

# The U. S. Master Producers & British Music Scene Book

Walter E. Hurst & William Storm Hale

This is Volume 4 of the book in the Entertainment Industry Series



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THE U.S. MASTER PRODUCER'S  
AND  
BRITISH MUSIC SCENE BOOK

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*"Every man who knows how to read has it in his power to magnify himself, to multiply the ways in which he exists, to make his life full, significant, interesting."*

- Aldous Huxley

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# THE MASTER PRODUCERS AND BRITISH MUSIC SCENE BOOK

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## PROMOTING MONEY

### PARTIAL HISTORY OF THE RECORD INDUSTRY

#### CHAPTER 14

The following is an extract from the case of UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION, Docket No. 8512, in the matter of COLUMBIA BROADCASTING SYSTEM, INC., ET AL., INITIAL DECISION, Donald R. Moore, Hearing Examiner, September 30, 1964:

#### FINDINGS OF FACT

##### I. THE PHONOGRAPH RECORD INDUSTRY

The phonograph record industry is a relatively new industry which began around the turn of the century, following Thomas Edison's invention of the phonograph. When Columbia entered the industry in 1938, total sales to consumers had been in a state of decline for almost two decades. From over \$100,000,000 in 1921, sales had dropped to \$26,000,000 in 1938.

By way of contrast, sales in 1961 had climbed to \$587,000,000.

In the late Thirties, records were being sold in a relatively small number of retail shops with little active promotion or advertising. Record companies were few in number; even fewer had national distribution.

The industry consisted basically of two companies, Radio Corporation of America (hereinafter referred to as "RCA") and Decca Records, which together accounted for approximately 75% of total sales. RCA was substantially larger than Decca; it had the most extensive classical catalog, contracts with the leading artists and symphony orchestras, and over 90% of classical record sales.

Columbia's entry had its impact. It immediately set out to develop its catalog. In the area of classical music, it began recording works by contemporary composers, entered into agreements with classical artists and orchestras, and in 1940 cut its prices in half. In the field of popular music, Columbia began to discover and develop new talent.

Other companies entered the industry in the next decade and retail sales grew, but by the end of the 1940's there were still relatively few record companies, and only six or seven of any stature.

#### Technological Developments

Until 1948, the industry had produced primarily "78s" -- records which revolved on a phonograph turntable at a speed of 78 revolutions per minute (rpm). The 78 rpm record was generally ten to



twelve inches in diameter and contained three to four minutes of playing time on each side. In the field of popular music, 78s usually contained one song per side; on the other hand, symphonies and other long classical works, generally packaged in sets or albums, often required five or more separate records. Made of shellac, the 78s were breakable, bulky and heavy.

Shortly after its entry into the industry in 1938, Columbia began experimenting with the development of a long-playing record (hereinafter referred to as the "LP") which operated on a phonograph turntable at a speed of 33 1/3 rpm. After years of laboratory research and development, Columbia introduced the LP commercially in 1948.

By turning at a slower speed than the 78 rpm record, the LP provided more playing time. Usually twelve inches in diameter, the LP afforded 25 to 30 minutes of recorded music on each side -- or the equivalent of six or more 78s. Made of vinyl, the LP was non-breakable, lighter, less bulky, easier to store and provided better sound than the 78 rpm shellac record.

The LP, moreover, practically cut the price of recorded music in half. For example, Handel's "Messiah," which formerly required up to eighteen 78 rpm records costing about \$18, became available to consumers on two LPs at half the price; "South Pacific," which sold for about \$8 to \$9 on seven 78s, sold for about half that price on one LP; and a full-length performance of "Aida," which formerly required about thirty 78s, became available on two or three LPs.

Columbia immediately offered the LP to all members of the record industry. While many companies began producing this new type of record at once, the innovation was "greeted with shouts of despair in some quarters" -- including, apparently, RCA headquarters.

RCA simultaneously had been experimenting with its own long-playing record (hereinafter referred to as the "single"), which turned at 45 rpm and thus also accommodated in a smaller amount of space on one record more music than the 78 rpm record. Like the LP, the single was non-breakable, lighter and less costly than the 78. The single, generally seven inches in diameter, usually contained three to four minutes of music, or one song, per side.

RCA at first refused to market LPs and, instead, proceeded to record all types of music on singles. To bolster this venture, RCA offered for sale an inexpensive phonograph that could play only 45 rpm records.

There followed the competitive "battle of the speeds" between 45 and 33 1/3 records. Within a few years, however, Columbia began producing 45s and RCA started to make 33 1/3s.



Today, most established record companies market records of both speeds; virtually all phonographs are equipped to play both speeds, as well as 78s and sometimes other speeds. Almost every form of recorded music, particularly popular music, constituting the bulk of industry sales, appears on both speeds, as well as on 78s.

LPs and singles now account for well over 90% of the industry's output. In 1961, the industry sold, in units, 182,000,000 singles and 173,000,000 LPs.

In addition to 78 rpm records, the industry also produces extended-play records (EPs), which are 45 rpm records seven inches in diameter with about eight minutes, or two songs, per side; seven inch single records revolving at 33 1/3 rpm; and records which revolve at only 16 rpm. Moreover, in recent years, considerable repertoire has been issued on pre-recorded tapes, in competition with phonograph records.

In 1952, Columbia anticipated the development of stereophonic records by its wide distribution of a small phonograph which introduced the concept of sound coming from two places. Stereo was commercially introduced six years later by a small company which had been recently organized. Stereo records provide sound coming from different directions rather than a limited central source as in the case of monaural recordings. Like the innovation of LPs and singles, stereo has further broadened the market for record buyers.

#### Industry Growth

Although opinions may vary as to the exact causes, it is undisputed that technological advances in the recording art, along with marketing innovations, have significantly broadened consumer interest in records as a medium of home entertainment, with the result that industry sales have grown by leaps and bounds.

Without making any finding as to cause and effect, the fact is that after the formation of the Columbia Record Club in 1955, total sales have expanded as follows:

1955 .....	\$227,000,000
.....	.....
1961 .....	\$587,000,000

In the past decade, the rate of growth of record sales has out-paced the rate of growth of the economy, measured in terms of both gross national product and disposable personal income. Record sales have also exceeded the rate of growth of the nation's population. Per capita record purchases almost tripled between 1954 and 1961.

This dynamic growth has been felt in every segment of the industry. There has been a substantial increase in the number of retail outlets, distributors and sub-distributors, record companies,

record releases, artists, songwriters, and publishers -- and in the number of Americans purchasing records.

#### Retail Outlets

The total number of retail outlets of all types selling records to consumers has mushroomed. Since 1955 there has been a ten-fold increase in the number of such outlets -- from approximately 15,000 to 150,000. This growth has been accompanied by dramatic changes in the methods of marketing phonograph records.

In the early days of the industry, a record dealer generally carried the label of one company under an exclusive franchise in his territory. As time went by, however, dealers added other labels in order to meet the growing and varied tastes of consumers.

Generally operating small music shops in downtown business districts, dealers sold phonograph records together with musical instruments and sheet music. Packaged in plain green sleeves and stocked behind the counter, records were not "merchandised to the eye of the consumer" and there was little active promotion or advertising. Knowledgeable sales personnel, well versed in music, generally waited on customers. Since there were relatively few new releases from the handful of record companies then in existence, record shops generally carried a high percentage of the catalog of the various companies. Records were almost always sold at manufacturer's suggested list prices, sometimes under fair trade laws.

The 1950's brought important changes. In certain metropolitan centers, some merchants began selling records at discount prices. They generally placed heavy reliance on newspaper advertising and promotion and large sales volume. Sam Goody became the "pioneer in the mass merchandising of records" at discount both in New York and nationally. Discounting got underway in Philadelphia and Chicago.

General department and variety stores, which previously had either not carried records or actively promoted them, also began heavy merchandising in this field in the early and middle 1950's. Discount department stores, epitomized by Korvette, started active promotion of records and extensive advertising. Such outlets sometimes used records with their "romantic" and "exciting" show-business appeal, as loss leaders in order to stimulate in-store traffic.

The growth of such outlets was phenomenal. For example, sales of phonograph records by Korvette increased from about \$3,000,000 in 1958 to almost \$14,000,000 in 1962. Sam Goody had sales of approximately \$5,000,000 in 1962 -- with one store alone accounting for over \$2,100,000. Both Goody and Korvette constantly run daily and weekly advertisements featuring low prices for records.

Rack jobbers have opened approximately 100,000 new outlets for records since 1955.



Rack jobbing, which began in the drug and grocery fields, appeared in the record industry in the mid-1950's. The rack jobber introduced records to grocery supermarkets, drug stores, variety stores and other heavy-traffic retail outlets that had not previously carried such merchandise. Since such outlets do not specialize in records, the rack jobber normally furnishes such accounts with various merchandising services, including the selection and rotation of inventory and the formulation and execution of advertising and promotion campaigns.

Sales of records through such outlets, virtually non-existent before 1955, have boomed:

1959 .....	\$ 62,000,000
1960 .....	94,000,000
1961 .....	147,000,000
1962 .....	200,000,000

Locations serviced by rack jobbers accounted for more than 25% of all record sales in 1961 and today represent the fastest growing segment of the retail record business.

The rack-serviced locations and discount houses introduced revolutionary retailing techniques to the record industry. They generally dispense with sales personnel and rely primarily upon customer self-service. They place major reliance on impulse buying and merchandise to the eye of the consumer by the in-store display of records.

Some stores like Korvette and Goody carry a broad selection of records, but many mass-retailers and most rack outlets generally do not stock a wide inventory of titles. In order to achieve rapid turnover, they concentrate on fast-moving popular, budget-line and children's records and tend to forego much classical and esoteric material and some forms of jazz and folk music.

Conventional but competitive record dealers have kept pace with this revolution in merchandising. With the deterioration of many downtown business districts, many dealers have moved to outlying shopping centers where they find heavier consumer traffic.

