of ours is earning money. It is only if that member's song is being performed on that night somewhere that performance money is earned.

As you will see from the Rinfret survey, which I will leave with you, most of our members are not earning above the lowest level of the members of our society.

Thank you, Mr. Chairman.

Mr. KORMAN. Before concluding, I mentioned we had these thousands of ads. Might I suggest that I sit down with committee counsel and select a few typical ads from this group for inclusion in the record?

Senator DeCONCINI. I think if you have thousands, it would be more convenient if you would select representative samples, and we would be glad to have them as part of the file. I will not put them all in the record because it is extremely expensive. We already have a number from our last hearings.

Mr. Korman, let me thank you for your fine presentations.

Let me assure you that there seems to be some prevailing feeling from your testimony here that this committee or that the chairman does not appreciate the magnificent performance and charitable gifts which your members have made. We do.

We are not here to question the patriotism of any of them or their right to own private property. In fact, as to the property right we are talking about, I want the record to be clear this bill was not introduced as a punitive action toward your group. It was introduced by Senator Zorinsky and brought to my attention and Senator Simpson's attention as well as others for the purpose of checking whether there is a public interest. That is the purpose of these hearings—to determine whether or not there is a public interest for legitimate charitable groups to be exempt from paying your fee when they are raising money for charity.

I want the record to be very clear that the tenor of a number of your statements is that we are picking on somebody and not preserving their property rights. I think the matter of the public interest is something we all have to face in our own lives in the complex society in which we live today. Often you and I will disagree as to what is and what is not the public interest.

The only point I want to bring up is this: Mr. Cleary mentioned some figures. My recollection, Mr. Cleary, is that those were combined figures which those organizations said they paid. I cannot refute those figures.

You said the Moose paid you \$140,000. The Moose said they paid 10 times that amount for all of their fees. I don't know that the figure is so dramatic as much as the fact of the dollar amount if it is used for charitable purposes. I think that is important.

Given that as a fact, that the money is used for charitable purposes, the question for this member of the committee is whether there is a public interest.

Obviously, your association already has determined that there is some public interest to charge a lesser license fee for fraternal orders and nonprofit organizations. I compliment you for coming to that conclusion.

Therefore, I think the matter for this committee to determine is whether or not you have operated in what we consider to be the public interest and representing "the public" if we can be so bold in our attempt to do that.

Therefore, I have no further questions but I wanted to make that statement to assure you and your membership that we are trying only to determine public interest here and whether or not there should be exemptions from the existing law for truly charitable organizations.

Senator Zorinsky?

Senator ZORINSKY. Thank you, Mr. Chairman. Certainly I want to compliment you for defending your industry. Certainly that is what America is all about, Mr. Korman.

There is no doubt in my mind there is public interest in this bill due to the fact that I have received a high volume of mail from the people of this country who are affected by the actions of ASCAP and BMI. Had I not received this high degree and volume of mail, obviously there would not have been as high a degree of public interest.

Certainly there was a high degree of interest on your part when you initiated this copyright bill not too long ago in past Congresses.

As I find from my research, it was quite a protracted fight. The copyright law concerning ASCAP and BMI did not come easy. There was voluminous testimony on both sides, which indicates to me that there is interest on both sides with regard to this bill.

I personally feel it goes beyond the dollars being generated. I think this goes to the very heart of what, in effect, is a tangible or intangible product from which someone can derive future economic benefits.

Senator DECONCINI. I have to go to a conference and I am 20 minutes late.

Would you conclude the hearings today and adjourn the subcommittee?

Senator ZORINSKY. Certainly.

Senator DECONCINI. Thank you.

Senator ZORINSKY. I feel that this legislation in itself, if carried out to its fullest extent, and which presupposes the creation of an individual who is appealing to the auditory aspects of another human being—and I guess that is how popular songs are evolved, those which are catchy or appealing to the general public obviously are played to a higher degree than others—likewise, I have this legislative bill here which is a product of mine where I sat with my staff and evolved it. I selected what I thought would be a public interest.

This legislative bill is being played pretty much throughout the country right now. I am getting a lot of people spending 15 cents to send me a letter with regard to their support of it or their opposition of it.

An act of Congress in itself is a creative device which people throughout this country randomly or selectively will utilize in the future. Is this to say that congressional people in this Congress, because they created a piece of legislation which will prove popular in some areas to the people of this Nation as they selectively use that legislation, are we entitled, if we get lobbyists and attorneys and propose similar legislation, that we copyright our own legislation?

I know this may sound far-fetched, but maybe many Elks clubs and Eagles clubs might have thought it far-fetched that somebody come in one day and tell them they cannot play that song up there on the bandstand unless they remunerate composers or authors for the use of that article.

It appears to me—and I am sure it is no secret to you that I have been in the coin-operated amusement machine business—records are a tangible item on which a copyrighted article which you can be paid for the work, so many cents per record, or sheet music which is also an indicator of the works of that composition, anything that is purchased or repurchased through our society is a good place to remunerate an individual for his efforts and works.

As we sit with this copyright law and certain performances are paid for, many others under the law which should be paid for are not being paid.

That is why the law in itself is difficult to enforce. It creates agitation on the part of those paying for this. I feel perhaps there are always two sides to a story.

Certainly your story needs to be told. I am going to do what I can to keep an open mind as regards your side of the issue.

However, I will remind you that I have heard a lot of horror stories coming back from the field. I know that you individuals at this table are not responsible for going into business establishments and making the pronouncements that "money is due."

However, some of the people who do it for you as an extension of your industry are not doing it with the best interest of your composers and authors in mind in the long range program.

I know a lot of that is beyond the control of an industry as huge and as large as yours.

I am sure the same point can be made as to other industries. However, I will say there is no doubt in my mind that there is public interest in this bill. Otherwise I would not have had the voluminous contacts from both sides of this issue which I have received.

Would you like to comment on that?

Mr. KORMAN. Let me make one or two comments in response to what you have just said. It is clear that we begin from opposite positions.

As a jukebox operator you were happy with the situation that no performance fees be paid under the 1909 act.

You know, Senator, ASCAP started trying to get that provision changed in 1928.

There were bills introduced in virtually every Congress beginning in 1928, and we think that the 1909 exemption was a pure fluke. The coin-operated device referred to in the 1909 act was nothing like the modern jukebox.

However, be that as it may, it was not ASCAP that got this copyright revision ball rolling. Rather it was the Registrar of Copyrights, Arthur Fisher.

For many years, when Congress thought of copyright, talk to a Senator or Congressman, he thought you were talking about jukeboxes and that is all that was involved.

There were many other issues, and the United States was behind many other countries in the copyright world. People having no interest in ASCAP or jukeboxes finally said, "It is time we did something about the 1909 law."

Justice Fortas said that trying to decide a copyright liability issue with respect to cable television under the 1909 act was like trying to fix a television set with a mallet.

In 1955 Congress appropriated some money for a Copyright Office study. Those studies were made, and they took years to make.

However, we didn't cause this law at all, Senator. It was the interest of authorship. Authorship is a vital interest in this country. It is an interest that every American should be concerned with, particularly every Senator and Congressman, because you are responsible for the copyright law.

When we think of the great things about this country, particularly if you have traveled abroad, you will find American music everywhere.

I just came back from Senegal and Morocco last week. All the music you hear is American music. It is a great export.

The balance of payments for music is all our way because foreign countries use and pay far more for American music in their territories than we do for use of foreign music here.

When this bill was approved in the Senate in 1976 the vote was 96 to zero. I don't think it was only because people were tired. It was because it was generally recognized that all the complicated and difficult issues had been finally worked out with many compromises.

Look at the jukebox provision—\$8 a year per jukebox.

When it happens anywhere else in the world that figure becomes a joke—not to the jukebox operator but to everyone else who did not have a direct financial interest in the jukebox business. Everyone else thought the figure was a joke, and thought the exemption was wrong, from the State Department to the Girl Scouts.

