

NEWSLETTER

An Entertainment Industry Organization



50th Anniversary

The President's Corner

Michael R. Morris

Last month the CCC kicked off the new year by presenting its "Film and TV Music 2005" to an overflow crowd. Kudos to Dan Butler, our VP (and VP Business & Legal Affairs - Music, Warner Bros. Pictures) for his exemplary moderation. As emphasized at last month's panel, the licensing of music in film and TV is an increasingly significant source of income for writers and publishers, as well as a potent means of breaking new acts. I hope you were able to attend our January meeting and took away some of the "nuts and bolts" advice offered by our panelists. Also, if you haven't read the January newsletter (available at www.theccc.org), I highly recommend your taking a look at both Randall Ramage's entertaining "Film Music Biz Quiz" and Steve Winogradsky's "Composer Agreement Basics" article (both featured in that issue).

Speaking of performance rights and revenues, tonight the CCC proudly presents "BMI in the Digital Age." This panel will be moderated by our past prez, Teri Nelson Carpenter (a Senior VP for the Saban Music Group) and features BMI executives Alison Smith (Senior VP Performing Rights) and Richard Conlon, (VP Marketing & Business Development, Media Licensing). Our speakers will
(continued, page 3)

The BMI Story

Why Does the United States Have More Than One Performing Rights Society?

In the late 1930s, the primary licensing body, the American Society of Composers, Authors and Publishers (ASCAP), founded in 1914, comprised only 1,100 writers and 140 publishers. To gain admission to ASCAP a writer had to have published five hit songs, a requirement that not only precluded the entry of new blood to its membership but also favored a small body of established writers. Likewise, the system favored established publishers, about 15 of which regularly controlled 90 percent of the most-played songs on network radio.

Commercial radio broadcasting, born in 1920, dominated the American musical landscape. By 1939, radio had become the primary form of family entertainment, and 85 percent of American homes included a receiver. Three networks -- NBC (National Broadcasting Company), CBS (Columbia Broadcasting System), and the Mutual Broadcasting System -- dominated the airwaves. In 1932, ASCAP negotiated an agreement with the radio industry that established fees based on a percentage of advertising time sales. An explosive proposed increase in those fees led to a confrontation between the radio industry and ASCAP.

While the networks dominated the airwaves, music publishing firms increasingly were controlled by motion picture companies, which sought access to a ready supply of music to incorporate in films. However, many writers fell outside the compass of Hollywood's interests, particularly those working in indigenous and earthy American genres including the blues-ragtime-jazz and country music traditions. Country artists had access to the public through the Grand Ole Opry, broadcast

over Nashville's WSM since 1925, and a few artists became nationally known recording stars, but membership in ASCAP eluded them. Country stars such as Gene Autry and jazz greats like Jelly Roll Morton were rejected for years by ASCAP before finally gaining membership.

BMI entered this tightly controlled industry in the fall of 1939. Its organization was precipitated by the oncoming expiration of a five-year ASCAP contract, in which radio had agreed to pay five percent of its annual advertising sales revenues. Radio industry leaders considered the creation of an alternative music licensing source, in the event that ASCAP and the industry could not come to terms. A special radio group met in Chicago in the fall of 1939 to consider a charter for a new licensing body to be named Broadcast Music Inc. drawn up by Sydney M. Kaye, a young copyright attorney. That charter called for broadcasting organizations to pledge sums equal to 50 percent of their 1937 ASCAP payments as capital and operating funds. No dividends were to be paid to stockholders, for BMI's main purpose was to provide an opportunity for those writers and publishers unable to gain entry into ASCAP to share in performing rights revenue and provide an alternative source for broadcasters and other music users.

BMI's charter was filed on October 14, 1939, and its offices opened in New York City on February 15, 1940. This was none too soon, as in March of 1940 ASCAP's newly proposed contract called for a 100 percent increase in radio's rates over the previous year. Already between 1931 and 1939, radio had seen licensing payments rise from \$960,000 to \$4.3 million, a jump of 448

percent. Not surprisingly, by the end of 1940 650 broadcasters had signed licenses with BMI. When ASCAP's license contract ran out, only 200 small stations still continued to use its catalog, thereby effectively blacking out all ASCAP repertoire for much of 1941.