Records have come out from behind the counter and are promoted by point-of-sale display and in store windows, "browsing" tables and on shelves. Dealers carry substantially more individual titles today than ever before.

Competitive-minded dealers utilize newspaper and radio advertising, direct-mail solicitations, other forms of promotion and advertising, window displays, other special displays, knowledgeable sales personnel, listening booths, special-ordering of out-of-stock merchandise and delivery services. Impulse buying has also become important in such stores, sometimes accounting for almost one-half of sales.



Like outlets serviced by rack jobbers, record stores have also enjoyed an enormous sales growth in the past decade. A continuing survey by the trade paper *Billboard* of phonograph record sales in stores, exclusive of those serviced by rack jobbers and of chain stores which do not buy from local distributors (hereinafter referred to as "the *Billboard* store survey"), shows that sales in such stores more than doubled between 1958 and 1962.

Accompanying this growth of over-the-counter sales was the advent of merchandising of phonograph records through the mail. There were mail order discounters on a national basis at least by 1950.

Today, mail order sales are made not only by record dealers, but also by department stores, mail order catalog companies and specialty mail order houses. This method of selling records was perhaps given further impetus by the development in the mid-1950's of record clubs, which operated under subscription plans similar to those initiated about 25 years earlier by book clubs.

The past decade has also witnessed the development on a wide scale of the mail order sale of record-packages by various large companies -- for example, Reader's Digest-RCA.

While clubs and specialized mail order vendors have grown in recent years, dealers and outlets serviced by rack jobbers have grown even more. Between 1957 and 1961, LP sales increased by a greater amount in locations serviced by rack jobbers than in any other distributional channel; stores showed the next greatest increase; and clubs were in the last place. Thus, in that period, LP unit sales increased by 45,000,000 in outlets serviced by rack jobbers, by 43,000,000 in record stores and other non-rack outlets, and by 33,000,000 through clubs.

#### Distributors and Subdistributors

With the growth of retail outlets, there has been an accompanying expansion of wholesale outlets. The number of distributors has increased; and many established distributors have opened additional branches. There has also been a rapid rise in the number of subdistributors, such as one-stops and rack jobbers.

The one-stop provides a central location where juke box operators can purchase all their requirements at one time instead of going to a number of different distributors. The rack jobber serves supermarkets and other busy retail outlets which carry records as a sideline. Today, rack jobbers and one-stops also sometimes sell records to dealers in competition with distributors.

#### Record Manufacturers

The marketing and technological innovations described above have opened the gates of the industry to hundreds of new manufacturers.



In 1938, there were only a relatively few record-producing companies. Today, there are hundred of such companies in the United States, and many more throughout the world whose records are distributed in the United States. Apparently, there is no reasonably exact figure; some witnesses referred to "thousands" of manufacturers.

The influx of new firms has led to a significant dispersal of economic concentration in the industry. The smaller companies have substantially expanded their market shares and cut sharply into the position of the established companies. For example, Columbia's market share in 1962 was almost one-fourth lower than its 1945 level.

The ability of new manufacturers to join the industry and prosper indicates the absence of any formidable barriers to entry. It is possible to enter the field with very little capital -- literally without "even a phone booth for an office." That fact was vividly demonstrated by manufacturer witnesses called by both sides.

For example, Government witness Randolph Wood started Dot Records in 1950 with about \$1,000; sold the company to Paramount Pictures seven years later for stock worth approximately \$2,000,000; and, by 1961, Dot's annual sales exceeded \$16,000,000 and its profits were about \$800,000. Liberty Records was launched in 1955 on an investment of only \$5,000 and achieved sales of more than \$7,000,000 seven years later. Kapp Records was started in 1953 with a small investment and enjoyed sales of more than \$5,000,000 by 1962. With an initial investment of under \$1,500 in 1952, Starday achieved volume of approximately \$600,000 by 1962. Caedmon, organized in 1952 with an investment of only \$1,500, developed an outstanding catalog in the spoken word field within a period of a few years.

The following factors have made entry easy and relatively inexpensive:

(a) The long-playing record has made it relatively simple to record an artist's performance. Before 1948, an artist's performance had to be etched on discs by means of a process requiring elaborate and costly equipment that only a few large companies could afford. Today, it is possible to record material directly on tape, often on small portable tape recorders. This advance alone facilitated the entry of many newcomers. Even with this greater convenience, many new entrants do not bother to invest in their own recording equipment and studios since excellent facilities, complete with top engineers, are available for hire.

(b) Once a performance is taped, new entrants need not invest in expensive plant and equipment for the physical manufacture or pressing of records. There are ample custom pressing facilities available at reasonable competitive prices. Most record companies engage such facilities rather than tying up capital in their own pressing plants. The trade paper *Cash Box* lists over 75 record pressers. The proof at the trial established that independent



pressers could compete in price with the major pressing companies and sometimes sold at lower prices.

(c) Newcomers need not make large financial investment in order to obtain national distribution for their output. There is a large and growing number of independent distributors across the nation handling many different labels, and most record companies use such outlets instead of setting up their own distribution networks. Many new entrants engage larger record companies to promote and distribute records through their established promotion departments and marketing machinery.

(d) There is a large and growing pool of recording artists and potential artists available to newcomers. Moreover, established stars switch from label to label with great frequency. It has been estimated that 80% to 90% of today's recording performers have changed labels more than once. As in any segment of the entertainment industry, there is tremendous volatility in the popularity of particular artists. Thus, newcomers become stars overnight; established stars sometimes suddenly drop from public fancy; and former stars, who have faded, frequently make dramatic comebacks. In 1962, for example, several smaller companies enjoyed great commercial success as the result of new talent discoveries -- Cadence with Vaughn Meader, Warner Bros. with Allan Sherman and Peter, Paul & Mary, and Vanguard with Joan Baez and The Rooftop Singers. Principally as the result of Meader's meteoric rise, Cadence's share of total LP sales in retail stores surveyed by *Billboard* increased over eight times between 1961 and 1962; and in that period, Warner's and Vanguard's share of LP sales practically doubled chiefly because of their new talent discoveries.

(e) In addition to this pool of artists, record companies have available a growing number of so-called independent producers, creative persons not affiliated with any record companies who operate on a free lance basis by selecting artists and musical material, taping performances and selling or leasing tapes or masters to record companies.

(f) Finally, there are no patent, trademark or copyright barriers to entry and no shortage of raw materials. Music in the public domain -- i.e., not subject to copyright protection -- is available without any royalty payment. Musical compositions subject to copyright, once licensed to a particular record company automatically becomes available to all others under the compulsory licensing provisions of the Copyright Act. There is an abundance of music available to record, and the number of songwriters and music publishers has increased significantly in the past decade.

The opportunities available to smaller companies were vividly illustrated late in 1962 by Cadence Records. Formed in 1952, that company operated profitably over the years without a pressing plant and with a sales staff of only two.



In 1962, Cadence acquired the rights to a comedy LP entitled "The First Family" from several writers who had conceived the idea for the album and made a demonstration record which they had been unable to sell to other companies. The LP featured Vaughn Meader, then a relatively unknown comedian.

In only two months, between November and Christmas, 1962, "The First Family" sold four million copies, to become the best-selling LP ever released, and Cadence received \$7,200,000.

All pressing was done by outside custom pressers, including Columbia and RCA, which farmed out some of their own pressing work to other plants and operated over weekends in order to meet the tremendous demand for "The First Family."

Of the 24 companies with the largest LP sales during the first forty-four weeks of 1962 in retail stores according to the *Billboard* store survey, more than 80% entered the record industry in the past twenty years; more than one-half entered after the advent of the LP in 1948; and more than one-third entered after the formation of the Columbia Record Club in 1955.

Since the *Billboard* store survey does not cover sales of records in rack-serviced outlets, it does not fully reflect the growth of lower-priced records, known as budget-line and "kiddie" records, which enjoy the bulk of their sales, not in record stores, but in the rapidly expanding rack-serviced locations. In addition to companies which sell records in both price categories, there has been a significant growth of firms specializing in the budget and "kiddie" field.

Virtually every major motion picture producer has entered the record industry in the past decade. Besides issuing phonograph recordings of motion picture music, such companies have become important factors in all fields of recorded music.

With the growth of new companies, the record industry, formerly centered in New York, has spread throughout the nation, with many firms springing up on the West Coast and in the Nashville area.

In addition to domestic growth, there has been a significant influx of foreign recordings into the United States. Records produced from masters made abroad by foreign artists, particularly in the popular field, are becoming increasingly significant. ...

Witness Ackerman testified that Columbia has been "foremost" in assuming a cultural obligation.

## Advertising

Before the development of record clubs in the mid-1950's, there was very little consumer advertising. While industry figures are not available as to all types of advertising, the entire industry spent only about \$300,000 for media advertising in 1955. By 1962, expenditures for advertising had risen to \$11,000,000.

The clubs and other mail order sellers of records have done extensive advertising and this has played an important part in educating consumers and making them aware of phonograph records as a medium of home entertainment.

While large discounters like Korvette, Goody and others run daily and weekly ads featuring low prices, most record dealers do very little advertising. The bulk of advertising for over-the-counter sales appears to be done for dealers by manufacturers.

## II. THE RESPONDENTS AND THEIR BUSINESS

Columbia Broadcasting System, Inc. (variously referred to herein as CBS or Columbia or as respondents), is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business at 485 Madison Avenue, New York 22, New York.

CBS consists of the following unincorporated operating divisions:

- CBS News
- CBS Television Network
- CBS Television Stations
- CBS Radio
- Columbia Records
- CBS Laboratories
- CBS International

In 1955, total sales of CBS were \$316,573,000. By 1961, the total was \$473,844,000.