Senator, you were out of the room when I made this point. ASCAP has no power to compel anyone to pay a license fee he feels is unreasonable. We have a consent decree which imposes on us the burden of dealing uniformly.

I remember at the first day's hearings you asked whether one of the fraternal or veterans' groups was in a position to negotiate with ASCAP or whether they had to pay the fee.

Do you remember that, Senator?

An answer was that you could not negotiate.

Why is that?

Because a representative cannot vary the terms of the uniform rate schedules. If so, there would be discrimination.

Therefore, we have terms applied uniformly.

However, if a user thinks the fee is too high there is a Federal judge standing by to hear him. ASCAP has the burden of persuading that judge that the fee it quotes is reasonable. That is a heavy burden.

In an organization like ASCAP, which is regulated under a decree, you can be sure that ASCAP is going to take every precaution to appear and to be reasonable so that the judge will have confidence in us and so that we do not lose his confidence.

As I said while you were out of the room, if we did that, with a stroke of the pen he could cut our rates and seriously injure our members for years to come.

I hope that you appreciate that people like Oscar Hammerstein and Dick Rodgers, who sat on the ASCAP board, and Hal David today who is president, Harold Arlen, these people are not out to do in users. These people are out to do fairly with users, to get paid what is appropriate. ASCAP could not stand the scrutiny of the Congress if it were to behave otherwise.

Yes, I have heard horror stories, too. ASCAP has had representatives with its ears bitten off, people stabbed. It works both ways. Some of the horror stories are true and some are not.

I remember a radio broadcaster in North Carolina who always paid his fees each month and suddenly stopped and didn't respond to letters requesting payment. Finally we canceled his license and sued him for infringement.

After the lawsuit got settled on the verge of trial the lawyer asked, "Why did you stop paying, Joe?"

He said, "I stopped paying because station so and so, a competitor, said they had not paid for years."

The other station had not failed to pay. He just told the other guy he had not paid.

Licensing copyrights is a hard business. One of the reasons we do not want to see this exemption is because it will encourage others not to pay, and it will encourage others to seek further exemptions.

Senator, if you would use your good offices to help to work out national arrangements with these groups—we have volunteered to do that, and offered very substantial savings, and that is a strictly business proposition—we will save a lot of money, and we are anxious to pass that on to the user.

However, as many people have said here, don't single out the composer, the person who created something which, if it is worth anything at all, is worth a great deal in terms of making people's lives happier and more effective.

Do not single that creative person out and make him make a contribution against his will where no one else has to. Do not permit an anomalous situation to exist where the musician is paid and the creative work he plays goes uncompensated.

That, I submit, would be wrong.

Senator ZORINSKY. Thank you.

Mr. DEUTSCH. Most of our songwriters are underpaid for their work and are living on the edges of the economic society. It would be our pleasure, and I hope we would be given an opportunity, to meet with some of the members of your staff and some individual songwriters who have been surveyed in this Rinfret survey so that we could express on human terms what our problems are as creators of music. We would appreciate that opportunity.

Senator ZORINSKY. Thank you. I appreciate that opportunity, also.

However, I also want to set the record straight that I do not think in any way this piece of legislation even involves the jukebox industry with regard to your royalty rights.

Second, you say the deficit and trade balance is reduced. Fine, I will help you strengthen that part of it.

I am concerned about American consumers of music and not foreign consumers. I am a U.S. Senator and not a French or British senator.

I would also say that these very able songwriters and composers I am sure we all would like to protect—every single person who has a service or talent to perform in this country would like to be protected in one way or another, to be assured a viable way of living, whether they be a plumber, a carpenter, a manufacturer, or a songwriter. That is human nature.

Unfortunately, this country cannot do that for everybody and cannot be everything to everyone.

However, when I see broadcasters and jukebox people themselves who promote the very essence of the success of a composer or an author, it is a two-way street. Composers and authors do not become famous nor does their product become famous or salable until it is recognized by the public to exist, and that very existence is transmitted by the broadcasting industry and, in some sense, the jukebox industry.

Certainly you are being paid to portray your side of the issue. However, I would like at this hearing to point out that there is more than one side to this issue.

With that, I would like to thank you very much for your appearance here. Hopefully we will have a dialog to continue our education on your subject and hopefully we can impart some of the problems as we see them on behalf of these nonprofit groups to you as well.

Thank you very much.

Mr. KORMAN. We would very much welcome that.

[The prepared statements of Messrs. Korman, Cleary, Holyfield, and Drake follow:]

PREPARED STATEMENT OF BERNARD KORMAN

The American Society of Composers, Authors and Publishers (ASCAP) submits this statement, in opposition to S. 2082, on legal issues raised by the proposed legislation.

I. THE 1976 COPYRIGHT ACT REPRESENTS THE APPROPRIATE STANDARD OF COPYRIGHT PROTECTION

The fraternal and veterans' organizations have argued that the 1976 Copyright Act is somehow an aberration because they have liability for public performances of copyrighted music. They maintain that the old 1909 Act, with its general "for profit" limitations on the nondramatic performing right in music, is the norm which should be restored for them.¹ Historically, they are in error.

The first performing right in music was granted in 1897.² It provided for copyright liability on the part of "[a]ny person publicly performing or representing any dramatic or musical composition for which a copyright has been obtained." There was no "for profit" limitation of any kind.

The 1976 Act restored the law to its 1897 condition. Thus, the "for profit" limitation of the 1909 Act—not the 1976 Act—is the aberration in the history of copyright protection in this country.

II. CONGRESS CAREFULLY CONSIDERED BOTH THE "FOR PROFIT" AND "PUBLIC" ASPECTS OF THE PERFORMING RIGHT IN THE 1976 COPYRIGHT ACT. IT CONCLUDED THAT FRATERNAL AND VETERANS' GROUPS SHOULD PAY FOR THE PROPERTY THEY USE

Some veterans' and fraternal organizations say they were not aware of the details of the 1976 Copyright Act when it was being considered. That may be so—but Congress knew what it was doing.

The 1976 Act did not spring into life overnight. It was considered for 21 years before enactment. Its provisions are not hastily-made mistakes; they are the result of long and wise Congressional consideration.

A. *The Elimination of a General "For Profit" Limitation on the Performing Right was Carefully Thought Out*

Congress appropriated funds in 1955 for a series of Copyright Office studies of the Copyright Law. The studies, written in the late 1950's and published in 1960 and 1961, were to form the basis for legislation to replace the 1909 law.

One study dealt specifically with the "for profit" limitation of the 1909 Act.³ It noted that Congress could take one of four courses concerning the "for profit" limitation: (1) it could be maintained in its existing form; (2) specific exemptions could be substituted for the general "for profit" limitation; (3) the general limitation could be retained and combined with specific exemptions; or (4) the limitation could be abolished altogether.⁴

Congress opted for the second alternative—substituting specific and limited exemptions. This approach was taken in the first Copyright Revision Bill, intro-

¹ See, e.g., letter of Clarence J. Ruddy, General Counsel, Loyal Order of Moose, dated Oct. 24, 1980.

² Act of Jan. 6, 1897, ch. 4, 29 Stat. 481.

³ Varmer, Study No. 16, Limitations on Performing Rights, in 2 Studies on Copyright 837 (Copyright Office, Arthur Fisher Mem. Ed., 1963).