As ASCAP and the broadcasters fought out their new contract, BMI began to build its own catalog. A number of major publishers, including E.B. Marks, Ralph Peer, M.M. Cole, and American Music, signed up with the organization. BMI also set up its own publishing company (later sold when the number of publishers became sufficient to serve writers and composers), and thousands of arrangements were sent from the New York headquarters to radio stations that used live music. BMI also began to "grubstake" aspiring publishers with advances and guarantees to start their own companies. When the 11-month battle between the networks and ASCAP ended by late 1941, BMI was well on its way to establishing a base of support for its aims.

From the outset, several innovations set BMI apart. First and foremost was its open-door policy. BMI welcomed all individuals, regardless of their chosen musical genre and, unlike ASCAP, even if they had no established successful material. Second, its revolutionary logging procedure, which incorporated samples of non-network programs in addition to those broadcast from major metropolitan centers, was designed by Paul Lazerfeld of Columbia University's Office of Radio Research. It involved examining 60,000 hours of program logs per annum, including performances of recorded music as well as live musical broadcasts. This policy proved to be of particular significance once network radio dropped live musical broadcasts in favor of recordings. Finally, the advances against future earnings BMI gave to fledgling publishers and writers helped assist the mushrooming of independent record labels and publishing houses that sprouted nationwide in the aftermath of the second world war.

From the start, BMI took an interest in the country community. The practice of providing new publishers with advances helped many firms take off, including Acuff-Rose Publications, headquartered in Nashville, and Hill and Range Songs, based in New York, both of which would become titans in the country field. Founded by Julian and Jean Aberbach in 1943, Hill and Range eventually became more active in pop and r&b, yet country provided the foundation for the Aberbachs' expanding publishing empire, the brothers having

set up subsidiary companies for such hitmakers as Eddy Arnold, Ernest Tubb, and Hank Snow.

Acuff-Rose, begun in 1942, was fully committed to the country field; its founders were Grand Ole Opry superstar Roy Acuff and veteran songwriter Fred Rose. Begun with a \$2,500 BMI advance, Acuff-Rose quickly became one of the most successful country publishers. Among its most-performed, most-recorded and best-loved songs is "Tennessee Waltz," penned by Redd Stewart and Pee Wee King in 1947, a 6 million copy seller for Patti Page and eventually a state song of Tennessee. However, Acuff-Rose's most illustrious artist was Hank Williams, arguably the greatest singer-songwriter the country field has yet produced. Before he died in 1953 at the age of 29, his mournful, poetic brilliance had resulted in such classics as "I'm So Lonesome I Could Cry," "Honky-Tonkin'," and "Your Cheatin' Heart."

The success of these firms and others like Jack Stapp's and Buddy Killen's Tree Music and Howie Richmond's The Richmond Organization was a result of country's assimilation into the musical mainstream. BMI, in turn, benefitted from their prescient support of Nashville, for between 1944 and 1954 fully 77 percent of all songs making the Top 10 on Billboard's various country charts were BMI-licensed.

With country's simultaneous commercial ascendancy, black musicians were coming into their own. The rise of rhythm & blues in the aftermath of World War II became the most important wave of black music to join the pop mainstream, surpassing the earlier effects of ragtime, blues, and jazz. Black bandleader Louis Jordan, whose Tympany-Five recorded such hits as "Is You Is Or Is You Ain't" and "Caldonia" in the 1940s, is regarded by many as the father of r&b. He made the blues jump, and the style he pioneered, combining a driving "back-beat," searing vocals, live-wire electric guitar, and honking saxophone, would lay the path for rock & roll.

Radio programmers recognized black music's increasing public acceptance, which, in turn, benefitted BMI as it stood virtually alone in serving r&b performing rights, licensing more than 90 percent of r&b radio hits on a weekly basis. Those hits were being produced by the proliferating field of independent record labels, which included the Rene brothers' Modern Records, Art Rupe's Specialty Records, Lou Chudd's Imperial Records, and Herman Lubinsky's Savoy label.