Although Government counsel disclaimed any intention of attacking respondents because of their "size or success", they emphasize, in their proposed findings, the vastness of the CBS "communications complex"; the growth in its over-all sales; its position in television and radio; as well as its self-described "pre-eminent position in the phonograph records industry" -- a position that in 1961 "was further enhanced by a 33 per cent increase in dollar volume over 1960 -- a new record -- and large-scale expansion of its domestic and foreign operations."

The CBS Annual Report for 1961 reports: "In 1961 the Columbia Records Division achieved the greatest dollar volume in



its history, a 33 per cent increase over 1960, and strengthened further its consumer sales leadership of the phonograph record industry. The Division continued to expand its domestic manufacturing facilities and broadened the scope of its widespread national operations. The Columbia Record Club maintained its pre-eminence in the record-club field."

The evidence also supports findings that competitive record manufacturers, just like Columbia Records, are affiliated with larger companies engaged in other activities, frequently in the communications or entertainment industry. Thus, record firms are operated by other broadcasters like RCA and ABC; by large motion picture producers; by large publishing enterprises like Reader's Digest and Book-of-the-Month Club; and by large foreign record companies. Many of these competitors have substantial sales and assets. For example, RCA's 1961 sales were more than three times those of CBS cited above.

To put in perspective the record sales of Columbia Records in 1961, it may be noted that the record industry also achieved its "greatest dollar volume" in 1961. Note also that the annual report attributes the growth in dollar volume in part to international and other activities not involved in this case.

Concerning the Club, its sales increased 10.9 per cent in 1961, while total industry sales rose 12.7 per cent.

#### Manufacture and Sale of Records

CBS entered the phonograph record business in 1939 through Columbia Recording Corporation, a corporate subsidiary acquired in 1938. The corporate name at the time of acquisition was American Record Corporation.

Columbia Recording Corporation then changed its name in 1947 to Columbia Records Inc. (CRI). CRI continued as a wholly-owned subsidiary of CBS until 1954, when CRI was merged into CBS and became Columbia Records, a Division of CBS. (This Division may be referred to hereinafter as Columbia Records Division, or simply as Columbia.)

The Columbia label has been in use since 1939 and is a so-called major label. The "secondary" Epic label has been used since 1953.

Other Columbia-owned record labels include "Harmony," "Perfect," "Stereo 7," "Alpine," "Legacy" and "Okeh." With the exception of "Harmony," it appears that most of those labels are, for all practical purposes, inactive.

Columbia manufactures phonograph records in four plants located in Bridgeport, Connecticut; Pitman, New Jersey; Terra Haute, Indiana; and Los Angeles, California.



Respondents have been and are now engaged in the manufacture, wholesale distribution and (through the Columbia Record Club) retail sale of phonograph records.

Respondents formed and put into operation the Columbia Record Club in 1955. The Columbia Record Club is now a division of Columbia Records Distribution Corporation (CRDC).

Actually, the complaint cited Columbia Broadcasting System, Inc., and Columbia Record Club, Inc., the latter as a wholly-owned subsidiary of CBS. That was the Club's status in 1960. By stipulation, the parties took cognizance of a later (1962) corporate reorganization, and it was agreed that the complaint may be treated as having been amended to name in addition to CBS, Columbia Records Distribution Corporation (CRDC), a wholly-owned subsidiary of CBS, and the Columbia Record Club as a division of CRDC.

CRDC, a wholly-owned subsidiary of CBS, consists of two elements or divisions: (1) Columbia Distributors, consisting of wholly-owned branch operations, through which records are sold to retailers, and (2) Columbia Record Club.

There was a third entity known as the Columbia Home Music Library, but it was discontinued in mid-1962.

As of April, 1963, CRDC purchased records on behalf of its Club division from the Columbia Records Division of CBS.

The Columbia Distributors Division of CRDC sells Columbia records to retail record dealers throughout the United States.

CRDC has 16 branches, including branches in the following cities: Baltimore, Boston, Chicago, Cincinnati, Detroit, Indianapolis, Los Angeles, Newark, New York, Philadelphia and St. Louis. These wholly-owned branches sell to retail dealers located not only in their own state but also to dealers in other states. Sales by these branches to retailers are substantial, exceeding \$14,000,000 in 1961.

Of the 16 branches, 13 sell Columbia records only, while 3 sell both Columbia and Epic. The distribution of Epic records is mainly through independent distributors.

Columbia records also are sold to retailers through independent distributors or wholesalers. Such distributors handling Columbia records numbered 28 in 1960. There were then 11 wholly-owned branches.

In 1955, Columbia had about six wholly-owned branches and some 33 independent distributors. At the end of 1962, Columbia had 13 wholly-owned branches and 19 or 20 independent distributors. The number of wholly-owned branches was 16 by mid-1963.

The corporate set-up before 1962 is not abundantly clear, but there does not seem to be any real issue between the parties on



that score. It appears that for some years prior to 1962, non-Club distribution was accomplished as follows: The Columbia Records Division of CBS sold the records it manufactured to Columbia Records Sales Corporation, which in turn re-sold the records to independent distributors and to Columbia Records Distributors, Inc. (CRDI), a wholly-owned subsidiary of CBS, which operated branches that serviced retailers. Club distribution prior to 1962 was the function of the Columbia Record Club, Inc., a wholly-owned CBS subsidiary which operated the Club and which obtained Columbia-made records from CBS' Columbia Records Division.

In the course and conduct of their record business, respondents have been and are engaged in "commerce" as "commerce" is defined in the Federal Trade Commission Act.

Although rejecting those specific figures, the examiner can find that there has been a marked increase in Columbia's LP sales, and in their proportionate importance in the total sales of CBS.

Instead of those figures, respondents urge us to look to industry trends and Columbia's relative position in the industry. In terms of rapidly growing consumer purchases of LPs, Columbia's shares of sales has remained fairly stable in the period covered. (RX 419). RX 419 is a tabulation, based on consumer research, showing Columbia's percentage of consumer dollar purchases of LP records, 1951-61. It shows a share of 33% in 1951, compared to 23.5% through May 20, 1961. During the ten-year period, the figure had gone no higher than 33%, but had gone as low as 22% in 1954 and 1957. For 1960, the figure was 25.4%. Thus, from 1956 (the first full year of Club operation) until mid-1961, Columbia's share of consumer dollar purchases of LPs actually showed some decline.

Columbia's Club and non-Club record business is fully integrated under common management, control and direction. There is no question that the record business is a subsidiary operation of Columbia Broadcasting System, Inc.

It may be, as respondents say in their Exceptions (page 11), that all record activities "are conducted separately and autonomously from the broadcasting and other activities of CBS" and that "Club and non-Club functions are operated independently." The fact remains that Columbia Records is a division of CBS, and the details of its operation within the corporate family do not appear to have the significance that counsel for both sides seem to attach to them.

It is obvious that the extensive facilities of the Columbia Broadcasting System are available to respondents, but there is no substantial evidence to support the inferences in CPF 219-221.

Contrary to those requested inferences, the evidence indicates that CBS' radio and TV facilities are made available to the Club on the same terms and conditions as to any other advertiser.



The Government's contentions to the contrary are based on two 1955 memoranda that make reference to intra-corporate bookkeeping as between the Club and CBS Radio. This is the only evidence cited by the Government to support their claim that CBS' radio and TV facilities are available "without any real expenditures by the Club."

There is no basis for a finding that Columbia has utilized the facilities of CBS' radio or TV in any unlawful manner for the benefit of its Record Club or other aspects of its record business.

Ironically, one of the documents cited by Government counsel suggests that there were disadvantages to the Columbia Records Division as a member of the CBS "corporate family." CX 90a indicates that purchase orders for Club radio advertising on CBS owned and operated stations were not "firm" but "pre-emptible."

Columbia does enjoy the advantage of research and development work conducted by CBS Laboratories but, again, this affords no basis for the sinister interpretation placed by Government counsel on a statement in a CBS annual report.

The examiner feels it unnecessary to resolve the question whether Columbia "has available to it the largest and best physical facilities in the record industry," as suggested by the Government in CPF 224. It does appear that the parties do agree that Columbia's Pitman, New Jersey, plant was in 1961 "the world's largest plant for manufacturing long-playing records," with an annual capacity of about 25 million records. It may be found also that Columbia has "one of the country's most advanced studios" in its Hollywood recording complex.

It is not surprising that CBS management undertook to insure the success of the Record Club operation. Again, however, there is no proof of any unlawful relationship or activities in the cooperation between Columbia Records and other divisions or subsidiaries of the CBS corporate family.

Despite respondents' Exceptions to CPF 213-15, there is really no doubt that Columbia has been actively engaged in a vigorous program of obtaining exclusive contracts with key recording artists, and that this has had the effect of appending additional talent to the already substantial catalog of respondents.

It is also true, of course, that many artists formerly signed with Columbia have switched to other labels, and that some of them (Johnny Mathis) were of considerable commercial significance.

It is common practice in the record industry for artists to jump from label to label, with 80% to 90% of the established artists having made switches. It is also standard in the industry to use exclusive contracts with artists. To the extent that Columbia has added artists -- and lost artists -- this is in keeping with a competitive industry.



Similarly, it is apparent that executive-echelon and lower-level management personnel of CBS have demonstrated an outstanding capacity for the independent development of a catalog and the discovery of new artists.

### III. COLUMBIA RECORD CLUB AND ITS COMPETITORS

The record industry did not create the club form of distribution. The publisher-owned Doubleday Book Clubs and the independently-owned Book-of-the-Month Club (herein called BOMC) had been operating since the early 1930's. The book club history was known to the record industry.

Shortly after the development of the LP in 1948, a number of mail order record clubs were organized in the United States. With the development of the low-cost, light, non-breakable LP, Goddard Lieberman, then executive vice president of Columbia Records, had foreseen the possibility of Columbia Records ultimately selling to the public through a mail order record club. During 1950 and 1951, he and James Conkling, president of Columbia Records, held intermittent conversations with representatives of BOMC. In 1953 Columbia tried its own experimental club in Ohio. The venture was unsuccessful.