⁴ *Id.* at 119.

duced in 1964.⁵ Congress' position remained unchanged over the next 12 years, when it was considering all aspects of copyright revision. Indeed, the Congressional reports stated that "this approach is more reasonable than the outright exemption of the 1909 statute."⁶

In deciding what the specific exemptions were to be, Congress concluded that no general exemption for fraternal, veterans', or, indeed, for any charitable group, was warranted. Instead, Congress decided generally that if no payment of any sort were being made by noncommercial groups, then non-dramatic performances of copyrighted music should also be unpaid. Accordingly, an exemption was granted under the limited circumstances specified in 17 U.S.C § 110(4) (no direct or indirect commercial purpose, no payment to performers, promoters, or organizers, and no admission charged except in certain instances). Congress knew this exemption was more limited than the 1909 law's exemption and said no.⁷

The fact that others were being paid was central to Congress' thinking that these performances should not be exempt, even though the purposes were charitable. Thus, the Reports say:

"An import condition for this exemption is that the performance be given 'without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers.' The basic purpose of this requirement is to prevent the free use of copyrighted material under the guise of charity where fee or percentages are paid to performers, promoters, producers and the like."⁸

B. The Definition of "Public Performance" Was Intended to Include Performances By Fraternal and Veterans' Organizations

Congress also intended performances by fraternal and veterans' groups to be "public" in the copyright sense—a sense that differs from any other. It is highly significant that, in explaining its intent, Congress included lodges as examples of the types of places where "public"—in the copyright sense—performances occurred:

"One of the principal purposes of the definition was to make clear that, contrary to the decision in *Metro-Goldwyn-Mayer Distributing Corp. v. Wyatt*, 21 C.O. Bull. 203 (D. Md. 1932), performances in semi-public places such as clubs, lodges, factories, summer camps, and schools are 'public performances' subject to copyright control."⁹

A representative of the Moose claimed that the law's definition would require the "father of the bride to obtain a music license for his daughter's wedding reception."¹⁰ Mr. Weis was in error. A wedding or similar family affair is not public because it is a gathering of "a normal circle of a family and its social acquaintances," in accordance with the law's definition.¹¹

C. "Public" Does Not Have The Same Meaning For The Copyright Law As It Does For Other Laws, Such As The Civil Rights Act

The fraternal and veterans' groups are unhappy about the Copyright Act's definition of "public" because it differs from the definition in the Civil Rights Act. They see it as "distorted", because they would prefer a meaning which would mean they need not pay.

This criticism is what the courts have referred to—in copyright cases—as the "one-word-one-meaning-only fallacy."¹² In those cases, the courts were discussing the definition of "publication" under the copyright statutes. Their observations hold equally true for the definition of "public". A word's definition in the law must be seen in its specific context. That the word may be used or defined otherwise in another context, for another purpose is both natural and irrelevant as a basis for criticism.

Here we are talking about public performances, in the copyright context, not public accommodations, in the civil rights context.

⁵ H.R. 11947, 88th Congress, 2d session (1964); S. 3008, 88th Congress, 2d session (1964).

⁶ S. Rept. No. 94-473, 94th Congress, 1st session. (1975), 59; H. Rept. No. 94-1476, 94th Congress, 2d session (1976), 62.

⁷ The exemption "would cover some, though not all, of the same ground as the present 'for profit' limitations" Senate Report, 77; House Report, 85.

⁸ Senate Report 77; House Report 85.

⁹ Senate Report 60; House Report 64.

¹⁰ Testimony of Carl Weis, Aug. 20, 1980, 16.

¹¹ 17 U.S.C. § 101.

¹² E.g., *American Visuals Corp. v. Holland*, 239 F. 2d 740, 742 (2d Cir. 1956).

The provisions of the Civil Rights Act of 1964 do not apply to "a private club or other establishment not in fact open to the public . . ." 42 U.S.C. § 2000a(e). However, Congress clearly intended a different standard to apply in determining what a "public performance" was under the Copyright Act. Thus, the Congressional Report specifically enumerate private "clubs" as places where "public performances" take place.¹³ And the law's definition states "public performances" can occur even at places not open to the general public, if "a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered" there. 17 U.S.C. § 101. There is thus no conflict between the Civil Rights Act and the Copyright Act. The fraternal organizations need not fear the loss of their exemption from nondiscriminatory treatment under the former because of their copyright liability under the latter.

III. THE PROPOSED EXEMPTION WOULD IMPROPERLY ERODE COPYRIGHT

Much has been said by the proponents about the relatively small amount involved in license fees as a rationalization for enacting this legislation. The real vice of this bill is that it erodes a valuable property right.

Other narrow special interest groups are watching and will be quick to press for exemptions for their activities if this bill is reported favorably. So-called "private" clubs—country clubs and golf clubs—now ask to be included in this bill.¹⁴ Congress explicitly intended these groups to pay reasonable license fees.¹⁵ Profit-making private instructional facilities—dancing schools—seek to overturn Congress' careful work by an exemption for their narrow special interest.¹⁶ So, too, commercial broadcasters who charge preachers for the use of their broadcasting facilities, persuade Rep. Kelly of Florida to propose an exemption for their broadcasts, as well as for profit-making private schools like dancing schools.¹⁷

None of this special interest legislation is justified. Indeed, S. 2082 has been specifically disapproved by the Section of Patent, Trademark and Copyright Law of the American Bar Association, and by the American Patent Law Association.

CONCLUSION

The issue here may seem minor but it is major. Congress should not do anything to erode the rights of copyright owners, rights it granted only after careful consideration over two decades prior to passage of the 1976 Copyright Act. This Committee should support the legitimate rights of authors and disapprove S. 2082.

PREPARED STATEMENT OF JAMES CLEARY

I am Jim Cleary, and would like to thank you for the opportunity to testify in opposition to S. 2082. I am ASCAP's National Sales Manager for General Licensing. It is my job to supervise ASCAP's licensing, through 18 District Offices, of all non-broadcast public performances of our members' music. I have the responsibility of overseeing licensing of fraternal and veterans' groups.

Before I speak to the issue of this bill, I'd like to tell you of my background, for it will, I think, put my remarks in perspective.

I first started to work for ASCAP in 1939, as a field representative. My job was to go from town to town, visiting establishments using music, inform them about the Copyright Law and license them for performances of ASCAP's members' music.

In 1941—before Pearl Harbor—I took a leave of absence from ASCAP and enlisted in the Army Air Corps. After a stint as a test pilot, I flew combat missions in B-25's with the 12th Bomb Group, 83rd Squadron, over North Africa.

In October, 1942, my plane was shot down on a combat mission. I spent the next two and one-half years in German prisoner-of-war camps. I was awarded the Air Medal, Bronze Star and Presidential Citation.

¹³ Senate Report, 60; House Report, 64

¹⁴ Letter of Herbert L. Emanuelson, Jr., President, National Club Association, Sept. 8, 1980.

¹⁵ The Reports speak of performances at "clubs" as properly under copyright control. Senate Report, 60; House Report, 64.

¹⁶ H.R. 4264, H.R. 5183, 96th Congress, 1st session (1979).

¹⁷ H.R. 6262, 96th Congress, 2d session (1980).

I left the service in 1946, and returned to ASCAP where I made my career, eventually becoming National Sales Manager in 1973. I should also add that I'm a member of the American Legion.

Our President, Hal David, notes in his statement some of the things ASCAP has done in the past to support the Legion's charitable efforts. He has also mentioned ASCAP's willingness to offer a special license to fraternal and veterans' groups which takes account of their unique position in our society.

I would like to comment on some of the statements made by those advocating this bill regarding ASCAP's licensing activities, for those statements are distortions—I am sure unwitting—of the facts.

Most amazing are the dollar figures quoted in regard to license fees. Senator Zorinsky testified that the Moose pay "over \$500,000 a year in fees to copyright owners," (Tr. 5) and the American Legion "pays over \$1.5 million a year in fees to copyright owners" (Tr. 6). (The spokesman for the Moose later said this group's figure was "projected" (Tr. 14)). Daniel Splain, representing the Eagles, said his organization is now paying about \$500,000 annually to copyright licensing organizations (Tr. 27). These claims have no basis in fact that I can see.

The facts are these: 753 Moose lodges are licensed, for a total annual amount of \$140,907.38, not \$500,000. We have licensed 400 American Legion posts for a total annual amount of \$51,506.27, not \$1.5 million. And 335 Eagles aeries are licensed, for a total annual amount of \$54,630.68, not \$550,000. BMI's representative has testified that the amounts these organizations say they are paying in license fees are not going to BMI (Tr. 78). They are certainly not going to ASCAP. There is a factual error somewhere and I know it is not ASCAP's error.