On Monday, July 5, 1954, the #1 song on Billboard's charts was Kitty Kallen's "Little Things Mean A Lot," a smooth ballad in the style of the old standards. But a change was in the air. That evening, in a cramped 30- by-20 foot recording studio in downtown Memphis, three young musicians were doggedly trying to come up with a sound that would satisfy the hard-to-please owner of Sun Records, Sam Phillips. A former disc jockey and radio engineer, Phillips had opened his recording studio in 1950 and started out recording local blues musicians, leasing the tracks to independent record companies like Chess. Two years later, he started his own record label.

Long in search of a young white artist who could capture the raw energy of black music yet crossover to a multi-ethnic audience, Phillips listened carefully as the trio fumbled through take after take until the 19-year-old singer began clowning around with "That's All Right," a minor blues hit written and recorded by Arthur "Big Boy" Crudup. Suddenly some connection was made; the music was lively, fun, and fresh. Phillips's attention was secured, and he honed the trio's raw sound, urging them through several more numbers, including Bill Monroe's bluegrass tune "Blue Moon Of Kentucky."

A week later a single with these two songs was playing on local Memphis radio, and within a month it was number one in that market. The singer, Elvis Presley, was headed for stardom. In little over a year, RCA Victor had bought Presley's contract from Phillips for the unprecedented sum of \$40,000. Phillips went on to record such rock & roll pioneers as Carl Perkins, Jerry Lee Lewis, Johnny Cash, Roy Orbison, and Charlie Rich. Elvis went on, of course, to become the catalyst for the rock & roll revolution and the biggest record seller of all time.

Rock & roll was fast occupying the musical mainstream, as the generation that would come to be known as the "baby boomers" were making their preferences known. With the development of the transistor radio, they could more easily listen to the latest hits. Television remained the province of mature adult audiences who responded more readily to the mainstream pop repertoire than the uninhibited beat of rock & roll. In 1956 when Elvis Presley appeared on network television, first on the "Dorsey Brothers Stage Show" and Steve Allen's program and then scoring his greatest success on Ed Sullivan's Sunday night variety show, the demographic audience of television transformed overnight. As

Sullivan received his highest audience share to date due to Presley's appearance, the source of the pop standard began to change.

None of this sat well with the writers and publishers of music in the old pop style, who felt they were losing a major share of the market to a group of "ill-trained juvenile upstarts." Unable to understand or accept the changes taking place about them, they presumed something underhanded must be going on to prevent the "good music" they represented from being played. In November 1953, a group of 33 composers calling themselves "The Songwriters of America" initiated a \$150 million anti-trust action against BMI, NBC, CBS, ABC, RCA Victor Records, Columbia Records, and 27 individuals, claiming a conspiracy of broadcasters and manufacturers was keeping "good music" from being recorded and from being played on the air. The plaintiffs included some of the leading names in popular songwriting, such as Alan Jay Lerner, Ira Gershwin, Oscar Hammerstein, and Arthur Schwartz, who was the leading plaintiff. While this was a private suit, significantly all of the plaintiffs were ASCAP members. They and other ASCAP members pledged five percent of their ASCAP royalties toward legal expenses. However, their sweeping charges could not be sustained, and 15 years and millions of dollars in legal and research fees later, the suit was dismissed with prejudice -- meaning that it could not be brought again.

At the same time, other actions by forces intimidated and angered by the social ramifications of rock & roll's effect upon teenagers agitated for control of its liberating energies. In 1956 they found a sympathetic ear in Congressman Emanuel Celler, chairman of the House of Representatives Judiciary Committee. In hearings Celler conducted, the Songwriters of America made wild accusations against BMI, condemning rock & roll and all the music BMI represented. Congressman Celler made no secret of where his sympathies lay, connecting BMI with the overthrow of "good music" and the rise of juvenile delinquency. The kind of negative and exaggerated testimony the Songwriters introduced into the hearing is typified by veteran ASCAP songwriter Billy Rose's statement: "Not only are most of the BMI songs junk, but in many cases they are obscene junk pretty much on the level with dirty comic magazines."