By late 1954, it became apparent that the volume of business generated by the existing record clubs was substantial, some estimates putting it in excess of \$6,000,000. Of the total dollars spent by consumers on classical purchases, 30% or more were being made through these clubs. Angel records, manufactured by EMI (which shortly thereafter purchased Capitol) were already being sold by one club, and it was believed that other labels would soon do likewise.

In late 1954, Harry Sherman, BOMC chairman, advised Conkling and Lieberman that BOMC wanted to become associated with Columbia in a record club. When they rejected his proposal, Sherman said that BOMC would organize a club itself and would undertake to recruit important artists, including those of Columbia.

BOMC then organized a record club and signed up artists. On July 12, 1955, it entered into a contract with the Metropolitan Opera Association for the production and distribution of opera recordings under the name Metropolitan Opera Record Club and thereafter solicited members. It made arrangements with existing record clubs, such as The Children's Record Guild, to make their records available through BOMC.

In 1954 and 1955, Columbia officials understood that BOMC also made approaches to various Columbia artists, including the Philadelphia Orchestra, The New York Philharmonic, Benny Goodman, Andre Kostelanetz, other Columbia pop artists with whom Columbia was currently renegotiating, and also to Columbia's West Coast A & R producer. It was reported to Columbia executives that BOMC was offering



Columbia artists substantial guarantees. Conkling warned that "tremendous pressures" were being placed on Columbia artists and that virtually every important classical artist or organization in the country had been approached with the offer of "fantastic" deals.

Conkling and Lieberman feared that if important Columbia recording artists were signed up to club contracts by large companies like BOMC which had no interest in non-club distribution, these artists might become unavailable to Columbia for retail distribution. This would work to the serious detriment of Columbia and retailers.

Columbia retained the Maxwell Sackheim advertising agency, direct mail specialists, to study the feasibility of Lieberman's original record club idea. Lester Wunderman, of that agency, who had been advertising account executive for the Doubleday book clubs and for various record clubs, was assigned to the project.

From the outset it was recognized that some dealers might object to a record club. However, Columbia's executives were convinced that record clubs would benefit record retailers. In that opinion they were fortified by Wunderman's actual experience in the record club field. The records offered by the clubs with which he had worked originally had little or no distribution through retailers. As a result of the clubs' offerings, dealers requested the right to buy and sell those records, and they became popular at retail.

On Memorial Day 1955, Norman A. Adler was placed in charge of the proposed club. By August, 1955, the Club was in operation. A number of significant policy decisions were made at the outset of the Club and have remained in effect ever since:

A. Unlike the book clubs which normally offered their membership a single selection each month, with alternates, the Club was to be a multi-division club which would cover major areas of musical interest. Under this concept, members could join either a popular, classical, jazz, or Broadway division. Each division would offer its own monthly selections and alternates, but a member would be free to buy in his own division or from any other division. The club thus could appeal to many musical tastes in a single national advertisement.

B. The Club adopted a "lead time" policy different from book clubs, which offered books to club members before or simultaneously with their release to book stores. In practice, the Club does not generally offer records until they have been available at retail for at least six months, and in many instances for five to eight years. Since most albums hit their sales peak within the first few months, record dealers generally have the opportunity to promote and sell the product before its offer by the Club.

C. Although Columbia retained the services of a consultant to advise in building its fulfillment organization, Columbia



was to operate its own club and would not share this function with some outside organization.

D. The dealer commission plan was established in order to encourage dealers to enroll members. Under this plan, a dealer who enrolled a member, without performing any further services, received a 20% commission on all purchases subsequently made by that member from the Club. Moreover, a dealer also receives the same 20% commission on all purchases by any new member who chooses to credit his membership to that dealer -- even if the dealer had not signed up or solicited the member. Over \$1,240,000 in commissions has been paid out to dealers since 1955 by the Club pursuant to this plan.

E. The Club established the redemption center plan, whereby a member could, at his option, redeem his bonus certificate in the dealer's store. This was designed to bring potential customers into the dealer's store, and thus to build store traffic and stimulate impulse buying.

The establishment of a major record club required extensive efforts and a sizable investment. The Club, for example, was launched with an advertising campaign that cost in excess of \$500,000.

Nonetheless, the Club was not an immediate success. Fewer members were attracted than had been contemplated. The cost per member of obtaining new members was higher than projected. Both RCA and Capitol issued press releases and trade advertisements stating that they would not form clubs. The Club also made mistakes in certain promotional policies. By the end of 1955 the Club was deeply in the red.

Contemporaneous financial projections for the last quarter of 1955 indicated costs of approximately \$1,800,000, with anticipated losses of up to almost \$900,000. Subsequent projections for 1957 showed only the modest possibility of small profits. This occurred at a time when Columbia's retail sales had spurted. In particular, the items that were sold by the Club or used as part of its introductory advertising experienced increased retail sales.

Columbia was faced with the alternatives of curtailing Club activities and refraining from future promotion expenses in the hope of ultimately recouping its losses, or of moving ahead and assuming more risks in order to make the Club more efficient and effective. The decision was made to assume the risks. It was not until 1957, a year and a half after its organization, that the Club was regarded by management as successful.

Columbia encouraged dealers to enroll Club members but at the same time the Club depended on national advertising to obtain members. During the formative period, and until 1956, record dealers were an



important factor in recruiting new members, but they were of decreasing importance even in that early period.

By February, 1956, the bulk of the Club members already were direct enrollees, as contrasted with dealer-enrolled members, a situation which continued to the date of trial. At present dealer-enrolled members constitute less than 1% of total membership.

Dealers were asked to cooperate, and many of them have enrolled members and acted as Club redemption centers.

Dealer commissions from the Club have declined from a high of \$264,330 in 1958 to \$86,036 in 1962.

There is evidence suggesting that some dealers felt that such commissions failed to compensate them for business lost to the Club.

It is interesting to consider the over-all viewpoint of the dealers who are cited in support of the Government's contention that "Dealers recognize that their early cooperation with the Club ventures turned out to be harmful to them."

#### Club Operations

The Columbia Record Club competes in the retail sale of records with other retail sellers of records. In the course of its business, the Club has engaged in advertising and other promotional activities designed to acquire and retain Club members and thus to sell records. The Club has represented that it offers money savings and other benefits not available to the consumer through dealers.

The Club advertisements recognize that the consumer has limited funds available for records and represent that buying through the Club stretches the record dollar.

The Club has five monaural divisions: Classical; Listening and Dancing; Jazz; Broadway, Movies, Television and Musical Comedies; and Country and Western. Each monaural division has a stereo counterpart. A member enrolls in one of the divisions, but is free to buy records in any of the other divisions.

The Club attracts new members by advertising in magazines and newspapers, through direct mail solicitations, and by encouraging present members to enroll a friend.

A group of records is offered to prospective members as an enrollment offer for a specified price, plus mailing and handling charges, with a contractual commitment on the part of the potential member to buy a specified number of other records at the regular Club price (usually equivalent to manufacturer's suggested list price), plus mailing and handling charges, during the contractual period.



Thereafter, the Club magazine is mailed to members 13 times a year.

Each month's magazine contains a regular selection for each division. In addition, other records are offered for sale in the magazine as alternates. Slightly over 100 records are displayed in each magazine; on rare occasions as many as 200 have been offered.

Under the "negative option" plan used by the Club, an IBM selection card is enclosed with the magazine. If the member does not return the card within 14 or 15 days, he will receive the monthly selection for his division. On the other hand, he may return the card indicating that he wants to purchase a regular selection in another division or an alternate selection, or no record at all.

After a member has completed his contractual commitment, he may leave the Club at any time. If he continues his membership, he pays full Club list price, plus mailing and handling, for each record he buys. He receives a bonus certificate for every two records he purchases. He may use the certificate to obtain a free record, either from the Club or through authorized dealer redemption centers.

The records appearing in a Club magazine are selected some four to six months in advance of the magazine mailing. Thus, on May 1, 1963, Club personnel selected the records for the Club magazine to be mailed to members in mid-September, 1963.

Space advertising in national magazines designed to attract new members must be planned at least six months in advance of publication. Records which appear in those advertisements must be selected long in advance. For example, the records which appeared in Club space advertising between July and December, 1963 were in fact selected in January, 1963. Once color plates are prepared, the Club cannot make changes in the format and in the selection of records because the expense is prohibitive.

The records appearing in the Club's new member solicitations are drawn from a list known as the "free list," which is prepared by the Club for this purpose every six months. Not all the records offered by the Club are put on the "free list;" in fact, only a limited number of records appear on the list.

With rare exceptions, no record appears on the free list until after that record has first been offered for sale through the Club at the regular Club price. Exceptions to this policy have occurred only when the Club introduced a new label and wanted to make a simultaneous offering of material in the Club magazine and in the national advertising.

In addition, the records on the "free list" have ordinarily been available at retail between six months and several years prior to their original Club offer. Records included in the free list will be used in introductory nationwide advertising between six months and a year subsequent to their selection for the free list.



\* \* \* \*

The magnitude of the operation is indicated by the fact that a million pieces of mail are received by the Club each week. The Club alone sends out 250,000 pieces of mail per week.

\* \* \* \*

Club membership has increased from fewer than a half-million in 1956 to a total approaching 2 million in 1962.

\* \* \* \*

#### Other Record Clubs

RCA entered the record club business in 1958 by establishing three separate record clubs -- a classical club, a popular club and an opera club. ....

RCA appointed Book-of-the-Month Club (BOMC) as its exclusive sales agent and delegated to it the task of handling advertising, promotion and fulfillment, and the selection and scheduling of the records to be distributed.

\* \* \* \*

In April, 1961, RCA arranged for Reader's Digest to administer its clubs as an exclusive agent.