As to the ability of these groups to pay reasonable license fees, I have obtained a copy of the most recent audited financial report of the American Legion National Headquarters, which was filed with the House Judiciary Committee. It shows an excess of income over expenditures in 1978 of \$1,129,221 in 1978 and \$964,824 in 1979. These groups are not in any danger of going bankrupt if asked to pay the modest license fees we suggest.

You have also received in evidence copies of advertisements taken from newspapers which demonstrate that, contrary to the representations of the spokesmen for the fraternal and veterans' organizations, many of their places are open to the general public. I know, from personal experience, that many of these lodges and posts are the social centers of many communities throughout the country. As such, they compete with commercial ventures, many of which hold ASCAP music licenses. I know, too, that many admit the public, unaccompanied by any member, even if the ads say "members and their guests only."

Mr. Chairman, you suggested at the previous hearing that these organizations sit down with us and try to work out a licensing arrangement. You said we might have a "charitable feeling" toward them. We do have that kind of feeling.

As ASCAP's National Sales Manager, I would be delighted to discuss licensing arrangements with all of these groups. Indeed, we have begun to do so, and were able to reach agreement with the Shriners. Our negotiations and dealings with the Shrine were very cordial. I believe both sides are pleased with the outcome. We are now talking to the Legion and I believe an agreement will result.

Let me be clear, Mr. Chairman and Members of the Committee. We cannot and shall not simply give our members' valuable property away. We shall continue to offer licenses that take account of the role these organizations play in America. These hearings should improve the chances that agreement will be reached, for which we thank you.

PREPARED STATEMENT OF WAYLAND HOLYFIELD

My name is Wayland Holyfield. I appreciate the opportunity to appear before you today to oppose S. 2082.

I am a professional songwriter. My music is country music. My songs include:

- "Nobody Likes Sad Songs"
- "If I Had a Cheating Heart"
- "No No No"
- "I've Got a Winner in You"
- "I'm Gonna Love You Tonight"
- "I've Never Seen The Likes of You"
- "Lovely Lonely Lady"
- "New York Wine and Tennessee Shine"

and many others. I hope they are familiar to you. I'm sure they are familiar to all those who hear them played by bands or on jukeboxes in places like fraternal lodges all across America.

I am an ASCAP member, and also serve on the Board of Directors of the Nashville Songwriters Association. The Association represents over 2,000 songwriters of all types of music, nationwide and even worldwide. We are a nonprofit organization, and our goal is the advancement of music.

I support charitable causes such as those espoused by the fraternal and veterans' organizations as much as anyone else. But I am deeply troubled by the thought that these groups ask for a law that would let them use my property without payment. I toiled as long and as hard on my work as anyone else does on his. If these groups pay for everything else, let them pay for my music—don't single me out because I make my living by writing songs. I have reviewed the testimony at the prior hearing, and I was surprised by one of the supposed justifications for this bill: the notion that income from these groups would represent a tiny percentage of total collections for performing rights.

The amount of money may be small, but please don't belittle my work by calling it insignificant. Many sources of royalties are individually small. That does not justify exempting those uses from payment.

Indeed, the person who supplies food or drink to an individual fraternal lodge may find a minuscule portion of his revenues come from that source. Is that any reason to force him to give away his property for nothing? I think not.

I urge you to remember that we songwriters must make a living from our creations. Income from performing rights such as these is the largest single source of our living.

In response to the argument that the uses this bill would exempt are charitable, many of the songwriters I represent would say, "charity begins at home."

If we wish to contribute our music, or discount its price, we may do so ourselves, directly or through ASCAP. Please don't single us out and force us to do so with this discriminatory legislation.

PREPARED STATEMENT OF ERVIN DRAKE

I am Ervin Drake, a songwriter. I also appear as president of American Guild of Authors and Composers ("AGAC") and have been authorized to speak on behalf of the Nashville Songwriters Association, International ("NSAI").

Together, AGAC and NSAI enjoy a membership of approximately 6,500 songwriters who reside in the 50 United States and whose songs are performed in virtually every city, town and state in the United States and throughout the rest of the world.

"The songwriter lives in the economic backwaters of time."

This statement is not based on hearsay or supposition but rather on an economic survey—the first and only one of its kind—which was commissioned by AGAC and NSAI from the distinguished consulting firm of Rinfret Associates Inc. in connection with record rate hearings which are now being concluded before the United States Copyright Royalty Tribunal. You are familiar with this Tribunal since, in reviewing the statements made before this Committee on August 20, 1980 Senator Zorinsky referred to it on several occasions. It was created by the 1976 U.S. Copyright Act (Public Law 94-553) for the purpose of adjusting the amount of royalties to be paid by certain users of the music and lyrics created by our songwriters. If that task were not performed by the Copyright Royalty Tribunal then it would have been incumbent upon Congress to continually meet and hold hearings for the purpose of making royalty adjustments for use of our compositions by cable stations, educational broadcasters, the juke box industry and the record companies who record our original musical compositions. It functions much in the same manner as any independent regulatory agency for the purpose of hearing testimony and making adjustments in royalty rates.

The Rinfret Survey, to which I have just referred, was commissioned by AGAC and NSAI and introduced at the present Copyright Royalty Tribunal hearings which at this very moment is concluding over 40 days of testimony to determine whether the present copyright royalty paid to composers, lyricists and their publishers by record companies is fair and equitable under the criteria set forth in the 1976 Copyright Act. You may be interested to know that from 1909 when the last U.S. Copyright Act was passed, to 1976, the total royalty paid by re-

ording companies for the privilege of recording a musical composition was 2 cents for each record made and distributed. As a result of the 1976 Copyright Revision Law, that royalty after 66 years was increased to 2¼ cents. Considering the inflationary spiral during that time, the increase was insignificant. To give you a realistic picture of what this means to a songwriter and his or her music publisher, if a record sells one million copies—an exceptional sale—then the total royalties paid by the record company would be \$27,500 which would be shared by the music publisher, the composer and lyricist. In over 80 percent of the cases, the individual composer or lyricist would receive no more than \$6,875 from the sale of one million records.

In analyzing the economic well-being of songwriters, Rinfret Associates Inc. prepared a questionnaire which was distributed to all the members of AGAC and NSAI. It was the first and only cross section analysis of the sources of their income, the amount of time spent in writing their songs and the financial rewards therefrom. The results of that survey may be summarized as follows:

1. About 56 percent of all respondents have no guaranteed income from any source for songwriting activities.

2. About 28 percent of all respondents received a total income of \$5,200 or less from all sources, music and non-music related; in the "last year" [of the survey].

3. About 55 percent of all respondents reported that their average total income per year received from only music related sources in the "past five years" was \$5,200 or less. About 7 percent reported that it was \$5,201 to \$8,500. About 6 percent reported that it was \$8,501 to \$11,500. This means that about 68 percent of all respondents reported that their average total income per year in the "past 5 years" was less than \$11,501.

4. About 77 percent of all respondents indicated that they have no financial arrangements (with publishers or others) which protect them from inflation.

5. About 58 percent of all respondents have no dental insurance.

6. About 33 percent of all respondents do not have disability insurance.

7. About 15 percent of all respondents have no hospitalization insurance.

8. About 21 percent of all respondents have no major medical insurance.

9. About 43 percent of all respondents have no insurance against unemployment.

10. About 43 percent of all respondents have no workmen's compensation.

11. The conclusions that may be drawn from the Rinfret Association Survey are as follows: (a) The popular notion that songwriting is a lucrative occupation is shown to be highly erroneous. Songwriting is an occupation which has a high degree of risk, a high degree of failure, a low chance of success and, in general, miserly rewards.

(b) Songwriting as an occupation, is still in the early 1900s economically and financially.