BMI calmly and eloquently responded to such hyperbole by explaining the very processes through which music really was chosen for airplay and how neither BMI nor any other organization could control that process. Competition, not conspiracy determined what music was

popular, and, if a conspiracy existed, chairman of the board Sydney Kaye argued, it would be "as patent as sunlight." Tennessee Governor Frank Clement, speaking in support of BMI, underscored the financial support BMI's activities in the Nashville music community had given to his state as well how the lofty lyrical standards the Songwriters of America defended were not clearly illustrated by Billy Rose's co-written "Does Your Chewing Gum Lose Its Flavor On The Bedpost Overnight."

The anti-BMI bill died in committee, yet the war against BMI and rock & roll did not, as later congressional investigations tried unsuccessfully to implicate BMI in unlawful practices including the payment of "payola"-- the offering of kickbacks to disc jockeys for the playing of certain records.

Governor Clement's defense of BMI's practices illustrates how closely its fortunes and those of country music were intertwined. Nashville was rapidly becoming one of the nation's major music centers. Business was so brisk that when WSM announcer David Cobb casually referred to Nashville as "Music City U.S.A." during a 1950 broadcast, the term stuck. Furthermore, while it has become common to think of country music as antithetical to rock & roll, it is not only one of its main roots but mutually supportive of its development in many ways. Elvis's signing by RCA Victor was facilitated by Julian and Jean Aberbach, owners of the prestigious Hill & Range publishing firm, in exchange for the publishing rights. With his signing, RCA acknowledged the need for a branch office in the Southeast and chose Nashville as the natural location. It was there Elvis's first RCA recording sessions occurred.

A sign of the solidarity of the Nashville community was the founding in 1958 of the Country Music Association. Radio executives, writers, performers and music publishers led the organization and set about regaining country's place in the public consciousness. From the start, the CMA made sales presentations for broadcasters and advertising executives in major radio markets like New York, Chicago, and Detroit. It aimed to convince advertisers that country music could sell products and brought in everything from market surveys to top country entertainers to prove it. Furthermore, in 1961, the CMA established the Country Music Hall of Fame to instill pride in country music's history.

BMI was fully committed to the changes in Nashville and its desire to take a rightful place in the music industry. Its support for the CMA was immediate: BMI vice president Bob Burton joined its first board of trustees as director at large in 1958. That same year,

President's Corner (continued)

discuss the current state of performing rights, both domestically and internationally, including trends in licensing and performance income and current royalty administration in the digital age. This will be an enlightening discussion, and the CCC thanks BMI for its support in making this evening possible.

Finally, as the CCC celebrates its 50th anniversary, I invite you to join the celebration by becoming a member (and if you're already part of the CCC, please "pass the word," so we continue to thrive as a non-profit music industry organization dedicated to promoting informative discussions of copyright-related issues in the music business).

BMI underscored its involvement with the community by establishing a branch office in Nashville. At first, this was a modest enterprise consisting of just one person, Frances Williams, now BMI president Frances Preston, who ran the office out of her home.

Preston remembers: "During that first year, I used to meet with writers in coffee shops, because I didn't have an office and a lot of the writers were working downtown at the WSM studios. So I signed many of the first people at the Clarkston Coffee Shop next door to WSM, because I would meet them after they came off the radio shows.

"When we opened our first real office, it was located in the Life and Casualty Tower, Nashville's first skyscraper. We signed everybody. I mean, they came in from far and near to join BMI. When the first statements started coming in, some writers came in almost crying, saying, 'You know, this is the first time I've ever received any money like this, the very first time.'

"In those early days, country songwriters didn't know music as an industry. It was strictly an art form. They wrote their songs and kept them in shoeboxes. They wrote about their everyday lives. They didn't think about writing a song as a way to make money. If you had told Hank Williams, when he was just starting out, that somebody wanted to record his song, he would have paid them to do it."

Abridged from a booklet published on BMI's website. Based on an original text by Paul Kingsbury and others at the Country Music Foundation, with additional text by David Sanjek, under the editorial direction of Howard Levitt. Reprinted by permission.

You may find the entire text at: <http://bmi.com/library/brochures/historybook/index.asp>