\* \* \* \*

Capitol also entered the record club field in 1958.

\* \* \* \*

Other record clubs were thereafter organized and were identified in the record, including the Universal Record Club, Diners' Club, Shakespeare Record Club, the 99¢ Record Club, Businessmen's Record Club, Music of the Month Club, Family Record Club, Christian Faith, Word, The Jazz Club of America, Living Shakespeare, Music Appreciation Records, Louisville Music Treasures, Citadel Record Club, The Jewish Record Club, and clubs affiliated with credit card companies. Dealers also commenced to operate their own record clubs.

However, respondents' own statistics show that such clubs, in the aggregate, account for 10% or less of total club sales of records. Except for the Diners' Record Club, there was virtually no detailed information developed concerning any of them. The most that can be said is that such clubs were disseminating advertisements in publications and by direct mail.

(A sample Record Club - Record Company contract appears on Pages 147, ff., preceded by the author's commentary on Pages 139, ff.)

# EXCLUSIVE ARTIST'S RECORDING AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 196\_, by and between \_\_\_\_\_, a division of the \_\_\_\_\_, (Address) \_\_\_\_\_ hereinafter referred to as COMPANY, and \_\_\_\_\_ hereinafter referred to as ARTIST.

For and in consideration of the mutual covenants and conditions herein set forth, the parties do hereby agree as follows:

1. COMPANY does hereby engage the exclusive personal services of ARTIST as a performer on phonograph records and ARTIST does hereby accept such engagement and agrees to render such services solely and exclusively for COMPANY during the term hereof upon the terms and conditions set forth herein.

2. The terms of this agreement shall commence with the date hereof and shall continue in force for a period of \_\_\_\_\_ from said date.

3(a). ARTIST agrees to record a minimum of \_\_\_\_\_, satisfactory 45 RPM single record sides, or the equivalent thereof in playing time, for COMPANY during each contract year in which this agreement is in effect. COMPANY may, at its option, from time to time, require ARTIST to record any amount of said record sides in excess of the minimum number herein specified. ARTIST agrees to appear at all recording sessions required by COMPANY at all times and places and in studios designated by COMPANY. The material for and the arrangements of musical compositions to be recorded hereunder shall be designated by COMPANY. At each recording session, ARTIST agrees to render his services hereunder to the best of his ability, and he will make proper preparations for such sessions and will rehearse, record and re-record the selected musical compositions and will comply with such instructions under the general director of COMPANY, or its duly authorized agent, until an acceptable master recording is obtained. Each recording shall be subject to the sole approval of COMPANY as to whether it is satisfactory for the manufacture and sale of phonograph records.

3(b). ARTIST is a show business personality who has other existing contractual obligations and may from time to time enter into contracts for motion pictures, television, plays, personal appearances. In the event a recording date set by COMPANY conflicts with another contractual obligation of ARTIST, ARTIST shall immediately notify COMPANY which shall cancel or postpone the date. See Paragraph 20.

4(a). From the date hereof and so long as this agreement remains in force, ARTIST will not perform for the purpose of making phonograph records for any person other than COMPANY, and ARTIST will not authorize or permit the use of his name, likeness or other identification, or voice or other sound effects, for or in connection with the production, sale, distribution, advertising, publicity, or exploitation of phonograph records by or for any person other than COMPANY. Should ARTIST make any sound recordings for motion pictures, television, electrical transcriptions or any other medium, ARTIST will do so only pursuant to a written contract prohibiting



the use of such recordings, directly or indirectly, for phonograph record purposes. ARTIST further agrees that he will not perform any selection or portion thereof recorded hereunder or pursuant to any prior written agreement with COMPANY for the purpose of making records for any person other than COMPANY at any time prior to the expiration of five (5) years from the expiration or termination of this or any subsequent agreement between the parties. Should ARTIST violate the restrictions hereinabove set forth, COMPANY may, in addition to any other right or remedy which it may have on account of such breach, terminate its obligation to pay ARTIST any royalties earned or payable thereafter. COMPANY may take such action as it deems necessary, either in ARTIST'S name or in its own name, against any person who uses the performances, name, likeness, other identification, voice and/or sound effects of ARTIST in violation of COMPANY'S rights under this agreement, but at COMPANY'S expense, unless such use is made with the assistance of ARTIST or pursuant to authorization from him. ARTIST will, at COMPANY'S request, cooperate fully with COMPANY in any controversy which may arise or litigation which may be brought concerning COMPANY'S rights obtained hereunder.

4(b). Notwithstanding the above, if an "original cast recording or sound track album" is prepared for a show (motion picture, television, play, tour package) in which ARTIST is working, ARTIST may render services as a performer on such album (album includes record and tape) and may give to the company recording such album the usual type of rights of privacy and other rights a recording artist gives a record company. ARTIST will thus not be prevented from obtaining work he might otherwise be prevented from obtaining; COMPANY will receive benefits arising out of a COMPANY artist being with the show.

5. ARTIST acknowledges that his performances hereunder and the rights and privileges granted to COMPANY under the terms hereof are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that a breach by ARTIST of any of the provisions of this agreement will cause COMPANY great and irreparable injury and damage. ARTIST expressly agrees that COMPANY shall be entitled to the remedies of injunction and other equitable relief to prevent a breach of this agreement or any portion thereof, which relief shall be in addition to any other rights or remedies, for damages or otherwise, which COMPANY may have.

6. ARTIST grants to COMPANY.

(a) All rights of every kind, and the complete, unconditional, exclusive, perpetual, unencumbered and world-wide right, title and interest in and to all results and proceeds of ARTIST'S services and performances hereunder, including the exclusive ownership of any and all masters and all records and reproductions made therefrom and the perpetual right to use and control the same and the performances embodied therein. Without limitation of the foregoing, COMPANY and/or its subsidiaries, affiliates and licensees shall have the exclusive, perpetual and unlimited right to make, manufacture, sell, lease, license, distribute, advertise, exploit or otherwise use or dispose



# SCHEDULE

OPTION TERM	Minimum No. of Masters To Be recorded.	Royalty Rate in lieu of Rate set forth in Parag. 8a	
		Domestic Royalties	Foreign Royalties
1st Option Term	<u>6</u> sides	3 1/2% of 90%	1 3/4% of 90%
2nd Option Term	<u>6</u> sides	4 % of 90%	2 % of 90%
3rd Option Term	<u>6</u> sides	4 1/2% of 90%	2 1/4% of 90%
4th Option Term	<u>8</u> sides	5 % of 90%	2 1/2% of 90%

8. Provisions for compensation by COMPANY to ARTIST hereunder are as follows:

(a) with respect to the sales of records hereunder which contain only the performances of ARTIST, COMPANY shall pay ARTIST a royalty of Three (3%) percent of ninety percent (90%) of the suggested retail list price (less all excise, sales and use taxes and other similar taxes- however designated) on all net retail sales of such records sold within the United States, except as hereinafter provided. With respect to such records sold outside of the United States, COMPANY shall pay ARTIST a royalty of ONE AND ONE HALF percent (1 1/2%) of ninety percent (90%) of the suggested retail list price (less any and all applicable taxes) in the country of manufacture, the country of sale, the United States, or England, at COMPANY'S option, on all net retail sales of such records, except as hereinafter provided. The term "net retail sales" is defined herein as the number of records sold by COMPANY for which it has been paid after deducting all returns, credits, cancellations, exchanges, provisions for return from dealers and distributors and similar deductions, and prior to final determination, COMPANY may set up reasonable reserves therefor. Foreign royalties shall be computed in the currency of the country involved, and shall be paid, only after receipt by COMPANY, at the same rate of exchange as COMPANY was paid, and shall be subject to any and all applicable foreign taxes.

(b) Royalties on records hereunder sold in albums, jackets, boxes, or any other device or container, other than the ordinary factory sleeves will not be determined by the suggested retail list price as hereinabove mentioned, but rather by the suggested list price for replacement records exclusive of excise taxes and other applicable taxes.

(c) The royalty due on account of the sales of any record produced hereunder shall be at the rate of royalty in effect hereunder at the time of the recording session for said record.

(d) As to records not consisting entirely of masters recorded hereunder the royalty rates otherwise payable to ARTIST hereunder



of or deal in such masters and records, whether based in whole or in part upon such results and proceeds, in any and all fields of use throughout the world or any part thereof, for any purpose, under any label, trademark, tradename or other identification, and by any means or method, upon such terms as it may desire or to refrain from so doing any of the aforementioned; and, further, the perpetual right to perform publicly such records and the exclusive and perpetual right to permit public performances thereof in any medium and by any means whatsoever.

(b) The perpetual right to use and publish and to permit others to use and publish ARTIST'S name (including any professional name heretofore or hereafter adopted by ARTIST), likeness, voice and sound effects, and biographical material, or any reproduction or simulation thereof in connection with the sale, advertising, distribution and exploitation of phonograph records hereunder; this right shall be non-exclusive. ARTIST will not give permission to any Company for which he works in some other record industry capacity than Artist to in any way imply that ARTIST is a recording artist for that Company.

(c) The right to refer to ARTIST as "COMPANY Exclusive Recording Artist" or other similar appropriate appellation. In all of its endeavors in the entertainment field during the term of this agreement ARTIST will exert effort to be billed, advertised and described as a "COMPANY Exclusive Recording Artist" or such other similar appropriate appellation as COMPANY may from time to time designate.

(d) The perpetual right to include master recordings produced hereunder in albums which contain master recordings embodying performances of other artists.

(e) ARTIST may give permission to other companies to use his likeness and name as long as it in no way implies that he is a recording artist for that company.

(f) The right to assign this agreement and to assign, license or otherwise transfer any or all COMPANY'S rights, powers, privileges and property under this agreement to any person subject, however to the assumption of all obligations hereunder.