Thus, while most people in the United States think that songwriters are such luminaries as Johnny Clark, Bob Dylan, Rogers and Hammerstein, Lerner and Lowe, Cole Porter and Bock and Harnick, the overwhelming majority of songwriters are underpaid for their work and efforts and live on the edges of the economic society which enjoys the fruits of their labor.

In addition to the royalties which are paid by record companies for the recording and sale of our musical works, each songwriter allows either ASCAP, BMI or SESAC, which are known as performing rights organizations, to license the use of their compositions for performance on television, radio, in night clubs, social halls, etc. Obviously, no individual songwriter is in a position to license use of his or her individual composition each time someone wished to perform it. Economic necessity dictates that there be organizations capable of furnishing a whole body of music to those who wish to perform their songs. The monies collected by these societies, after deducting operating expenses, are distributed entirely to the composer, lyricist and his or her music publishers. Each writer pays income tax on the monies he or she receives.

The proposal which is the subject of S. 2082 which is proffered by some very worthwhile organizations would deny these songwriters badly needed income by exempting the sponsoring organizations from royalty payments when they perform our music and lyrics. I support the worthwhile activities of these organizations. We believe their social and medical endeavors serve to reduce the federal government's obligation to furnish this type of service where it is successfully performed by private nonprofit organizations. Many of our songwriters are members of these organizations. But as has been indicated before, the membership of these fraternal groups is voluntary and is based on the members' belief in their goals.

However, no matter what is the worth of these groups there is no justification for permitting performance of our music and lyrics in support of fund-raising endeavors by exempting these organizations from the payment of royalties. These very same organizations do not question their obligation to pay for those who sing or play our music or indeed the need to pay janitorial services or the cost of heat, light and other services furnished to their fraternal clubhouses. Why should the copyright be singled out for such an exemption. There is no rationale. As the Rinfret Survey clearly points out, the rewards of our members are not great. Most songwriters are required to take other jobs in order to supplement their songwriters income until they are hopefully able, one day, to become self-sustaining.

I have been a songwriter all my life; my livelihood is derived solely from the revenue I receive from songwriting. During the August 20 hearings of this subcommittee, a suggestion was made that if this exemption were granted, it would only mean a diminution of some \$90,000 to \$100,000 in royalties otherwise payable by these fraternal organizations to BMI. This proposed diminution represents real dollars lost by each songwriter member of BMI when you multiply this lost revenue by each year our songs are played but not paid. That, in turn, represents lost revenue to the United States Government in the form of income taxes that will not be remitted.

The 1976 Copyright Law does grant certain exemptions to certain organizations for the use of our music. Testimony has been given concerning these exemptions. I wish to point out, however, that the exemption for religious uses of our music is not as broad as the testimony would seem to indicate. It provides that no performance royalty is payable if the music is used "in the course of services at a place of worship or religious assembly." Thus, if a church or synagogue were holding a social event (which was not a religious service) they, like anyone else would be required to pay a performance royalty to use copyrighted music. It might be of interest to this sub-committee to realize how closely this issue hits me. I wrote a song with which I believe you may be familiar called "I Believe". There are many people who consider this semi-religious in nature. It is one of my most important copyrights. However, if every religious organization was exempt from paying royalties on that song when it was performed independent of a religious service, my royalties would be greatly diminished.

The only manner in which a songwriter can earn money from the use of his material is by its performance on records and performance by those groups who are licensed by ASCAP and BMI.

To eviscerate the sources of our revenue will only increase the number of people who are forced to abandon songwriting. That will represent a serious loss to all who depend on the performance of music as a source of living. One of our deceased songwriters wrote a song called "I Am An American". That song gave birth to "I Am An American Day". You will well remember how much that song meant during the period it was written to so many people. Our members have also written such great songs as "76 Trombones", "I Love A Parade", "The National Guard March", "I'll Be Home For Christmas" and "There She Is, Miss America". No parade or public event ever occurs without some of that music being played. We, therefore, respectfully ask that this committee not take such action as would further encroach upon our creativity and income. We also urge this sub-committee to review the findings of the Rinfret Survey which I am furnishing to you. It stands as a grim reminder that those individuals who have contributed much to this country by their creativity are still numbered among the lowest economic strata of this country.

Senator ZORINSKY. The subcommittee is adjourned.

[Whereupon, at 12:08 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

A P P E N D I X

96TH CONGRESS
1ST SESSION

S. 2082

To amend title 17 of the United States Code to exempt nonprofit veterans' organizations and nonprofit fraternal organizations from the requirement that certain performance royalties be paid to copyright holders.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5 (legislative day, NOVEMBER 29), 1979

Mr. ZORINSKY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 17 of the United States Code to exempt nonprofit veterans' organizations and nonprofit fraternal organizations from the requirement that certain performance royalties be paid to copyright holders.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 110 of title 17 of the United States Code is
4 amended—

5 (1) by striking out the period at the end of para-
6 graph (8) and inserting a semicolon in lieu thereof;

2

1 (2) by striking out the period at the end of para-
2 graph (9) and inserting a semicolon and "and" in lieu
3 thereof; and

4 (3) by adding at the end thereof the following new
5 paragraph:

6 “(10) performance of a musical work in the course
7 of the activities of a nonprofit veterans’ organization or
8 a nonprofit fraternal organization.”.

○

Additional Prepared Statements

Prepared Statement of Gunther Schuller

My name is Gunther Schuller. I am taking time out from my duties as Artistic Director of the Berkshire Music Center (Tanglewood) to write you on a subject of great concern. You also may know of me as a composer (in both the classical and jazz fields), as past President of the New England Conservatory of Music, and for my recreations of Scott Joplin's Ragtime pieces used in the film, The Sting. I played for many years not only in the Metropolitan Opera Orchestra, but also with such jazz greats as Charlie Parker, Dizzy Gillespie, Miles Davis, and the Modern Jazz Quartet. In addition, I have conducted most of the major symphony orchestras of the United States not only in standard programs but in works by our leading contemporary composers. I have also served for the past six years on the Council of the National Endowment for the Arts and am presently President of the National Music Council.

I cite the above not in a display of egotism, but merely to offer a few of my credentials.

In contemplating S2082, I have a strange sense of *déjà vu*, of having been through all this before. During much of my life, I have been a teacher, educating and training young Americans to write music and otherwise engage in an honorable creative profession in which their contributions to our national culture will be awarded not only public recognition and other honors, but rewarded with just and proper remuneration as well. However, the history of protection of intellectual property in the United States, particularly of music, has been a checkered one. For every gain made by composers, writers and copyright owners of music during the past two centuries, there have been other counter-efforts to deprive them of these very gains, often won only after long legislative battles and deliberations.

S2082 clearly represents another of these efforts to peck away at the law of the land and to change it for the benefit of certain special interests. This bill asks more than 100,000 American writers of music of every type to give

their property rights away to veterans and fraternal organizations. It asks them to do so even when admission is charged, musicians are paid, and promoters or producers of such programs receive their expected compensation. Apart from being totally unfair and undemocratic, it is patently illogical to pay everyone involved with an event, except the people whose creativity makes the event possible in the first place. If composers didn't compose their music, musicians would have nothing to play, promoters would have nothing to promote, and these organizations would have no music with which to entertain. Why must the composer--the creator--be the one who is asked to make the financial sacrifice? The janitor of the building will be paid--maybe even overtime. So will the bartender serving refreshments. The person selling tickets will probably be paid; the musicians will be paid, and their leader will probably get double payment. Why should not the composer receive his or her due?

Furthermore, why should veteran and fraternal groups be uniquely entitled to such a special privilege? This kind of favor for the few at the expense of American creativity is wrong, unfair and un-American. It runs against the very principle of property right and creative enterprise on which our nation is founded. I urge you to reject S2082 unequivocally.