(g) A series of \_\_\_\_\_ ( ) separate, consecutive, and irrevocable options to renew and extend this agreement for period of one (1) year each beginning at the expiration of the original term hereof, upon all of the same terms and conditions as are applicable to the original term except as otherwise specified in the schedule below. Such options shall be considered exercised by COMPANY unless COMPANY gives the Artist notice to the contrary, in writing, at least thirty (30) days prior to the expiration of the preceding term hereof, and only if prior to exercise COMPANY has met all its then due obligations.



shall be proportionately prorated on the basis of the number of masters recorded hereunder which are on such records compared to the total number of masters on such records. As to masters embodying performances of ARTIST hereunder together with the performances of another artist or artists, the royalty rates otherwise payable to ARTIST hereunder and the recording costs otherwise chargeable to ARTIST hereunder with respect to such masters, shall be proportionately prorated on the basis of the number of artists whose performances are on such masters.

(e) As to records, which embody performances hereunder, sold through record clubs, direct mail order operations or similar sales plans or devices, the royalty rate shall be one-half (1/2) of the royalty rate otherwise payable hereunder; provided, however, that no royalty shall be payable with respect to records given to members of such clubs or plans as "bonus" or "free" records as a result of joining the club or plan and/or purchasing a required number of records or otherwise.

(f) In the event of the sale by COMPANY of records embodying performances hereunder, at less than the usual sales price, as a result of a promotional program or discount plan, royalties due hereunder shall be reduced in the same proportion (with regard to the computation of suggested retail list price or suggested retail list price for replacement records) as the reduction in the usual sales price as a result of such program or plan.

(g) Royalties shall be based on the amount received by COMPANY on records which embody performances hereunder, when, as part of a promotional program, such records are distributed as premiums or in connection with the sale of any other product, commodity or service and on promotional records which include masters recorded hereunder or such masters together with masters recorded by others, which promotional records (sometimes referred to as "sampler" records) are designed for sale at a substantially lower price than the regular suggested retail list price of such records.

(h) No royalties shall be computed or shall be due or payable hereunder with respect to records given away (including such records generally described as "Free Goods", "Bonus records" or "Freebies" or furnished on a non-profit basis to disk jockeys, radio and television stations, motion picture companies, "one-stops", rack jobbers, distributors, dealers, consumers, employees, publishers or others. Nor shall royalties be computed or be due or payable hereunder with respect to records sold at salvage or close-out prices.

(i) COMPANY shall engage and pay for the services of vocalists, musicians, arrangers, sketchers, conductors, orchestrators, contractors and copyists in connection with the performances to be rendered by ARTIST at recording sessions hereunder, and such payments, together with payroll taxes thereon, payments based on payroll to any labor organization or designee thereof, the cost of cartage and rental of instruments for such recording sessions, studio costs and all other recording costs incurred in producing masters hereunder shall be deemed additional non-returnable advances to ARTIST and

5.



shall be deducted from royalties payable to ARTIST by COMPANY under this or any other agreement of the parties. Recording costs which are chargeable against royalty earnings hereunder include all costs and expenses for and with respect to the production of masters and all procedures connected therewith through and including the completed lacquer master. In the event the ARTIST should delay the commencement or completion of, or be unavailable for any recording session hereunder, COMPANY shall have the right to charge all expenses actually incurred by COMPANY by reason thereof as additional non-returnable advances to ARTIST; this sentence is modified by new paragraph 3(b).

(j) COMPANY will compute the total composite royalties earned by ARTIST pursuant to this agreement of the parties hereto within sixty (60) days after the first day of January and the first day of July of each year for the preceding six (6) month period, and will remit the net amount of such royalties, if any, after deducting any and all unrecouped advances and chargeable costs under this agreement or any other agreement between the parties hereto, to ARTIST or his designee, together with the detailed royalty statement, within such sixty (60) days. All royalty statements and other accounts rendered by COMPANY shall be binding upon ARTIST and not subject to any objection for any reason, unless such objection is made in writing, stating the basis thereof, and delivered to COMPANY within 210 (210) days from the date of such statement or account, and after such notice of objection, unless suit is instituted within ninety (90) days after the date upon which COMPANY notifies ARTIST that it denies the validity of the objection.

(k) ARTIST shall have the right, upon the giving of at least ten (10) days written notice to COMPANY, to inspect the books and records of COMPANY, insofar as the same concerns ARTIST, at the expense of ARTIST, at reasonable times during normal business hours, for the purpose of verifying the accuracy of any transaction or entry relating to the accounting of all sums to which ARTIST may have the right to object pursuant to paragraph 8j hereof.

(L) If COMPANY commercially exploits masters recorded hereunder and receives money, and no other provision of this contract covers what royalties or percentage ARTIST shall be paid, then COMPANY shall pay ARTIST ten percent (10%) of the net cash received by COMPANY.

9. Neither COMPANY nor ARTIST shall be deemed in default if performance of obligations hereunder is delayed or becomes impossible or impracticable by reason of any act of God, war, fire, earthquake, strike, sickness, accident, civil commotion, epidemic, act of government, its agencies or officers, or any other legitimate cause beyond the control of the parties hereto. Upon the happening of any such event, or the failure of ARTIST to perform any or all of the conditions or covenants herein contained on his part to be performed, which defaults are caused by means beyond the control of COMPANY and not induced or brought about by the unreasonable acts of COMPANY, COMPANY, in addition to any other rights or remedies it



may have hereunder and otherwise, may elect, by notice to ARTIST, to extend the term of this agreement for a period equivalent to all or any part of the period that any such conditions shall prevail or that ARTIST shall be in default hereunder. In the event of any such extension, specific dates, periods and time requirements referred to herein shall be postponed or extended accordingly. If COMPANY does not cut 6 sides in one year, ARTIST is free of future obligations to record.

10. If ARTIST'S voice should be materially or permanently impaired, or if the performances of ARTIST should cease to be on the high artistic quality which induced COMPANY to engage him, or if ARTIST should cease to pursue his career as an entertainer, or if ARTIST should do any act offensive to decency, morality or social propriety tending to result in scandal, hatred, ridicule or contempt, or should ARTIST violate or be charged with the violation of any law which subjects ARTIST or COMPANY to any hatred, ridicule, contempt or scandal, or if ARTIST should fail, refuse or neglect to comply with any of his obligations hereunder, COMPANY, in addition to any other rights or remedies which it may have hereunder or otherwise, and as an alternative to the extension of the term of this agreement in those specific instances where it is given such right, may elect to terminate the engagement of ARTIST hereunder by notice in writing to him, and thereby be relieved of any liability for the executory provisions of this agreement, except for rendering statements, paying royalties, allowing auditing.

12. ARTIST represents that he is a member of the American Federation of Television & Radio Artists (AFTRA) in good standing or will become a member in good standing of AFTRA within thirty (30) days after employment hereunder. All applicable provisions of the AFTRA Code of Fair Practice for Phonograph Recordings shall be deemed part of this agreement and are hereby incorporated herein.

13. Any written notice or matter required or desired to be given to COMPANY or ARTIST pursuant to this agreement shall be given by addressing the same to the addresses of the respective parties hereto contained in the opening paragraph hereof, or to such other address as either party may hereafter designate in writing to the other party, and on the date when same shall be deposited, so addressed, postage prepaid, in the United States mail and/or on the date when same shall be delivered, so addressed, toll prepaid, to a telegraph or cable company and/or on the date when same shall be delivered to the other party personally or to his duly authorized agent (as designated in writing), such notice shall be deemed to have been duly made pursuant hereto.

16. For the purpose of this agreement:

(a) The term "record" or "phonograph record", when not more particularly described, means and includes any disc record or any material and revolving at any speed, or any magnetic tape or wire, or any other device or contrivance of any type, character or description,



now known or unknown designed for the reproduction of sound in the phonograph record field as said field is presently understood or may be hereafter developed.

(b) The term "master" or "master recording" means any original recording which has been accepted by COMPANY for use in the manufacture of phonograph records and which embodies the performance of a recording artist.

(c) The word "performance" means singing, speaking, conducting, or playing an instrument, alone or with others. Artist may do all these things only as non-artist background anonymous vocal group member or musician or conductor.

(d) The word "selection" means a single musical composition (including a medley), story, poem, or similar work.

(e) The word "person" includes any individual, corporation, partnership, association or any other organized group or persons or legal successors or representatives of the foregoing.

(f) The term "contract year" or "year" means a consecutive twelve (12) month period commencing from the commencement of the agreement or the next successive twelve (12) month period commencing at the end of the preceding contract year.

(g) The "term of this agreement" or "period of this agreement" or "term hereof" or "period hereof" or "so long as this agreement remains in force" or words of similar connotation shall include the original period of this agreement and the period of all renewals, extensions, substitutions or replacements of this agreement.

17. All the terms, conditions and restrictions herein contained shall be binding on ARTIST as a performer on phonograph records, whether performing alone or as a part of a group, regardless of the name or names by which he may be identified in such capacity. ARTIST represents and warrants that he is and will be under no disability, restriction or prohibition with respect to his right to execute this agreement and fully perform its terms and conditions, including, without limiting the generality of the foregoing, his right to record any and all compositions hereunder, except to the extent, if any, set forth in Schedule No. 1 attached hereto and made a part hereof. ARTIST does hereby undertake and agree to indemnify, save and hold COMPANY free and harmless from any and all liability, loss, damage, cost or expense, including attorneys' fees, arising out of, connected with or related to any just claim by any person which is inconsistent with any of the warranties or representations made by ARTIST in this agreement. This agreement supersedes all prior negotiations, understandings and agreements between the parties hereto, and both parties acknowledge and agree that neither party shall rely on any representations or promises in connection with this agreement on the subject matter hereof not contained herein. This agreement cannot be cancelled, altered, modified, amended or waived, in part or in

full, in any way except by an instrument in writing signed by both of the parties hereto. This agreement shall be governed by and construed under the laws and judicial decisions of the State of California. Should any paragraph or provision of this agreement be held to be void, invalid or inoperative, such decision shall not affect any other paragraph or provision hereof, and the remainder of this agreement shall be effective as though such void, invalid or inoperative paragraph or provision had not been contained herein. This agreement shall not be effective unless it is signed by an officer of THE COMPANY.

18. ARTIST may terminate his obligations to record under this agreement for 30 days after the end of any recording year in which COMPANY has failed to nationally release at least 2 singles or has failed to record the minimum number of sides or has failed to pay all royalties due within 30 days after the due date.

19. The parties realize that a recording artist should do more than sing at rehearsals and sessions. On the other hand, since the ARTIST is not being paid for the following activities, ARTIST does not want to promise to perform them at the times and places designated by COMPANY. However, once ARTIST has promised to COMPANY that ARTIST will appear at a specified time and place for a specified activity ARTIST shall so appear and shall cooperate in the specified activity. Activities are: (a) Appearing for photography, art work and similar reasons under the directions of COMPANY.

(b) Appearing for interviews (with media, public relations personnel) arranged by COMPANY.

(c) Making personal appearances on radio, television and elsewhere.

(d) Recording taped interviews, spot announcements, trailers, electrical transcriptions.

(e) These activities shall only be for the purpose of publicizing Artist's records made pursuant to this contract.

20. In the event a contractual commitment takes ARTIST out of Los Angeles, ARTIST agrees to record at any conveniently located recording studio designated by COMPANY.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

COMPANY:  
A DIVISION OF:

By \_\_\_\_\_  
Office:

ARTIST:



DATE: \_\_\_\_\_

FROM: Record CLUB

TO: Record COMPANY

Gentlemen:

The following, when signed by you and by us, will constitute the agreement between you and us:

1. Definitions

a. "Master recordings," as used herein, shall mean any original recording whether on magnetic recording tape or wire or on lacquer or wax disc or on any other substance or material, whether known or unknown, owned or controlled by you at any time during the period of this agreement.

b. "Phonograph record(s)" and/or "record(s)," as used herein, shall mean all forms of recordings and reproductions, manufactured by any method now or hereafter known, on any mediums or devices now or hereafter known, on any mediums or devices now or hereafter known of a type primarily intended for use as home entertainment.

c. "Term of this agreement" shall be the initial period commencing with the date hereof and ending on \_\_\_\_\_.

d. "Royalty price," as used in this agreement, shall mean our retail selling price of any phonograph record less (1) any excise or other similar tax, (2) the charge made by us for any record container, such as album sleeve, jacket or other such type of packaging included in with such albums, (3) the charge made by us for any extraordinary librettos or program notes included with such records (it is the intention of the parties that this last preceding reference may be considered a reference to liner notes), and (4) the additional charge made by us to the retail purchaser for postage and handling, provided any such additional charge is seemed to be included in the retail selling price. The charge referred to in items (1), (2), (3), and (4) above shall be no greater than the same amount as we deduct in determining artist royalties for the leading Club's Parent Company recording artist whose records are sold by the Record Club. For purposes of calculating the royalties payable to you during the term of this agreement under the formula set forth in paragraph 11 hereof it is agreed that the royalty price on records with a suggested retail price in the United States of \$3.98, \$4.98 and \$5.98 shall be \$3.46, \$4.42, and \$5.26 respectively. The royalty price on records with a different suggested list price shall be determined by the general criteria outlined above.

## 2. Grant

a. You hereby grant to us solely for the purpose of sale by direct mail in accordance with the merchandising method known and understood in the mail order business as the "subscription" or "club" plan as distinguished from individual over-the-counter sales by retail store outlets receiving their phonograph records from phonograph record distributors, the sole and exclusive right, privilege and license during the term of this agreement to manufacture, distribute, and sell and authorize the manufacture, distribution, and sale through subsidiaries, affiliates and licensees, owned or controlled by us, including without limitation the Record Club, solely in the United States and Canada of phonograph records manufactured from the master recordings. It is understood and agreed that said grant shall apply only to the manufacture, distribution and sale of twelve-inch long-playing 33 1/3 rpm records, or the equivalent thereof. All matrices and phonograph records manufactured from the master recordings together with performances embodied thereon shall be entirely our property, free of any claims whatsoever except as provided in this agreement, and subject to your rights as specified herein, and our rights shall not in any event exceed the rights as granted hereunder by you or include any other right of distribution, including premium product distribution sales rights.

b. We agree that if after \_\_\_\_\_, we have failed to release pursuant to sub-paragraph 2a hereof, phonograph records manufactured from master recordings of any of your artists in connection with whom you have recorded and released, through record retailers, two long-playing phonograph records and you request in writing that we offer for sale hereunder phonograph records manufactured from master recordings of such artist and if within sixth (60) days after your request you do not receive written notice from us that we intend to offer for sale hereunder such phonograph records within six (6) months from the date of your request, you may attempt to have phonograph records manufactured from master recordings of such artist offered for sale by direct mail by a person other than us. Such direct mail sale by a person other than us shall be on a label other than one used by you for the general retail distribution of phonograph records.

c. Notwithstanding the provisions of sub-paragraph 2a and paragraph 7 hereof, if any competitive record club shall offer you terms more favorable to those contained in this agreement, then you shall have the option at any time after August 31, \_\_\_\_\_, to grant such other record club the right, privilege and license to manufacture, distribute, sell and advertise phonograph records manufactured from the master recordings. If you choose to exercise this option, we shall be completely relieved of any obligation to comply with any of the terms of our guarantee as provided in sub-paragraph 1ld hereof, and we shall have the immediate further option of terminating this agreement at any time thereafter.



### 3. Timing of Releases

You recognize and agree that we may sell, or offer for sale, or distribute phonograph records manufactured from master recordings at any time subsequent to three months after the date of first sale by you through record retailers of any phonograph records manufactured from master recordings. It is understood that said three month period shall not apply to seasonal merchandise (i.e. Christmas selections). It is further understood that the date we "sell," "offer for sale," or "distribute" phonograph records for the purposes of this paragraph 3 shall be the date of initial receipt by a member of the Record Club of any phonograph records manufactured from master recordings. For the purposes of this paragraph 3, we shall be entitled to rely on your initial release information in determining your date of first sale of any such phonograph records.

### 4. Label

You hereby grant to us the right to use and we agree that we shall use the applicable label controlled by you on all phonograph records manufactured by us from the master recordings as well as on jackets or other such customary containers for such records. You agree, on written request, to furnish us, for the sole purpose of use hereunder and for ultimate return to you, such sample labels and plates for such labels which you may have in your possession.

### 5. Stereophonic Master Recordings

You warrant and agree that any master recordings which are or have been recorded both monophonically and stereophonically shall be available to us for use in manufacture of both monophonic and stereophonic recordings.

### 6. Termination

Upon conclusion of the term of this agreement, except as otherwise provided in paragraph 10, we shall place the master recordings received from you at your disposal, or at your option destroy such master recordings, in which event we shall furnish to you an affidavit that such destruction has been effected.

### 7. Exclusivity

You agree that during the term of this agreement you will not, in the territory of the United States and Canada, (a) sell by direct mail, (b) offer for sale by direct mail, or (c) authorize or consent to the sale or offering for sale by direct mail by any third party of phonograph records manufactured from master recordings which you now own or control or which you may hereafter own or control. Your sale of records by direct mail to radio stations shall not be deemed a violation of this agreement.

8. A. F. of M. and Copyright Payments

You agree to pay and be solely responsible for (a) the so-called Per-Record Royalty payments which may be required to be paid to the Music Performance Trust Fund in connection with our manufacture and sale of phonograph records from master recordings, (b) all fees or royalties which may be required to be paid to the copyright owners in connection with the manufacture and sale of phonograph records from the master recordings hereunder, (c) any excise taxes (as fixed by law) for all records manufactured hereunder, and (d) the AFTRA Pension and Welfare Fund to the extent that you may be additionally liable therefor as a result of sales pursuant to this agreement. You shall advise us of and make available to us any copyright agreements you may have with respect to any such master recordings.

9. Name and Likeness

You warrant and agree that we shall have the right to use and to allow others to use the names and likenesses of all persons whose performances are embodied on the master recordings and biographical material concerning them for advertising and purposes of trade, in connection with the phonograph records manufactured and sold by us pursuant to this agreement. The rights referred to in this paragraph shall be limited to advertising and trade purposes concerning the sale of records hereunder and no such use shall be in the nature of an endorsement, commercial tie-up or association.

10. Post-Termination Sales

a. You agree that we may during the period of one (1) year subsequent to the expiration or termination of the term of this agreement distribute and sell and advertise the distribution and sale by direct mail of phonograph records manufactured or in the physical process of manufacture from the master recordings as of the expiration or termination of the term of this agreement. You shall be paid royalties and rendered statements in the same manner and at the same rates as during the term hereof. You may, at your option, repurchase any such records at our net manufacturing cost thereof, its being understood that we shall notify you in writing as to the number and type of phonograph records manufactured from master recordings remaining on hand at the end of said term. It is understood and agreed that phonograph records shall be manufactured by us consistent with the anticipated demand therefor and in accordance with our normal and ordinary business policies.

b. In the event we do not during the term of this agreement sell a number of records equal to the amount guaranteed to you pursuant to paragraph 11 of this agreement as the case may be, we shall have the right during the one-year period subsequent to the expiration of the term of this agreement to continue to manufacture and sell phonograph records which had been offered during the term of this agreement, and any payments made to you in fulfillment of the



guaranteed minimum of sales shall be an advance against any royalties otherwise payable with respect to phonograph records manufactured and sold during such one-year period.