Gunther A. Schuller

*House of Bryant*

PUBLICATIONS



STATEMENT BY FELICE BRYANT

TO THE JUDICIARY COMMITTEE

ON BILL # S 2082

Sirs:

My name is Felice Bryant. I am a professional songwriter, as is my husband, Boudleaux Bryant. Each of us is affiliated with BMI.

Through the blessings of providence and the application of a lot of hard work, many of my songs, both those written by myself alone and those written in collaboration with my husband, have achieved considerable success. Among them are: "Bye Bye, Love", "Wake Up Little Susie", "We Could", "Raining In My Heart", "Rocky Top", and many others.

Since nineteen hundred and forty-nine, the writing of songs has been our sole means of livelihood. It has provided the wherewithal by which we have clothed, sheltered, and fed ourselves and have become responsible, self-sufficient, tax-paying citizens; raising and schooling two children (each of which has served in the Armed Forces, one in Viet Nam) who are also responsible citizens of our great country, and who are also earning a living in the music business.

One can easily see that in view of the foregoing, I do not regard the ownership of my songs lightly. Indeed, I am sure that I feel fully as proprietary about them as does the farmer his crops, the contractor his buildings, the manufacturer his goods, or the brewer his beer. Therefore, I feel that it is not only unfair, but downright un-American, that a composer or lyricist should be singled out to be forced to "donate" the products of his labor to any organization whatsoever; no matter what its charitable, social, political, or patriotic attributes might be.

I believe in rendering unto God what is God's, and to Caesar what is Caesar's. It is my emphatic opinion that Caesar should not have any extraordinary participation in the ownership of my songs.

I am grateful to God for the many blessings that have made me a successful woman in a sometimes trying and difficult business. I am also thankful to live in a country that places value on the private ownership of property. If that country should start whittling away at these property rights by



House of Bryant

PUBLICATIONS



confiscating the goods of selective minority groups, that would be a truly sorry commentary on the democratic principle in action.

Sincerely,

Felice Bryant

Felice Bryant
P.O. Box 120608
Nashville, TN 37212

Prepared Statement of Jerry Goldsmith

My name is Jerry Goldsmith and I'm a writer of music for feature films and television, the themes and scores that enhance the action on the screen. Some of my scores for feature films include "Patton", "MacArthur", "Tora! Tora! Tora!", "The Sand Pebbles" and "The Blue Max". My scores and themes have been heard in a number of television series, among them "The Waltons" and "Barnaby Jones". I've received an Academy Award and three Emmy Awards for my work.

I'm offering this statement today in opposition to the legislation that is proposed. I know of many established writers who have made their contributions and done their benefits for all sorts of worthy causes. As you know, people in the entertainment industry - and songwriters must be included - are always giving.

But in giving, they do so voluntarily and freely. They can pick their shots and that's as it should be. It's quite another thing to legislatively volunteer a man's services or talents gratis to a special interest group, as will be the case if the present bill is enacted.

Music is so much a part of our lives that it would be difficult to think of existing without it. Perhaps because it is so much of our daily fiber that we take it for granted. We're all music lovers. We just differ on the type we like. But behind all music is the creator, the individual who sits down and laboriously puts the notes on paper. Like all craftsmen and artisans, his product is worthy of compensation...if his product finds public favor. To say that all the public must pay for music, except this special group, or that unique organization, is to treat the creator of music unfairly.

For many years, educational institutions and public broadcasters, among others, paid for the use of all copyrighted material - except music. The new Copyright Law ended that discriminatory practice while still providing for free music use under certain teaching circumstances.

Now, special legislation aims at eroding that small advance by music creators, special legislation will again have him reluctantly volunteering his creations to groups quite able to pay for music use.

Prepared Statement of Sy Oliver

JULY 28, 1980

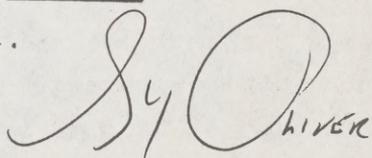
GENTLEMEN:

MY NAME IS SY OLIVER. I HAVE BEEN A BMI-AFFILIATED COMPOSER FOR MANY YEARS.

MY REPUTATION, ESSENTIALLY, IS AS AN ARRANGER AND COMPOSER OF POPULAR MUSIC - SUCH AS "OAS ONE" WHICH I COMPOSED AND ARRANGED FOR THE TOMMY DONOHY ORCHESTRA DURING THE "SWING ERA." MANY OF MY WORKS REMAIN POPULAR TODAY, I'M HAPPY TO SAY, AND ARE RECORDED BY CURRENTLY POPULAR ARTISTS.

BECOMING ESTABLISHED IN THE MUSIC BUSINESS IS NOT EASY. TALENT - YES BUT MUCH LUCK AND YEARS OF HARD WORK ARE A PART OF ANY SUCCESS IN THIS FIELD. AND TO BE DENIED ANY LEGITIMATE SOURCE OF INCOME LEGITIMATELY EARNED SHOULD NOT BE LEGAL.

Sincerely


 Sy Oliver

PREPARED STATEMENT OF HAL DAVID

Mr. Chairman and Members of the Subcommittee, I am Hal David, President of the American Society of Composers, Authors and Publishers (ASCAP), an unincorporated membership association of composers, authors (lyricists) and publishers of music. I appreciate your invitation to discuss the important subject of royalty payments for the performance of music by nonprofit fraternal and veterans organizations.

ASCAP's more than 28,000 members come from all states and from all walks of life. They engage in and support the public service activities and goals of fraternal and veterans organizations to the same degree as all other Americans. ASCAP itself has, over the years, supplied the prizes for musical competitions conducted by the American Legion. And contributions to America, and to these groups, by ASCAP members such as Irving Berlin, are too well-known to warrant retelling here today.

I have been fortunate in writing songs the public has liked -- "Raindrops Keep Falling On My Head", "Do You Know The Way To San Jose?", "What the World Needs Now Is Love", "I'll Never Fall In Love Again" and "Alfie" are some you may recall. Like all other songwriters, I have written many songs that have failed. But like most professional composers and lyric writers, I rely

almost completely on copyright royalties for my livelihood. The performance royalty is the mainstay of my financial security.

Although writers share many of the goals of the nonprofit fraternal and veterans organizations which Senator Zorinsky, sponsor of S.2082, seeks to benefit, we vigorously disagree that a blanket exemption from copyright responsibility is equitable or appropriate. We welcome these hearings because of the very real need for better understanding of the role of the copyright law in the life of our nation. Authorship is, and should be, a matter of vital concern to this Committee and, indeed, to all Senators and Congressman.

The legitimate interests of creators of copyrighted music, and of music users, deserve public discussion. We think these hearings serve that purpose.

It will, I think, be helpful first to discuss ASCAP's role as a clearinghouse for creators and users and then to examine S.2082.

ASCAP's Role as a Clearinghouse

ASCAP was founded in 1914 by Victor Herbert, John Philip Sousa, Irving Berlin, and other leading American writers and publishers of music of that day. Its primary purpose was to make it possible for creators to be paid for the performance of their music, as the Federal

Copyright Law intended.

ASCAP operates as a clearinghouse for nondramatic performing rights in music. It licenses on behalf of all of its members, collects license fees from users, and then distributes those fees to its members after deducting the Society's cost of operations. It is governed and managed by a Board of Directors of 12 writers and 12 publishers.

ASCAP has many different forms of license agreements, each tailored for the particular type of music user. These are blanket licenses granting access not only to the existing repertory but also to all new works created during the term of the license. License agreements vary in rate and rate structure from industry to industry and often are the product of negotiations with industry-wide groups such as the American Hotel and Motel Association and the National Association of Broadcasters.

The most numerous type of user is the one we refer to as the "general establishment" -- the bar, restaurant, tavern, nightclub and similar place. The rate schedule for these users establishes the license fee based upon a number of objective factors, such as the price of a drink, seating capacity, number of nights per week music is used, type of musical rendition (e.g., mechanical music, single instrumentalist, two or more instrumentalists) admission

or similar charge, and so forth. ASCAP's general counsel, Mr. Bernard Korman, can explain the derivation and application of these criteria. The rates are part of the license agreement so that the user can compute his own fee or verify that the fee quoted by an ASCAP representative is proper for his use.