#### 11. Royalties

a. We will pay you a royalty of five (5%) per cent of the royalty price plus an additional royalty of two and one-half (2 1/2%) per cent of the royalty price. Said royalty shall be paid on (90%) ninety per cent of our net sales of phonograph records manufactured from the master recordings. Net sales are defined as gross shipment less returns.

b. No royalty shall be payable to you with respect to phonograph records which are distributed to members of any direct mail organization, including without limiting the foregoing, the Record Club, either as a result of joining any such direct mail operation or as a result of the purchase of the required number of records, which records are sometimes referred to as "bonus" or "free" records.

c. If, however, during the term of this agreement or during the additional one-year period subsequent to the expiration of the term of the agreement the aggregate number of records distributed royalty free pursuant to sub-paragraph 11 b hereof shall exceed fifty (50%) per cent of the records sold pursuant to sub-paragraph 11 a hereof, then with respect to records distributed in excess of such fifty (50%) per cent we will pay you subsequent to the end of such initial period or such additional period, as the case may be, a five (5%) per cent royalty of the royalty price of such excess records.

d. In the event that our accounting immediately following the end of the term of this agreement shall show that the total number of phonograph records with respect to which we have paid you royalties pursuant to sub-paragraph a or sub-paragraph c of this paragraph 11 during the term of this agreement shall be less than 1,000,000 twelve-inch long playing phonograph records or their equivalent within the definition of phonograph records in sub-paragraph 1 b, we shall pay you a five (5%) per cent royalty of the average royalty price of your records sold by us during the term of this agreement with respect to the number of records by which the records for which you have been paid royalties shall have been less than such 1,000,000 records. Any amount so paid shall be an advance against any royalties which may be thereafter payable to you with respect to records sold by us subsequent to the expiration of the term of this agreement pursuant to paragraph 10 hereof.

#### 12. Payment

In respect of the royalties provided for hereunder:

a. We will compute such royalties, within forty-five (45) days after June thirtieth and after December thirty-first of each



year during which records made hereunder are sold, for the preceding six-month period and will pay such royalties to you within such forty-five days.

b. All royalty statements and all other accounts rendered by us to you shall be binding upon you and not subject to any objection by you for any reason unless specific objection in writing, stating the basis thereof, is given to us within one (1) year from the date rendered. You shall be entitled at any time during such one (1) year period to examine, during usual business hours, and make copies of our books and records with respect to your account and the sale of records hereunder.

### 13. Artist Royalties

a. You recognize that it is our policy to pay no more than half of customary artist royalty with respect to records sold by us through our direct mail operation, and agree in general to conform to this policy, except in the cases of artists who are dead or no longer under contract to you. You will use your best efforts to make available to us under the terms of this agreement the performances of major artists who are now under contract to you or who have previously been under contract to you. Without limiting any of the rights granted to us under this agreement, you warrant and represent that you shall include on a list which you will attach to this agreement the names of those artists who are under exclusive contract with you, indicating the year such artist's contract with you shall terminate. You agree to include on such list all special restrictions, if any, in connection with each artist's contract with you, including a statement as to which artist has not agreed to accept half of his or her customary artist royalties on records sold pursuant to this agreement.

b. You agree that the performances of any artists signed by you to recording contracts subsequent to the date of this agreement, and to be performed before the termination hereof shall be available to us pursuant to the terms of this agreement; and you agree to give us notice in writing as each such contract is signed, setting forth any special restrictions contained therein.

c. We recognize that there may be certain unique situations involving master recordings whereby you may be unable, despite your best efforts, to make such master recordings available for direct mail distribution by reason of contractual restrictions. It is understood and agreed that you shall give us notice in writing as to each such contract setting forth any special restrictions contained therein. Your failure to make any such master recording so available to us shall not be deemed a breach by you of your obligations pursuant to this agreement so long as you shall not use this sub-paragraph 13 c to frustrate the purposes of this agreement. It is further understood and agreed, however, that nothing contained in this sub-paragraph 13 c shall in any way prejudice or constitute a waiver of our rights under this agreement.



14. Warranty and Representation

You warrant, represent, covenant and agree that:

a. You are, in the United States and Canada only, under no liability, restriction or prohibition in respect of your rights to execute this agreement and perform its terms.

b. You are or will be the sole and exclusive owner of all rights granted herein with respect to the master recordings, and you now have or shall acquire all rights necessary to the manufacture, sale and distribution by direct mail in the United States and Canada of phonograph records manufactured from such master recordings, subject to the terms hereof, and except as to phonograph records licensed to you by your foreign affiliates as to which you do not have or are unable to obtain record club rights.

c. The master recordings were and will be recorded in all respects in accordance with the rules and regulations of all unions having jurisdiction and all persons whose performances appear thereon will have been fully and completely paid (except for royalties), or will have in writing waived such payment in connection with the rendering of such performances and their embodiment thereon, and the manufacture and sale of phonograph records to be made therefrom. With respect to any royalties which may become due and payable by you to any of the persons whose performances are embodied on phonograph records and manufactured and sold hereunder, you further warrant and represent that the royalties payable to you hereunder shall include the royalties which may be required to be paid to such persons, which required payments shall be your sole responsibility.

d. All necessary permission for the recording of the material contained on the master recordings has been or will be obtained, and all fees and other charges applicable to or resulting from the recording of such material have been or will be fully and completely paid to, or in writing waived by, each person entitled to such payment in connection with the making of the master recordings, and the manufacture and sale of phonograph records to be made therefrom, except as otherwise provided in paragraph 8 hereof.

e. We shall be under no liability, prohibition or obligation whatsoever with respect to our manufacture, distribution, and sale of phonograph records from the master recordings, except as specifically provided in this agreement.

15. Indemnification

You and we each agree to and do hereby indemnify, save and hold the other harmless from loss or damage (including attorneys' fees) arising out of or connected with any claim by a third party which is inconsistent with any of the warranties, representations, or agreements made by you or us in the agreement. You or we (as the case may be) will



reimburse the other on demand for any payment made by the demanding party at any time after the date hereof in respect of any liability or claim to which the foregoing indemnity relates and which has resulted in an adverse judgement against the demanding party. Prompt notice will be given to the indemnifying party of any claim to which this indemnity relates and such indemnifying party shall have the right, at its own expense, to participate in the defense thereof.

16. Assignment

You and we may at our election assign this agreement or any of the rights hereunder to any subsidiary in which we or you now have or may hereafter obtain a controlling interest.

17. Entire Agreement

This agreement sets forth the entire agreement between the parties with respect to the subject matter thereof, and no modification, amendment, waiver, termination or discharge is sought to be enforced. No waiver of any provisions of or default under this agreement shall affect your or our right thereafter to enforce such provisions or to exercise any right or remedy in the event of any other default whether or not similar. This agreement, its validity, construction, and effect shall be governed by the laws of the State of New York.

18. Album Containers, Masters, Et Cetera

a. We shall be responsible for the creation and production of album containers such as jackets, sleeves or other such similar type containers for the phonograph records made from the master recordings. You agree to provide us with necessary plates, material and technical assistance to enable us to produce containers identical to the containers which you have created, produced, or are now in the process of producing or may hereafter produce for use in connection with phonograph records embodying the performances contained on the master recordings, and we agree to produce and use identical containers in sales and advertising hereunder where feasible, except as you know we utilize plastic inner sleeves for records issued through the Club, (and we shall be solely responsible for any liability resulting from the use of such plastic sleeves) but where such identical use is not feasible, we shall have the right to create and produce our own containers, provided, however, any changes shall be subject to your approval, which approval you shall not unreasonably withhold. You warrant that the containers and contents thereof furnished pursuant to this paragraph shall be free from any liability, prohibition, or obligation, as to royalty or otherwise whatsoever. You shall be responsible for original costs incurred by you in connection with material supplied to us. We shall reimburse you only for all out-of-pocket expenditures sustained by you in complying with our request for plates, material or technical assistance as referred to above, including payment to your recording facilities of the charge made for any acetate lacquers sent to us.



b. The master recordings supplied by you to us hereunder shall be considered on loan pursuant to the terms hereof. We shall pay all costs and expenses in reproducing phonograph records from the master recordings and shall pay all costs and expenses incurred in the process known in the phonograph record industry as "duplicate mastering" and shall be responsible for doing so. We may at our election request you to secure such duplicate mastering including mothers and stampers, but if you are so requested it shall be at our expense and all charges incurred shall be billed directly to us for our account. You agree to send to us samples, such as acetates of recording masters which are within the purview of this agreement, and copies of all phonograph records released by you during the term of this agreement. We agree to forthwith pay for said samples at the same price as your costs plus any out-of-pocket expenses, such as transportation charges incurred by you.

c. You agree to advise us of your recording schedule and supply us with copies of your current catalog and all relevant information during the term of this agreement.

#### 19. Encumbrances

We shall not pledge, mortgage, or in any way encumber this agreement, the master recordings furnished us, or any other reproducing device derived (in any manner whatsoever) from such master recordings.

#### 20. Coupling

We agree to release records embodying performances contained on the master recordings only in the form as submitted by you. We therefore have no right to couple performances embodied in such master recordings differently than as submitted without your express written consent so to do, which consent you may withhold for any reason whatsoever.

#### 21. Force Majeure

If, due wholly or partly to any labor controversy or adjustment thereof or to any cause not entirely within our control or which we could not by reasonable diligence have avoided, we are materially hampered in the distribution or sale of records produced from master recordings, then, for the duration of such contingency we may suspend the term hereof by written notice to you to such effect. If such period(s) of suspension during the original term and option period (if any) exceed six (6) months in the aggregate, you may without liability terminate this agreement by written notice to us to such effect. Upon such termination our obligation pursuant to paragraph 11 d shall be adjusted on a pro rata basis reflecting the time during

which this agreement was in effect (exclusive of the period of suspension). Nothing contained herein shall affect our obligation to pay royalties due to you after the termination of this agreement.

Very truly yours,

RECORD CLUB

By \_\_\_\_\_, President

ACCEPTED AND AGREED TO:

RECORD COMPANY

By \_\_\_\_\_, President