When an unlicensed music user is located, the Society sends a letter explaining the necessity for obtaining a license for the performance of copyrighted music. Often a series of letters and visits are required before a license is obtained. The Society thus performs an educational function: it informs music users that a copyright is a form of property, and that the creator and copyright owner are entitled to be paid for the uses of their property. The job of licensing is made easier the more understanding there is of the underlying notion of copyright as the author's property right. It is, after all, one of the basic rights of man to own what the mind has created.

Nonprofit Performance of Music

Mr. Chairman, the 1909 Copyright Law, like the 1976 Act, recognized the general principal that a copyright is property and one cannot lawfully use another's property without permission. Under the old statute, copyright owners of musical compositions licensed nondramatic public performances only when the performances

were "for profit".

Many groups organized on a nonprofit basis claimed their performances were not "for profit" even when they were charging the public and paying musicians and in competition with commercial establishments. Although these groups paid for all the other property they used -- food, beverages, utilities, rent -- they did not pay the creator for the use of his or her music.

Congress corrected this inequity in the new copyright law which generally gives the copyright owner the right to license any "public performance". The "for profit" requirement was eliminated. Specific exemptions were provided for certain educational and other nonprofit uses -- such as performance in the course of religious services at a place of worship, or noncommercial performances where no admission is charged and no promoter, performer, or organizer is paid.

In other words, Congress decided, after full and careful consideration, that copyright owners should not be forced to contribute -- to give away -- their property to a group when no one else was being forced to do the same with other property.

The Copyright Act of 1976 (which became effective January 1, 1978) culminated a long and arduous effort to revise and update the provisions of the 1909 copyright law. It took more than ten years of Congressional hearings, study, markups and reports. The final product was the result of painstaking drafting and redrafting and

an extremely careful evaluation of a number of issues including the nonprofit performance exemption.

In explanation of the action taken, the Senate and House Judiciary Committee Reports noted that distinctions between commercial and "nonprofit" operations were becoming increasingly difficult to draw. The Committees warned that perpetuation of a broad "not for profit" exemption not only could hurt authors, but might "dry up" their incentive to write.

ASCAP has submitted a memorandum explaining the legal issues in greater detail.

Now, only two years and ten months after the new Act became effective, we are told by the proponents of S.2082 that veterans' posts and fraternal lodges must curtail all live music performances because they confront financial survival on a day-to-day basis. And why must live performance be stopped? Because, we are told, the performance license fees for music are very burdensome. In fact, it is said, many have stopped using music rather than pay these fees.

The license fees which ASCAP has sought to collect are very modest indeed, and BMI's are even lower. The average annual fee for the 831 licenses issued since 1978 to veterans organizations is \$128.91. For the 1565 fraternal organizations licensed it is \$171.23.

We have endeavored to negotiate a national license with the national veterans and fraternal organizations. A national license reduces our administrative costs and we would pass these savings on to the licensee. To date, we have succeeded in reaching only one such accord -- a national agreement covering all activities of the Shriners. However, we believe we are close to an agreement with the American Legion and would be happy to negotiate similar agreements with others.

The Act already confers a valuable exemption for music use -- noncommercial performances of music by means of records, tapes and cassettes. Live musical performances at social functions of veterans or fraternal organizations are exempt so long as the performers, promoters or organizers are not paid and there is no admission charge.

The musical performances by veterans and fraternal organizations which ASCAP seeks to license are precisely the types of performances that blur the distinction between commercial and nonprofit establishments. When a Legion post or Eagle lodge offers the same sort of food, beverage and music as a local commercial establishment and that commercial establishment pays performance royalties for its use of music, sound public policy does not justify any exemption for the nonprofit organization. To confer such an exemption and obliterate the distinctions carefully drawn in 1976

after decades of study would be to confiscate a valuable property right. Owners of copyrights in music would be compelled to subsidize certain activities and certain nonprofit organizations. This legislation would deny to our members the right other citizens possess of determining which charitable unit or nonprofit organization should receive their contribution. It simply would be unfair.

The license fees involved are piddling to the users, but the total revenues involved for creators should be substantial in the aggregate once all users are licensed. It is a matter of simple equity that these uses of music -- which are commercial for many concerned, such as the musicians and the purveyors of food and drink -- should not be made "for free" merely because the user is a charitable or civic organization. Congress so concluded in 1976. That policy decision should not now be overturned and certainly not on the sort of showing made by the proponents.

The blanket exemption proposed will make harder the difficult job of licensing many general commercial establishments which compete for patronage with the local veterans' post or fraternal lodge. Numerous examples of advertisements addressed to the general public by veterans and fraternal organizations have been furnished to the Committee. Others will be furnished. If the veterans' post or the fraternal lodge is granted blanket exemption and can perform live music where performers are paid and admission is charged, the licensing of commercial establishments becomes more difficult,

however clear the latter's liability under the law.

Conclusion

Mr. Chairman, I think the underlying policy of the Copyright Act specifying the scope of the nonprofit exemption is clear and unassailably sound. It is simply that if an organization has sufficient funds to compensate performers and pay for uses of other property, it is only fair that it also pays those who created the music.

I appreciate the opportunity to appear and present this statement and shall be pleased to answer questions.

PREPARED STATEMENT OF PAUL WENDEL

Mr. Chairman and Members of the Subcommittee:

I am Paul Wendel. I appreciate the opportunity to submit my statement in opposition to S.2082.

I believe I am especially qualified to speak to this proposed legislation. I am a professional songwriter, and have been an ASCAP member for 14 years, having joined the Society in 1966.

I am also proud to say I have been an active member of the American Legion for 16 years, since 1964. I have just completed serving a term as Commander of Post No.1112 -- the John Philip Sousa Post. Membership in our Post is limited solely to musicians, and we participate in many of the public works you have heard described by Legion spokesmen. For example, for over 45 years we presented an annual John Philip Sousa Memorial Concert open to the public at no charge. (I might add that all performers volunteered their services for these concerts, and ASCAP has never sought to license them.)

My music is inextricably bound up with the concepts we Legionnaires hold dear. Thus, my songs include such as:

Preamble (a musical setting of the Preamble to the
Constitution of the American Legion)
America, My Homeland
Four Freedoms
Here (200 years later)
What is America, The U.S.A.?
Ballad of Our Flag
From '76 to '76
Lady With a Torch
American Legionnaires
Vets of Nam
I Help America Work

I am proud that "America, My Homeland" is the official song of the American Legion's Department of New York.

I believe John Philip Sousa, the incomparable March King, leader of the United States Marine Band, composer of America's great music, for whom our post is named, would be appalled at the concept of this legislation. For, I believe, Sousa -- who was a charter member of ASCAP -- would find this proposal at odds with the very values we in the Legion hold most sacred.

Those values are that a man's creation is his property, and cannot be used without his permission. They hold that no government has a right to confiscate a man's property without permission and compensation.

But it is just such forced confiscation of my property, and that of my colleagues, which S.2082 advocates. I am honored to have my works used at Legion events. But that choice is mine. It should not be made for me by government, which has no business intruding in my affairs. Other songwriters may not share my beliefs. Whether they do or not, they must be free to control the use of their property as they see fit. Anything else would be un-American.

This legislation is contrary to the principles we fought to preserve, and I oppose its enactment.

LETTERS

SEP 12 1980

Broadcast Music Inc.  320 West 57th Street, New York, N.Y. 10019 212 586-2000

EDWARD M. CRAMER
PRESIDENT

September 8, 1980

Honorable Dennis DeConcini
4104 Dirksen Building
Washington, D.C. 20510

Dear Senator DeConcini:

As you may recall, on August 20th I appeared before your Subcommittee which was considering S 2082.

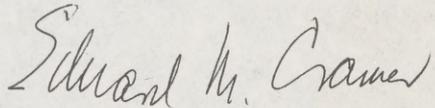
During the course of my testimony, I stated that in the past BMI collected very little money from veterans and fraternal organizations. If these groups were paying the substantial fees they claimed they were, BMI was not the recipient.

You asked me to estimate how much our receipts were from these sources. I did not know, and could only guess, but, however, I said I would supply the figure for the record. At the time of the hearing my guess was \$90,000 last year. Although our books are not kept so that we can readily distinguish between payments made by these organizations and certain other licensees, we have done a manual computation and it appears that last year our income from fraternal and veterans groups was \$87, 815.00.

A formal communication for the record will be sent to the Subcommittee by our General Counsel, Edward W. Chapin, together with typographical and stenographic corrections of the record.

I want to thank you for inviting me to testify before the Subcommittee, and for the objective manner in which the hearings were conducted.

Very truly yours,



EMC:mb

Supreme Lodge of the World
Loyal Order Of Moose
 MOOSEHEART, ILLINOIS 60539

PURITY • AID



PROGRESS

October 24, 1980

HERBERT W. HELLMAN
 DIRECTOR GENERAL

CARL A. WEIS
 SUPREME SECRETARY

PHILLIP R. MORSE
 GENERAL GOVERNOR
 PHONE 312-859-2000

OFFICE OF
 CLARENCE J. RUDDY
 GENERAL COUNSEL
 111 WEST DOWNER PLACE
 AURORA, ILLINOIS 60504

Hon. Dennis DeConcini
 U.S. Senator
 3230 Dirkson Bldg.
 Suite 4104
 Washington, D.C. 20510

OCT 27 1980

Dear Senator DeConcini:

Enclosed is a letter which I have prepared in response to statements made by Mr. David Cramer, President of BMI, at the subcommittee hearing on August 20, 1980, which I would like to be put in the record.

Very sincerely yours,

Clarence J. Ruddy
 Clarence J. Ruddy
 General Counsel

CJR:jar
 Enc.

cc: Carl A. Weis

Supreme Lodge of the World
Loyal Order Of Moose
 MOOSEHEART, ILLINOIS 60539

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October 24, 1980

Mr. Chairman and Members of the
 Subcommittee:

At the Senate subcommittee hearing on August 20, 1980, Mr. Cramer, President of BMI, asked why copyright owners should be compelled to forego royalty for their compositions played at functions sponsored by non-profit fraternal owners and veterans' organizations when such bodies must pay the performers for their services, the plumber for repairing a leaky faucet and the liquor dealer for the beverages.

The answer is clear. Historically, these last named persons have always had a property right to the items they furnish. Copyright owners are in a different category. Their property rights are strictly limited to those established by statute. They always have had a common law right to works they created but this ceased upon publication. An author or composer had title to his manuscript and could proceed against anyone who published it without permission, but this right was lost if he published it himself.

Rights to published works are obtained only by statute.¹ Authority to adopt a copyright law is conferred by Article I, Section 8 of the U. S. Constitution. Without this authority Congress could not pass a copyright law at all and the author would have no right after he published his song or his book. But Congress does have this authority and has exercised it in a series of copyright acts. Properly each of these acts has defined the limits of copyright.

Until the 1976 act was passed the laws provided that no copyright license was required for a performance unless the performance was a proper concession for the copyright owner for a privilege which he had never had before. This exemption must be regarded

1. Bobbs-Merrill Co. v. Straus, 210 U.S. 339, 52 L.Ed. 1086, 1092.

as a proper exercise of the fair use doctrine which has long been recognized by the courts.

We have pointed out that the Supreme Court has held that copyright law has not been enacted for the primary benefit of the copyright owner but primarily for the benefit of the public. It has applied the doctrine of fair use to copyright material. It has stated that rights of access to fair use of such material pertaining to the cultural, esthetic, historical, educational, scientific, technical and religious heritage of a nation come within the scope of the right of free press guaranteed by the Bill of Rights.²

Use of copyrighted music for dances given to a private group for the benefit of charitable projects is a fitting example of fair use and is a small concession for a composer to make for rights conferred by the copyright law which had not existed before.

Objection has been made that the proposed amendment would take away property from copyright owners. That is not so. Rather, it will simply restore a right which fraternal orders and veterans' organizations had possessed under the 1909 Act. This right was the exemption from a copyright license fee unless the performance was a public one. This right was taken away by the 1976 Act.

The question has now been raised: Why did not fraternal orders and veterans' organizations oppose adoption of that act at the time? Speaking frankly, the Loyal Order of Moose had no actual knowledge of the Act until after its passage nor can it be charged with having had constructive notice. There was no reason to believe that a bill to enact a new copyright law would affect a fraternal order.

The 1976 Act contains a distorted definition of the word "publicly", very much at odds with general understanding. Without this definition fraternal orders would not be affected. As we have stated earlier, the Loyal Order of Moose has no objection to the imposition of a license fee for performances which are truly public.

All that fraternal orders and veterans' organizations are asking is that the limitation upon copyright which has always been recognized be now restored and that copyright owners not be permitted to charge royalties for performances of music which are not truly public. The amount in question is almost an insignificant part of the huge total fees which copyright owners collect for public performances of music.

Respectfully submitted,

Clarence J. Ruddy
Clarence J. Ruddy
General Counsel

CJR:jar

2. Red Lion Broadcasting Co. v. FCC, 395 U.S. 376, 386-390, 23 L.Ed. 371, 386-389.

Supreme Lodge of the World
Loyal Order Of Moose
 MOOSEHEART, ILLINOIS 60539

SEP 18 1980

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DIRECTOR GENERALCARL A. WEIS
SUPREME SECRETARYPHILLIP R. MORSE
GENERAL GOVERNOR
PHONE 312-859-2000OFFICE OF
SUPREME SECRETARY

September 9, 1980

The Honorable Dennis DeConcini
 United States Senate
 3230 Dirksen Building Suite 4104
 Washington, D.C. 20510

Dear Senator DeConcini:

Since the hearing on S. 2082 held on August 20 before your Subcommittee on Improvements in Judicial Machinery, we have rechecked our records and are in a position to reaffirm the following statement contained in our testimony, about which some questions were raised:

"On a projected basis the amount paid for royalties and licenses by Moose Lodges alone is more than a half million dollars annually."

Our records show that 328 of our 2,087 Lodges in the United States paid BMI \$35,940.00 during the past year. Incidentally, from the Moose alone, that's 40 percent of the total that BMI acknowledged receiving. We are prepared, if necessary, to furnish an itemized list of those payments.

Thanking you for your consideration, I am

sincerely yours,

SUPREME SECRETARY

CAW:dc

Supreme Lodge of the World 171399
Loyal Order Of Moose
 MOOSEHEART, ILLINOIS 60539

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OFFICE OF
 SUPREME SECRETARY

September 12, 1980

The Honorable Dennis DeConcini
 United States Senate
 3230 Dirksen Building Suite 4104
 Washington, D.C. 20510

Dear Senator DeConcini:

You asked for comments about the newspaper clippings which BMI introduced at your Subcommittee hearing on August 20.

In reviewing those clippings I find only one by a Moose Lodge - Austin, Minnesota Lodge No. 1180. Happy to inform you that the Austin Moose club is definitely closed to the public, and that the ad in question inadvertently omitted the restrictive word "Members". You'll notice that word is included in the enclosed clipping of an ad which the lodge ran on August 13, 1980.

The Austin Moose Lodge has a combined membership strength of more than 2,000 men and women, in a town with a population of only 23,000. Thus a newspaper ad is an efficient method for the lodge to inform its members.

Nevertheless, we do not encourage Moose Lodges to use public advertising, and it is our firm policy that whenever such advertising is used, the restriction "Members only" must be included. We regret the oversight that occurred in Austin.

Very sincerely yours,

SUPREME SECRETARY

CAW:dc
 Enclosure

